

INDUSTRIAL COURT OF MALAYSIA

CASE NO. : 3/4-703/24

BETWEEN

MUHAMMAD NUR IKHSAN BIN ZULKIFLI

AND

BRAHIM'S FOOD SERVICES SDN BHD

AWARD NO. : 253 OF 2026

BEFORE : **YA TUAN AHMAD RAZIF BIN MOHD SIDEK
CHAIRMAN**

VENUE : **Industrial Court Malaysia, Kuala Lumpur.**

DATE OF REFERENCE : **20.05.2024.**

**DATE OF RECEIPT OF
ORDER OF REFERENCE** : **12..06.2024.**

DATES OF MENTION : **18.07.2024, 03.10.2024, 14.11.2024, 06.01.2026.**

DATE OF HEARING : **29.07.2025.**

REPRESENTATION : **Ms. Islamiah Idris
Sarah Syahirah Abdullah
Messrs Nazri Azmi Islinda
Counsel for the Claimant.**

**Ms. Arissa Ahrom
Ms. Lai Lin Yik (PDK)
Messrs Lee Hishamuddin Allen & Gledhill
Counsel for the Company.**

REFERENCE:

This is a reference dated **20.05.2024** made by the Director General of Industrial Relations pursuant to subsection 20(3) of the Industrial Relations Act 1967 [*Act 177*] arising out of the dismissal of **Muhammad Nur Ikhsan Bin Zulkifli** (“the Claimant”) by **Brahim’s Food Services Sdn Bhd** (“the Company”) on **26.10.2023**.

AWARD**BRIEF FACTS**

[1] The Claimant had served the Company and its predecessor companies for over 25 years and the Claimant last position was as Executive of Operations, Warehouse, Support Services and Facilities Management in Penang Flight Kitchen, responsible for the maintenance and safety of equipment in the facility (refrigeration, vehicles, kitchen equipment etc.). The Company is the principal inflight catering services provider at both the Kuala Lumpur International Airport and Penang International Airport.

[2] Prior to the Claimant being transferred to the Penang Flight Kitchen as an Executive (Grade AS) with effect from 15.7.2022, the Claimant held the position of an Executive (Grade AS) in the Company’s Facilities Management Department. The Claimant’s last drawn salary was RM6340.91, consisting of RM6090.91 of basic salary and RM250.00 COLA. Claimant received RM1536.00 monthly contributions for Employee Provident Fund (EPF), a combination of Employee and Employer contributions.

[3] On 03.07.2023 that there were 2 major incidents of high lifts breaking down at the Penang Flight Kitchen which required major repairs. In view of this, the Company had commenced technical investigations on the matter.

[4] Vide a Show Cause Letter dated 14.07.2023, the Company highlighted to the Claimant of his violation of its Disciplinary Handbook and upon reviewing the Claimant’s explanation vide his letter dated 24.07.2023, the Company found the Claimant’s explanations were unsatisfactory and unacceptable and subsequently held an inquiry on 10.08.2023.

[5] Based on the evidence produced by the Claimant during the said inquiry, the Company had decided to commence further technical investigations. Vide a Show Cause Letter dated 13.09.2023, the Company highlighted to the Claimant of his violation of its Disciplinary Handbook and the Claimant vide letter dated 22.09.2023 had replied to the Show Cause Letter dated 13.09.2023.

[6] Upon reviewing the Claimant's explanation, the Company found out that the Claimant's explanations were unsatisfactory and unacceptable. The Company later held an inquiry on 04.10.2023.

[7] Vide a Letter of Dismissal dated 26.10.2023 the Company decided to terminate the services of the Claimant with immediate effect and in the same letter, the Claimant was also informed that he may appeal against the Company's decision.

[8] Vide a Letter dated 2.11.2023, the Claimant had appeal against the said decision, but the Company was unable to accept his appeal and reaffirmed the punishment of dismissal.

[9] The Court has gone through the evidence as given through testimony in Court and the documents and submission that have been filed. Those documents and submissions are listed for ease of reference as follows: -

- (i) *Penyata Kes* dated 08.08.2024;
- (ii) Statement in Reply dated 02.10.2024;
- (iii) Rejoinder dated 24.10.2024;
- (iv) Claimant's Bundle of Documents filed on 13.08.2024 and marked as exhibit CLB-1;
- (v) Company's Bundle of Documents (Volume 1) filed on 25.07.2024 and marked as exhibit COB-1;
- (vi) Company's Bundle of Documents (Volume 2) filed on 25.07.2024 and marked as exhibit COB-2;
- (vii) Company's Witness Statement of Syuhada Sukor signed on 29.07.2025 marked as exhibit COWS-1;

- (viii) Claimant's Witness Statement of Muhammad Nur Ikhsan Bin Zulkifli signed on 29.07.2025 marked as exhibit CLWS-1;
- (ix) Claimant's Witness Statement of Wan Zaidy Bin Wan Ishak signed on 29.07.2025 marked as exhibit CLWS-2;
- (x) Agreed Notes of Proceedings filed on 23.10.2025;
- (xi) Amended Claimant's Written Submission filed on 10.12.2025;
- (xii) Company's Written Submission filed on 29.10.2025;
- (xiii) Claimant's Reply To Written Submission filed on 30.12.2025; and
- (xiv) Company's Written Rebuttal filed on 30.12.2025.

The Role of the Court

[10] Before proceeding with the full award, the Court reiterates its stand regarding the role of the Court in a matter referred under subsection 20(3) Act 177 in the reported cases of **Badariah Abdullah Iwn. Malaysia Airports (Sepang) Sdn Bhd [2023] 2 LNS 1546**, **Nor Azlina Abd Rahim Iwn. Jurukur Perunding Services Sdn Bhd [2023] MELRU 1728** and **Chong Jee Fatt v. Tee E & C (Malaysia) Sdn. Bhd. [2023] 3 ILR 204**. The Court refers to the oft-cited Supreme Court case of **Wong Chee Hong v. Cathay Organisation Malaysia Sdn Bhd [1988] 1 CLJ 45** and **Goon Kwee Phoy v J & P Coats (M) Bhd. [1981] 2 MLJ 129**. The accepted principles in those cases are clear and needs no further elaboration. It would not be prudent to repeat the same and as such, parties are welcome to view the said case for an explanation of the cases above.

[11] The main and only function of the Industrial Court in dealing with a reference under section 20 of the Act, is to determine whether the misconduct or irregularities complained of by the Management as the grounds of dismissal were in fact committed by the workman, and if so, whether such grounds constitute just cause.

The Burden and Onus of Proof

[12] Before venturing further into the Award, the Court would like to highlight first the issue of burden of proof for this case, the Federal Court in the case of **Goon Kwee Phoy v J & P Coats (M) Bhd [1981] 2 MLJ 129** held that:

“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”
[Emphasis added]

[13] The Supreme Court in the case of **Wong Chee Hong v. Cathay Organisation (M) Sdn. Bhd. [1988] 1 CLJ (Rep) 298** held inter alia that:

“When the Industrial Court is dealing with a reference under s. 20, the first thing that the court will have to do is to ask itself a question whether there was a dismissal, and if so, whether it was with or without just cause or excuse.”

[14] Furthermore, the Court relies on the High Court case of **Weltex Knitwear Industries Sdn Bhd v. Law Kar Tay & Anor. [1998] 1 LNS 258**, where the High Court states as follows:

“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.”

[15] It is trite law that the burden of proof in establishing that there was just cause or excuse for dismissing the Claimant is on the Bank. The Court of Appeal in **Menara PanGlobal Sdn Bhd v Arokianathan a/l Sivapiragasam [2006] 3 MLJ 493** upheld the Industrial Court’s decision on this point when it determined as follows:

“12. To summarise this Court therefore has to:

- (a) determine if the Claimant has been dismissed, and
- (b) if the Court finds that the Claimant has been dismissed it has to go on to determine whether it was with just cause or excuse.

13. In doing so, this Court has to consider the reasons put forward by the Company for the Claimant's dismissal and determine whether the Company has proved them to the Court on a balance of probabilities. Even if the Company does succeed in proving these reasons, the Court has to determine in the final analysis whether they constitute just cause and excuse for dismissing the Claimant. In a dismissal case of this nature where the Claimant was dismissed for misconduct, the Company must produce convincing and cogent evidence that the Claimant committed the offence that he was alleged to have committed for which he was dismissed. The burden of proof lies on the Company on probabilities, and it must adduce evidence to discharge this legal burden.”

[Emphasis added]

[16] The Court also refers to its previous case with regards the burden of proof as well as adducing evidence in the case. In the case of **Lai Phui Phui v. ID Network Sdn Bhd [2023] MELRU 2347** this Court refers to the Court of Appeal case of **Telekom Malaysia Kawasan Utara v. Krishnan Kutty Sanguni Nair & Anor [2002] 3 CLJ 314** and the case of **International Times & Ors v. Leong Ho Yuen [1980] 1 MLJ 86**.

[17] Both the cases cited in the **Lai Phui Phui v. ID Network Sdn Bhd [2023] MELRU 2347** are the standard and burden of proof required by the Court, based on balance of probabilities. The Courts have stated that all applications under subsection 20(3) are deemed to be prima facie dismissal without just cause or excuse. It is also encumbered on the parties asserting the facts that it must be proven based on the balance of probabilities. Since this is a misconduct case, thence the Company has to prove their case first.

The Termination & The Legal Test

[18] This is a case of termination due to misconduct. Referring to the case law above, the burden of proof is on the Company to prove that the Claimant had done the acts the Company claimed and subsequently if proven whether it warrants a termination. This was clearly enunciated in the Federal Court case of **Milan Auto Sdn. Bhd. v. Wong Seh Yen [1995] 4 CLJ 449**, where Mohd Azmi bin Kamaruddin FCJ (delivering the judgment of the Court) held as follows:

“[1] The function of the Industrial Court in dismissal cases on a reference under s. 20 is two-fold. It has 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 is a jurisdictional error that merits interference by the High Court by way of certiorari. Further, the Industrial Court would be acting in excess of jurisdiction if it changed the scope of reference by substituting its own reason, that is to say a reason not relied upon by the employer for the dismissal.”

[Emphasis added]

[19] It is a principle of industrial relations jurisprudence that in a dismissal case, the employer must produce convincing and cogent evidence that the workman committed the offence or offences he is alleged to have committed for which he had been dismissed. The burden of proof lies on the Company on a balance of probabilities to establish this. In the case of **Ferodo Ltd v Barsed [1976] ICR 439** it was as follows:

“It seems to this appeal tribunal, therefore, that the law is quite plain and that what the industrial tribunal ought to do is, not to ask itself the question which this tribunal did – “Are we satisfied that the offence was committed?” – but to ask itself the question, “Are we satisfied that the employers had, at the time of the dismissal, reasonable grounds for believing that the offence put against the employee was in fact committed?””

[Emphasis added]

[20] In the case of **Abdul Hadee bin Ahmad v Tenaga Nasional Bhd [2025] ILJU 271**, the Industrial Court concluded that:

“[34] The duty of the Industrial Court to consider a reference under s. 20 of the Act are:

(a) Whether a misconduct or irregularities complaint of was in fact on balance of probabilities committed by the Claimant; and

(b) If the Claimant did commit the misconduct or irregularities whether it constituted just cause or excuse to dismiss the Claimant or in other words whether the punishment of dismissal is justified based on the proven facts of the case.”

[Emphasis Added]

The Company’s Case

[21] The Company contended that the dismissal of the Claimant from his position as Executive (Grade AS) in the Company’s Penang Flight Kitchen, stemmed from 2 major incidents of high lifts breaking down at the Penang Flight Kitchen that came to the management’s attention on 3rd July 2023, in which the break down required major repairs. In view of this, the Company had commenced technical investigations.

[22] Following this, the Company highlighted to the Claimant of his violation of its Disciplinary Handbook vide a Show Cause Letter dated 14.07.2023 (“First Show Cause Letter”) and upon reviewing the Claimant’s explanation vide his letter dated 24.07.2023 (“First Explanation Letter”), the Company did not find the Claimant’s explanations to be satisfactory and acceptable. In the circumstances, an inquiry was held on 10.08.2023 to hear the following charges against the Claimant (pages 70 & 71 of COB-1):

“Tuduhan 1

‘Bahawa anda Encik Muhammad Nur Ikhsan Bin Zulkifli, NKT:302392 bertugas sebagai Eksekutif di Dapur Penerbangan Pulau Pinang pada bulan Januari 2023 sehingga Julai 2023 telah

didapati gagal melaksanakan penyenggaraan Hi-Lift 08, Hi-Lift 18, HiLift 25, Hi-Lift 51 dan Hi-Lift 56 disenggara mengikut prosedur yang terdapat di dalam WI 5.11.2: Preventative Maintenance supaya semua Hi-Lift di dalam keadaan baik dan boleh digunakan untuk keperluan operasi seperti laporan yang diterima oleh pihak pengurusan pada 03 Julai 2023.

Mengikut Kaedah dan Peraturan Syarikat, perbuatan salahlaku ini adalah bertentangan dengan syarat-syarat perkhidmatan anda seperti tercatat di dalam Buku Acara Tatatertib Syarikat Lampiran A, Fasa 15, Perkara 15.4 'Selalu bersikap cuai atau lalai sewaktu bertugas,' Perkara 15.11 'Melanggar sebarang undang-undang, kaedah, peraturan atau perintah yang terpakai dalam Syarikat.'. Kesalahan demikian sepatutnya menerima hukuman yang berat.

Tuduhan 2

'Bahawa anda Encik Muhammad Nur Ikhsan Bin Zulkifli, NKT:302392 bertugas sebagai Eksekutif di Dapur Penerbangan Pulau Pinang pada bulan Januari 2023 sehingga Julai 2023 telah didapati gagal melaksanakan tugas anda dalam memastikan kakitangan di bawah seliaan anda untuk melakukan Preventive Maintenance secara mingguan dan bulanan mengikut prosedur yang terdapat di dalam WI 5.11.2: Preventive Maintenance bagi Hi-Lift 08, Hi-Lift 18, HiLift 25, Hi-Lift 51 dan Hi-Lift 56 sehingga menyebabkan Hi-Lift 08, Hi-Lift 51 dan Hi-Lift 56 mengalami kerosakan major. Hal ini telah menyebabkan Syarikat terpaksa menanggung kos pembaikan yang tinggi bagi menyenggara Hi-Lift tersebut.

Mengikut Kaedah dan Peraturan Syarikat, perbuatan salahlaku ini adalah bertentangan dengan syarat-syarat perkhidmatan anda seperti tercatat di dalam Buku Acara Tatatertib Syarikat Lampiran A, Fasa 15, Perkara 15.4 'Selalu bersikap cuai atau lalai sewaktu bertugas,' Perkara 15.11 'Melanggar sebarang undang-undang, kaedah, peraturan atau perintah yang terpakai dalam Syarikat.'

Kesalahan demikian sepatutnya menerima hukuman yang berat.

Tuduhan 3

'Bahawa anda Encik Muhammad Nur Ikhsan Bin Zulkifli, NKT:302392 bertugas sebagai Eksekutif di Dapur Penerbangan Pulau Pinang pada bulan Januari 2023 sehingga Julai 2023 telah didapati gagal melaksana dan memastikan proses Corrective Maintenance seperti yang tercatat di dalam prosedur WI 5.11.1: Repair of Equipment, Building and Vehicle bagi Hi-Lift 08, Hi-Lift 51 dan Hi-Lift 56 sehingga menyebabkan keperluan operasi Syarikat terjejas.

Mengikut Kaedah dan Peraturan Syarikat, perbuatan salahlaku ini adalah bertentangan dengan syarat-syarat perkhidmatan anda seperti tercatat di dalam Buku Acara Tatatertib Syarikat Lampiran A, Fasa 15, Perkara 15.4 'Selalu bersikap cuai atau lalai sewaktu bertugas', Perkara 15.11 'Melanggar sebarang undang-undang, kaedah, peraturan atau perintah yang terpakai dalam Syarikat'. Kesalahan demikian sepatutnya menerima hukuman yang berat."

[23] The Company further contended that the Claimant was given the opportunity to produce evidence and witnesses to defend himself from the charges levelled against him during the inquiry on 10.08.2023 and based on the evidence produced by the Claimant during the said inquiry, the Company had discovered that there were further misconducts that had been committed by the Claimant. As a result of such discovery, the Company had decided not to impose any punishment against the Claimant but, had instead commenced further technical investigations.

[24] Vide a Show Cause Letter dated 13.09.2023 ("Second Show Cause Letter"), the Company had highlighted the Claimant of his violation of its Disciplinary Handbook and upon reviewing the Claimant's explanation vide his letter dated 22.03.2023 ("Second Explanation Letter"), the Company found the Claimant's explanation to be unsatisfactory and unacceptable and held an inquiry on 04.10.2023 to hear the following charges against the Claimant (pages 80 & 81 of COB-1) :

“Tuduhan 1

‘Bahawa anda Encik Muhammad Nur Ikhsan Bin Zulkifli, NKT:302392 bertugas sebagai Eksekutif di Dapur Penerbangan Pulau Pinang telah didapati menanda senarai semak dokumen Laporan Kenderaan Bulanan Penyenggaraan Hi-Lift bagi bulan Disember 2022 sehingga bulan Mei 2023 secara sekaligus pada waktu yang sama serta mengarahkan kakitangan di bawah seliaan anda untuk menandatangani Laporan Kenderaan Bulanan Penyenggaraan Hi-Lift tersebut. Pihak Syarikat beranggapan bahawa anda telah berkelakuan tidak jujur dalam menyediakan Laporan Kenderaan Bulanan Penyenggaraan Hi-Lift pada bulan seperti yang dinyatakan.

Mengikut Kaedah dan Peraturan Syarikat, perbuatan salahlaku ini adalah bertentangan dengan syarat-syarat perkhidmatan anda seperti tercatat di dalam Buku Acara Tatatertib Syarikat Lampiran A, Fasa 7, Perkara 7.1 ‘Menipu atau berlaku tidak jujur dalam urusan yang berkaitan dengan perniagaan atau harta Syarikat...’ Perkara 15.11 ‘Melanggar sebarang undang-undang, kaedah, peraturan atau perintah yang terpakai dalam Syarikat’. Kesalahan demikian sepatutnya menerima hukuman yang berat.

Tuduhan 2

‘Bahawa anda Encik Muhammad Nur Ikhsan Bin Zulkifli, NKT:302392 bertugas sebagai Eksekutif di Dapur Penerbangan Pulau Pinang pada bulan September 2022 sehingga bulan Julai 2023 telah didapati tidak mematuhi Standard Operating Procedure (SOP) yang telah ditetapkan dengan menggunakan gambar Hi-Lift yang sama bagi dokumen Laporan Kenderaan Bulanan Penyenggaraan Hi-Lift. Pihak Syarikat beranggapan bahawa anda telah berkelakuan tidak jujur dalam menyediakan Laporan Kenderaan Bulanan Penyenggaraan Hi-Lift pada bulan seperti yang dinyatakan.

Mengikut Kaedah dan Peraturan Syarikat, perbuatan salahlaku ini

adalah bertentangan dengan syarat-syarat perkhidmatan anda seperti tercatat di dalam Buku Acara Tatatertib Syarikat Lampiran A, Fasa 7, Perkara 7.1 'Menipu atau berlaku tidak jujur dalam urusan yang berkaitan dengan perniagaan atau harta Syarikat..,' Perkara 15.11 'Melanggar sebarang undang-undang, kaedah, peraturan atau perintah yang terpakai dalam Syarikat'. Kesalahan demikian sepatutnya menerima hukuman yang berat.

Tuduhan 3

'Bahawa anda Encik Muhammad Nur Ikhsan Bin Zulkifli, NKT:302392 bertugas sebagai Eksekutif di Dapur Penerbangan Pulau Pinang pada 23 Jun 2023 telah didapati menandatangani dokumen Laporan Kenderaan Bulanan Penyenggaraan bagi Hi-Lift 25 di bahagian pengesahan di mana senarai semak tidak bertanda pada hari tersebut oleh kakitangan di bawah seliaan anda. Hal ini telah menyebabkan anda gagal menyemak dokumen terlebih dahulu sebelum membuat pengesahan.

Mengikut Kaedah dan Peraturan Syarikat, perbuatan salahlaku ini adalah bertentangan dengan syarat-syarat perkhidmatan anda seperti tercatat di dalam Buku Acara Tatatertib Syarikat Lampiran A, Fasa 15, Perkara 15.4 'Selalu bersikap cuai atau lalai sewaktu bertugas,' Perkara 15.11 'Melanggar sebarang undang-undang, kaedah, peraturan atau perintah yang terpakai dalam Syarikat.' Kesalahan demikian sepatutnya menerima hukuman yang berat."

[25] The Company further contended that the Claimant was given the opportunity to produce evidence and witnesses to defend himself from the charges levelled against him during the inquiry on 04.10.2023 where the Inquiry Panel was not satisfied with the explanations provided by the Claimant in response to the charges levelled against the Claimant.

[26] The Company contended that the only punishment that could be imposed on the Claimant, noting on the gravity of the misconduct by the Claimant was dismissal as it no longer has trust and confidence in the Claimant to continue in his employment.

Therefore, the Company issued a letter of dismissal (“Notice of Termination”) dated 26.10.2023 (page 82 of COB-1) terminating the services of the Claimant with immediate effect. In the same letter, the Claimant was also informed that he may appeal against the Company’s decision. Accordingly, the Claimant exercised the opportunity given by the Company to appeal against the said decision vide his letter of appeal dated 02.11.2023 (page 83 of COB-1). However, the Company was unable to accept the Claimant’s appeal and reaffirmed the punishment of dismissal via letter dated 08.12.2023 (page 84 of COB-1).

The Claimant’s Case

[27] The Claimant submitted that he joined the Company’s predecessor company in 1996 as an IT Jr. Programmer and rose through the ranks to Executive of Operations, Warehouse, Support Services and Facilities Management. The Claimant also submitted that he had served the Company for a period over 25 years without any disciplinary record.

[28] The Claimant further submitted that in June 2022, he was informed of a transfer to Penang Flight Kitchen effective on 15.07.2022 where the Claimant had appealed against the transfer on the grounds that his aged parents and children are residing in Selangor and that his specialised duties were KLIA-based (Exh. MNI-1 to MNI-5, CLB-1) but however, his appeal was rejected and despite the transfer controversy, the Claimant had continued to perform his duties diligently.

[29] The Claimant contended that that on 22.02.2023, he had submitted a Management Paper recommending preventive maintenance of High-Lift Vehicles and requested a budget of RM 68,800 (Exh. MNI-6, CLB-1). According to the Claimant, the Management Paper was a proposal from the Claimant to get the Company’s approval for a budget of RM68,000.00 to en High-Lift gage in a comprehensive Preventive Management Servicing Contract for 4 units high lift vehicles for the Penang Flight Kitchen. The Claimant also contended that at that point of time, there was no Preventive Maintenance Servicing Contract available and as such, there is high risk of the vehicles breaking down and cause disruption to the Company’s operation. However, the Claimant did not receive any respond from the Company on the Management Paper.

[30] The Claimant further contended that on 03.07.2023, he had alerted his superiors to the urgent need for replacement vehicles to ensure safe and efficient operation of the vehicles on site as during such period, only 1 vehicle is usable, and the rest are either under repair or unusable and those vehicles are aged 25 to 32 years. (Exh. MNI-7 of CLB-1). This request was not approved by the Company. Instead of addressing these concerns, the Company initiated a Technical Inquiry on 04.09.2023 and 05.09.2023 to investigate alleged irregularities in maintenance records (Exh. MNI-14 & MNI-15 of CLB-1).

[31] The Claimant further contended that the Company had conducted the 1st Domestic Inquiry on 10.08.2023 (Exh. MNI11 of CLB-1) where three (3) charges were levelled against the Claimant and the Claimant pleaded not guilty to all the charges and stated clearly his defense of the charges in his submission to that Panel Inquire (Exh. MNI-12 of CLB-1). The Claimant further contended that the Company did not make any decision on the 1st Domestic Inquiry; however, the Company proceeded to hold the 2nd Domestic Inquiry on 04.10.2023 with three (3) charges against him.

[32] The Claimant further contended that he pleaded not guilty to 1st and 2nd charge and pleaded guilty to charge no 3. The 2nd Domestic Inquiry concluded with a finding of guilt on charges 1 & 2, that the Claimant had endorsed Monthly vehicle reports forms for four vehicles without ensuring the actual work was carried out. The Claimant denies these allegations and avers that he acted in good faith and in accordance with established practice. The Claimant was then dismissed on 26.10.2023, and his appeal was rejected on 08.12.2023.

[33] The Claimant seeks an order for reinstatement to his former position with full back wages and the restoration of all attendant benefits, or alternatively, such other relief as this Honourable Court deems just and appropriate in the circumstances.

The Issues

[34] The main issue in this present case, to be determined by this Court is, whether the Claimant was dismissed with just cause or excuse. When an employee commits gross misconduct such as conduct inconsistent with the relationship of an employer

and employee, the employer is justified in dismissing the employee after giving him adequate opportunity to refute the allegations framed against him. As stated earlier, the burden of proof lies on the Company on a balance of probabilities to establish this.

The Decision

[35] In dealing with this issue, it is pertinent for the Court to look at the chronology that leads to the dismissal of the Claimant as follows: -

Date	Event
15.07.2022	: Claimant was transferred to Penang Flight Kitchen as Executive (Grade AS).
14.07.2023	: First Show Cause Letter issued to the Claimant.
24.07.2023	: First Explanation Letter submitted by the Claimant.
03.08.2023	: First Domestic Inquiry Notice issued to the Claimant.
10.08.2023	: First Domestic Inquiry session was held.
13.09.2023	: Second Show Cause Letter issued to the Claimant.
22.09.2023	: Second Explanation Letter submitted by the Claimant.
26.09.2023	: Second Domestic Inquiry Notice dated issued to the Claimant.
04.10.2023	: Second Domestic Inquiry session was held.
26.10.2023	: Claimant was terminated.
02.11.2023	: Claimant submitted an appeal.
08.12.2023	: Company reaffirmed the punishment of dismissal,

[36] The case before this Court essentially involves the Claimant's acts of (page 80 & 81 of COB-1): -

- (i) marking the checklists on all the Monthly Vehicle Report (Hi-Lift) of HL 08, HL 18, HL 25 & HL 51 for the months of December 2022 until May

- 2023 simultaneously (“1 st Charge”);
- (ii) failing to comply with the prescribed procedure, by attaching the same pictures of the hi-lifts in the Monthly Vehicle Report (Hi-Lift) of HL 08, HL 18, HL 25 & HL 51 for the months of September 2022 to July 2023 (“2 nd Charge”); and
 - (iii) signing and verifying the Monthly Vehicle Report (HiLift) of HL 25 despite the said report not being filled out by his subordinate, Encik Wan Zaidy, Technician in the Maintenance Department, Penang Flight Kitchen of the Company (“3 rd Charge”).

[37] According to the Company’s witness, Puan Syuhada Sukor (“COWS-1”) who testified in her capacity as an officer of the Company’s management, holding the position of Head of Finance & Administration, the Claimant’s job scope as Executive in the Company’s Penang Flight Kitchen was among others, be responsible for the maintenance of 5 hi-lifts which were being utilised at the Penang International Airport, namely Hi-Lift 08 (“HL 08”), Hi-Lift 18 (“HL 18”), Hi-Lift 25 (“HL 25”) and Hi-Lift 51 (“HL 51”) based on the procedures as set out in “WI 5.11.1 Repair of Equipment, Building and Vehicle” and “WI 5.11.2 Preventive Maintenance” (Q&A 8 of COWS-1; page 49 – 54 & 55 – 59 of COB-1).

[38] According to COWS-1(Q&A 9 of COWS-1), the said hi-lifts were used to transport and load food and beverages onto aircrafts at the Penang International Airport, and the hi-lifts are designed with a platform that can be raised and lowered to match the height of the aircraft door to facilitate the loading of catering supplies onto the aircraft.

[39] COWS-1 further testifies that based on the invoices dated 03.07.2023 and 04.07.2023, the management had found that there were 2 major breakdowns involving HL 08 & HL 51 in which, such breakdown required major repairs and incurred significant costs of repairs, including the costs of towing HL 08 & HL 5125. According to COWS-1(Q&A 10 of COWS-1) as a result of such findings, the Company commenced technical investigations to determine the cause of the major breakdowns involving HL 08 and HL 51, wherein it was found that the Claimant had among others failed: -

- (i) to carry out and ensure the maintenance of hi-lifts used at the Penang International Airport in accordance with the procedures in “WI 5.11.2 Preventive Maintenance”;
- (ii) to carry out Preventive Maintenance for hi-lifts used at Penang International Airport; and
- (iii) to carry out and ensure the Corrective Maintenance process for hi-lifts used at Penang International Airport in accordance with the procedures in “WI 5.11.1 Repair of Equipment, Building and Vehicle”.

[40] COWS-1 further testifies that (Q&A 13 of COWS-1 & page 1-40 & 43-46 of COB-2) the Company upon considering and analysing the documentary evidence produced by the Claimant during the domestic inquiry session convened on 10.08.2023, had further discovered that the Claimant had contravened the Disciplinary Handbook. In view of this, the management had commenced further technical investigations wherein it was discovered among others, that the Claimant: -

- (i) had marked the checklists on all the Monthly Vehicle Report (Hi-Lift) of HL 08, HL 18, HL 25 & HL 51 for the months of December 2022 until May 2023 simultaneously;
- (ii) had failed to comply with the prescribed procedure, by attaching the same pictures of the hi-lifts in the Monthly Vehicle Report (Hi-Lift) of HL 08, HL 18, HL 25 & HL 51 for the months of September 2022 to July 2023; and
- (iii) had signed and verified the Monthly Vehicle Report (Hi-Lift) of HL 25 despite the said report not being filled out by his subordinate, Encik Wan Zaidy Wan Ishak (CLWS-2) Technician in the Maintenance Department, Penang Flight Kitchen of the Company.

[41] Based on the evidence of COWS-1 (Q&A 15 & 17 of COWS-1) during the domestic inquiry convened on 04.10.2023, the Claimant had again admitted guilt to the 3rd Charge in the Second Domestic Inquiry Notice which is consistent with his earlier admission via his Second Explanation Letter.

[42] According to the Claimant, he had submitted the Management Approval Paper on 22.02.2023 given that there was no “Preventive Maintenance Servicing Contract

available”. In this relation, with regard to the Claimant’s application for a budget to be approved for the purpose of the maintenance of the hi-lifts, COWS-1 (Q&A 21 of COWS-1) testifies that the Claimant’s application was unnecessary as the Company had via a letter dated 31.01.2023 (page 61-63 of COB-1) appointed Khaw Chuan Auto Repairing to carry out all maintenance and repair works involving all the hi-lifts at the Penang International Airport for a period of 1 year effective 01.02.2023.

[43] It is the Court finding that during the cross-examination, the Claimant had conceded and confirmed the existence of the appointment of Khaw Chuan Auto Repairing via a letter dated 31st January 2023 to conduct ad hoc maintenance and repair works of the hi-lifts for a period of 1 year.

**Notes of Proceedings dated 29.07.2025 at page 45, L1-10
CLWS1**

“Q : *Ok Encik, tadi Encik mengesahkan bahawa penyelenggaraan Hi-Lift akan dilakukan oleh Khaw Chuan Auto Repairing. Lihat muka surat 61 sehingga 63, COB-1. Setuju Encik, kenyataan Encik yang penyelenggaraan akan dibuat oleh Khaw Chuan Auto Repairing adalah berdasarkan surat ini di mana Syarikat melantik Syarikat Khaw Chuan Auto Repairing melalui surat bertarikh 31/01/2023 untuk adhoc vehicle repairs at Brahim’s Food Services Sdn Bhd, Penang, for a period one year, betul?*

A : *Betul.”*

[44] This Court also take note that Claimant’s own witness, CLWS-2 who was also his subordinate in charge of conducting visual checks of the hi-lifts had admitted when cross-examined that the Monthly Vehicle Report (Hi-Lift) of HL 08, HL 18, HL 25 & HL 51 which were checked by himself between September 2022 until June 2023 shows that the conditions of the said hi-lifts during the 9 months were functional and there were no breakdowns page (94 – 97 of the Agreed Notes of Proceedings).

**Notes of Proceedings dated 29.07.2025 at page 94, L23-27, L33-37
CLWS2**

“Q : *Ok. Encik lihat dari muka surat 1 sehingga muka surat 40.*

Ini merangkumi laporan-laporan dari September 2022 sehingga Jun 2023. Encik boleh ambil masa tengok satu-satu Encik. Dari 1,2,3,4,5.

A : *Yang mana, Cik? Yang 4 hingga?*

Q : *Ok. Kalau Encik tengok muka surat 1 ok, 2,3,4, ini adalah untuk 34 September 2022 untuk keempat-empat Hi-Lift tersebut. Setuju Encik 35 dalam semua ini 1,2,3,4 Encik tandakan ok, betul?*

A : *Ya.”*

**Notes of Proceedings dated 29.07.2025 at page 95, L2-20, L26-37
CLWS2**

“Q : *Seterusnya 5,6,7,8, pun Encik tandakan ok bagi setiap 10 perkara, betul? Betul?*

A : *Betul.*

Q : *Ok. Lepas itu 9,10,11,12, untuk November 2022 pun semua ok juga, betul?*

A : *Betul.*

Q : *13,14,15,16, ini untuk Disember 2022. Untuk keempat-empat Hi-Lift 10 perkara, ok, betul?*

A : *Betul.*

Q : *Ok, 17,18,19,20, semua ok kecuali body paint point work perkara 8, 18 betul?*

A : *Betul.*

Q : *Ok. 21,22,23,24, sama juga untuk Februari 2023. Untuk Mac 2023, 25 27 sehingga 28.*

A : *20?*

Q : *23 sehingga maaf, 25 sehingga 28*

A : *25*

Q : *Sehingga 28 betul juga*

A : *28.”*

**Notes of Proceedings dated 29.07.2025 at page 96, L2-6 & L18-35, page 97,
L2-L20
CLWS2**

Q : *Sama juga*

J : *Jawaban? En. Zaidy.*

A : *Ya.*

Q : *Ok. Seterusnya, 29, 30, 31 dan 32, semua ok balik di, bagi bulan April 2023, betul?*

A : *Ok.*

Q : *Betul ya. Ok, untuk bulan Mei 2023, 33, 34, 35 ,36, 10 perkara semua ok, betul?*

A : *Betul.*

Q : *Ok, lepas itu untuk bulan Jun. Jun di muka surat 37, 39, 38, 30... ok, 39 tadi Encik kata tak ada ditandakan. Untuk 40 semua ok, betul?*

A : *Ok.*

Q : *Betul En. Zaidy?*

A : *Betul.*

Q : *Yang tadi Encik terangkan kalau ok ini maksudnya semua berfungsi?*

A : *Berfungsi, ya.*

Q : *Kan. Alright. Jadi, saya katakan bahawa Soalan Jawapan 5 dalam Penyata Saksi Encik bahawa keadaan kenderaan Hi-Lift adalah sangat kritikal, sudah lama digunakan sering rosak, tidak diselenggara secara berkala, kenyataan ini adalah tidak benar kerana berdasarkan laporanyang Encik semak sendiri tandatangan dan disahkan oleh En Ikhsan sendiri menunjukkan setiap bulan pun ok, 10-10 perkara, setuju ke taksetuju?*

A : Yang mana? Rujuk yang mana?

Q : Merujuk kepada yang kita rujuk semua tadi.

A : Ya.”

[45] This Court agrees with the Counsel for the Company that the evidence of CLWS-2 corroborates with COW-1’s evidence (Q&A 21 of COWS-1) that the Claimant’s application for a budget to be approved for the purpose of the maintenance of the hi-lifts were unnecessary as the Company had via a letter dated 31.01.2023 appointed Khaw Chuan Auto Repairing to carry out all maintenance and repair works involving all the hi-lifts at the Penang International Airport, effective from 01.02.2023 for a period of 1 year.

[46] On the Claimant submission that he was dismissed on “allegations that he had falsified Monthly vehicle records by signing the inspection checklist without proper verification”, this Court would refer to the charges as contained in the Second Domestic Inquiry Notice for which the Claimant was terminated of upon being found guilty are reproduced below:

“Tuduhan 1

‘Bahawa anda Encik Muhammad Nur Ikhsan Bin Zulkifli, NKT:302392 bertugas sebagai Eksekutif di Dapur Penerbangan Pulau Pinang telah didapati menanda senarai semak dokumen Laporan Kenderaan Bulanan Penyelenggaraan Hi-Lift bagi bulan Disember 2022 sehingga bulan Mei 2023 secara sekaligus pada waktu yang sama serta mengarahkan kakitangan di bawah seliaan anda untuk menandatangani Laporan Kenderaan Bulanan Penyelenggaraan Hi-Lift tersebut. Pihak Syarikat beranggapan bahawa anda telah berkelakuan tidak jujur dalam menyediakan Laporan Kenderaan Bulanan Penyelenggaraan Hi-Lift pada bulan seperti yang dinyatakan.

Mengikut Kaedah dan Peraturan Syarikat, perbuatan salahlaku ini adalah bertentangan dengan syarat-syarat perkhidmatan anda

seperti tercatat di dalam Buku Acara Tatatertib Syarikat Lampiran A, Fasa 7, Perkara 7.1 'Menipu atau berlaku tidak jujur dalam urusan yang berkaitan dengan perniagaan atau harta Syarikat..' Perkara 15.11 'Melanggar sebarang undang-undang, kaedah, peraturan atau perintah yang terpakai dalam Syarikat'. Kesalahan demikian sepatutnya menerima hukuman yang berat.

Tuduhan 2

'Bahawa anda Encik Muhammad Nur Ikhsan Bin Zulkifli, NKT:302392 bertugas sebagai Eksekutif di Dapur Penerbangan Pulau Pinang pada bulan September 2022 sehingga bulan Julai 2023 telah didapati tidak mematuhi Standard Operating Procedure (SOP) yang telah ditetapkan dengan menggunakan gambar Hi-Lift yang sama bagi dokumen Laporan Kenderaan Bulanan Penyenggaraan Hi-Lift. Pihak Syarikat beranggapan bahawa anda telah berkelakuan tidak jujur dalam menyediakan Laporan Kenderaan Bulanan Penyenggaraan Hi-Lift pada bulan seperti yang dinyatakan.

Mengikut Kaedah dan Peraturan Syarikat, perbuatan salahlaku ini adalah bertentangan dengan syarat-syarat perkhidmatan anda seperti tercatat di dalam Buku Acara Tatatertib Syarikat Lampiran A, Fasa 7, Perkara 7.1 'Menipu atau berlaku tidak jujur dalam urusan yang berkaitan dengan perniagaan atau harta Syarikat..' Perkara 15.11 'Melanggar sebarang undang-undang, kaedah, peraturan atau perintah yang terpakai dalam Syarikat'. Kesalahan demikian sepatutnya menerima hukuman yang berat.

Tuduhan 3

'Bahawa anda Encik Muhammad Nur Ikhsan Bin Zulkifli, NKT:302392 bertugas sebagai Eksekutif di Dapur Penerbangan Pulau Pinang pada 23 Jun 2023 telah didapati menandatangani dokumen Laporan Kenderaan Bulanan Penyenggaraan bagi Hi-Lift 25 di bahagian pengesahan di mana senarai semak tidak bertanda pada hari tersebut oleh kakitangan di bawah seliaan anda. Hal ini

telah menyebabkan anda gagal menyemak dokumen terlebih dahulu sebelum membuat pengesahan.

Mengikut Kaedah dan Peraturan Syarikat, perbuatan salahlaku ini adalah bertentangan dengan syarat-syarat perkhidmatan anda seperti tercatat di dalam Buku Acara Tatatertib Syarikat Lampiran A, Fasa 15, Perkara 15.4 'Selalu bersikap cuai atau lalai sewaktu bertugas', Perkara 15.11 'Melanggar sebarang undang-undang, kaedah, peraturan atau perintah yang terpakai dalam Syarikat'. Kesalahan demikian sepatutnya menerima hukuman yang berat."

[47] It is the Court findings that the crux of the 1st Charge & 2nd Charge in the Second Domestic Inquiry Notice for which the Claimant was found guilty of essentially involves the Claimant's failure to faithfully discharge his duty. The Claimant had breached the Company's Disciplinary Handbook, specifically Clauses 7.1 (page 30 of COB-1), 15.4 and 15.11 (page 33 of COB-1) of *Lampiran A* which expressly stipulates as follows:

"7. Tipuan: 7.1 Menipu atau berlaku tidak jujur dalam urusan yang berkaitan dengan perniagaan atau harta Syarikat atau harta yang diamanahkan kepada Syarikat atau terhadap harta kakitangan lain dalam kawasan Syarikat atau maklumat peribadi kakitangan kepada Syarikat.

...

15.4 Selalu bersikap cuai atau lalai sewaktu bertugas.

...

15.11 Melanggar sebarang undang-undang, kaedah, peraturan atau perintah yang terpakai dalam Syarikat."

[48] Further, the 3rd Charge for which the Claimant had admitted guilt involves the Claimant's dereliction of duties. The Claimant's misconducts in this case clearly point to his breach of duty of care to faithfully and diligently discharge his duties owed to the Company as his employer.

[49] During cross-examination and re-examination, COWS-1 disagreed that the pictures required to be attached to the Monthly Vehicle Report (Hi-Lift) carried no significance. COWS-1 went on to illuminate before this Honourable Court that given the pictures attached to the said reports must reflect the current conditions of the hi-lifts. Therefore, it is logical that only current pictures of the hi-lifts are attached to the said reports in order to substantiate the veracity of the reports (*Notes of Proceedings dated 29.07.2025 at page 8, 9, 16 & 17*). In this regard, this Court agrees with COWS-1 as it is only logical for the Monthly Vehicle Report (Hi-Lift) to show the relevant Hi-Lift that was reported. COWS-1 further explained that the Claimant's misconducts were considered serious misconducts, warranting the harshest punishment of dismissal given that the said misconducts could have caused an accident.

**Notes of Proceedings dated 29.07.2025 at page 16 L34-37 & page 17 L-1-24
COWS1**

- “Q** : *Baik, Yang Arif. Puan, seterusnya peguam bijaksana telah mencadangkan kepada Puan, merujuk kepada pertuduhan kedua, dinyatakan gambar dalam laporan, “Saya katakan penggunaan gambar dalam laporan itu tidak significant kepada laporan sebenarnya.” Dan jawapan Puan adalah, “Saya tidak setuju, Yang Arif. Boleh rujuk kepada COB-2, pada setiap report ada gambar kenderaan. Jadi, gambar ini disebabkan report ini adalah report semasa, gambar ini secara logiknya mestilah gambar semasa kenderaan tersebut.” Dan dicadangkan kepada Puan sekali lagi bahawa gambar itu tidak significant kerana tidak diperlukan dalam report. Jawapan Puan adalah, “Saya tidak setuju.” Boleh tak Puan terangkan kepada Mahkamah ini kenapa Puan tidak setuju dengan cadangan bahawa gambar itu tidak significant kerana tidak diperlukan dalam report, laporan bulanan tersebut?*
- A** : *Yang Arif, gambar itu adalah perlu kerana kita Syarikat ingin memastikan report ini selari dengan gambar yang, dia adalah disokong oleh gambar semasa, keadaan semasa kenderaan itu, Yang Arif.*

- Q** : *Baik. Selepas itu, ditanya juga, dinyatakan kepada Puan bahawa kesalahan tidak berat untuk dibuang kerja dan Puan tidak setuju. Boleh tak Puan terangkan kepada Yang Arif kenapa Puan tidak setuju dengan cadangan bahawa kesalahan-kesalahan tersebut tidak berat untuk dibuang kerja?*
- A** : *Kerana kesalahan itu boleh mengakibatkan kemalangan dan laporan terhadap kenderaan itu tidak jelas untuk kita melakukan pembaikan terhadap kenderaan tersebut jika ada apa-apa kerosakan atau masalah.”*

[50] COWS-1, as the Company’s Head of Finance & Admin, is responsible to manage disciplinary and integrity matters of the Company’s employees (Q&A 3 of COWS-1). COWS-1 further testified that upon considering and analysing all the relevant evidence in relation to the Claimant’s misconduct, the Company can no longer repose the necessary trust and confidence in the Claimant for him to continue in his employment (Q&A 17 of COWS-1). In relation to the Claimant’s misconducts in the 1st Charge & 2nd Charge, the crucial reference documentary evidence produced before this Court are:

- (i) the Monthly Vehicle Report (Hi-Lift) of HL 08, HL 18, HL 25 & HL 51 for the months of December 2022 until May 2023 where the Claimant had marked simultaneously; and
- (ii) the Monthly Vehicle Report (Hi-Lift) of HL 08, HL 18, HL 25 & HL 51 for the months of September 2022 to July 2023 where the Claimant had failed to comply with the prescribed procedure, by attaching the same pictures of HL 08, HL 18, HL 25 & HL 51.

[51] This Court agrees with the Counsel for the Company that the Monthly Vehicle Report (Hi-Lift) to the Company’s operations is crucial and significant as it is the industry practice to fulfil the International Organization for Standardization (“ISO”) requirements that the significance of be understood to which the Claimant himself

agreed that the Monthly Vehicle Report (Hi-Lift) are for the purposes of fulfilling the ISO standards set out internationally recognized benchmarks for quality, safety and operational consistency

**Notes of Proceedings dated 29.07.2025 at page 39 L2-32 & page 40 L1-7
CLWS1**

“Q : *Maksudnya, keadaan fizikal Hi-Lift tersebut pada bulan-bulan dari September 2022 sehingga Julai 2023, tidak dapat diketengahkan secara visual kepada pihak pengurusan melalui laopran ini, betul?Sebab tadi encik kata dia tidak menggambarkan keadaaan terkini Hi-Lift tersebut. Jadi, setuju bahawa keadaan fizikal Hi-Lift tersebut tidak dapat diketengahkan kepada pihak pengurusan secara visual melalui gambar-gambar ini dalam laporan September 2022 sehingga Julai 2023, betul?*

J : *Awak faham ke tak soalan itu?*

A : *Saya faham Yang Arif, tapi kaitan dia dengan operasi yang saya jalankan, memang laporan ini tak dihantar ke pihak majikan. Senarai Semak ini akan stop dekat saya dan apa yang akan saya buat Adalah melalui platform lain untuk mengketengahkan status Hi-Lift, bukan melalui senarai Semak ini. Bila soalan daripada peguam kata mengketengahkan ke pihak majikan, memang dokumen ini tidak diketengahkan pun ke majikan. Ini untuk memenuhi keperluan ISO sahaja. Untuk sebarang pembaik puli pembaikan, bukan melalui dokumen ini. Ada dokumen lain dan kertas kerja lain yang digunakan.*

So, bila soalan macam itu, memang dokumen ini tidak akan terus, dia akan full stop dekat saya. Dalam SOP pun, kalau disemak, tak ada pun seterusnya. Tandatangan selepas saya pun tak ada. Makna, habis dekat saya, saya yang akan decide untuk buat kertas kerja ke, ataupun

segala pembaik pulih yang diperlukan ataupun secara adhoc selepas dokumen ini. So soalan itu tak berapa relevan dengan operasi yang saya telah jalankan sepanjang tempoh itu. Untuk ketengahkan status Hi-Lift ataupun kerosakan, bukan melalui ini. So bila ditanya soalan itu, memang bukan, tak relevan dengan SOP dan perjalanan, pengetahuan saya.

...

Q : *Tadi Encik nyatakan bahawa ini untuk memenuhi ISO. Betul?*

A : *Ya, betul.*

Q : *So, untuk ISO ini, boleh tak Encik terangkan sama ada aka nada audit untuk menyemak sama ada ISO telah dipenuhi dengan laporan ini telah disediakan?*

A : *Khusus untuk check list ini, saya tak pasti sebab saya dah tiada di sana.”*

[52] Hence, this Court agrees that fulfilling ISO requirements is not merely administrative. The Company being the principal inflight catering services provider at both the Kuala Lumpur International Airport and Penang International Airport is expected to maintain routine accurate and up-to-date records of the Monthly Vehicle Reports (Hi-Lift), especially in view of the hi-lifts being safety-critical machinery to ensure that any defects, maintenance issues, or potential hazards are identified promptly to ensure the safety of not only the Company’s employees operating the hi-lifts but also the public. This Court also agrees with COWS-1’s explanation that the Claimant’s misconducts may cause accidents where the reports are not clear.

[53] This Court further agrees with the learned Counsel of the Company that it is important for the Monthly Vehicle Reports (Hi-Lift) to be accurate in documenting the current condition of the hi-lifts and it cannot be diminished or trivialised in the manner attempted by the Claimant. It is the Court findings that the Claimant had disregarded the set procedures and when cross-examined in relation to the 2nd Charge, the Claimant had admitted that he had simply decided to not change the pictures attached to the Monthly Vehicle Reports (Hi-Lift) for 11 months, from September 2022 until July

2023, as follows:

**Notes of Proceedings dated 29.07.2025 at page 36 L29-37
CLWS1**

“Q : *MNI-18 di muka surat ke-2, ini jawapan Encik kepada perkara ke-2, perenggan yang ke-2, barisan ke-4, Encik menyatakan, “Oleh yang demikian, saya telah membuat keputusan untuk tidak mengubah gambar dan sekiranya perlu, saya akan memfailkan perubahan dokumen ISO.”, betul dinyatakan di sini? “Saya telah membuat keputusan untuk tidak mengubah gambar”, betul?*

A : *Perenggan?*

**Notes of Proceedings dated 29.07.2025 at page 37 L9-L12 & L25-L35
CLWS1**

Q : *“Saya telah membuat keputusan untuk tidak mengubah gambar.”, betul?*

J : *Ya Betul.*

...

Q : *Ok. Tapi Encik nyatakan di sini, “Saya telah membuat keputusan untuk tidak mengubah.”*

A : *Maksud saya tidak ada perubahan itu, masih bernombor kenderaan yang sama, cuma mungkin sudut ataupun gambar itu mungkin berbeza sedikit dari segi ... tapi gambar kenderaan yang sama. Saya tak mengubah, maksudnya bahagian-bahagian lain, tapi ...*

Q : *Encik tidak mengubah gambar?*

A : *Tidak mengubah gambar.”*

[54] In respect of the Monthly Vehicle Reports (Hi-Lift) of the relevant hi-lifts from December 2022 until May 2023 (the 1st Charge), the Claimant himself had admitted that he had filled up the Monthly Vehicle Reports (Hi-Lift) himself and subsequently, instructed CLWS-2 to sign the Monthly Vehicle Reports (Hi-Lift) under “Checked by”, followed by the Claimant signing the verification section in the said reports 24.

**Notes of Proceedings dated 29.07.2025 at page 44 L9-27
CLWS1**

“Q : *Ok. Manakala, Encik sendiri yang mengisikan ruangan di bawah “Condition” di dalam laporan-laporan tersebut, betul? Balik kepada Soalan Jawapan, sesi tadi, Encik menyatakan, “Saya membantu En Wan Zaidy menanda pada senarai semak tersebut. Dan visual check memang dilakukan oleh En Wan Zaidy.” Maksudnya, Encik yang mengisikan, menanda ruangan “Condition”, betul?*

A : *Ya, betul.*

Q : *Ok. Dan selepas itu, Encik mengarahkan En Wan Zaidy untuk menandatangani laporan-laporan tersebut di bahagian “Checked by”, betul?*

J : *Ya Betul.*

Q : *Seterusnya, Encik mengesahkan laporan tersebut dengan menandatangani kotak “Verification”, betul?*

A : *Ya Betul.*

[55] This is despite in his earlier evidence, the Claimant told this Court that it was his subordinate, CLWS-2 who was responsible for conducting visual checks on the hi-lifts and filling up the Monthly Vehicle Reports (Hi-Lift) after the said visual checks and after that, the Claimant himself would subsequently verify the Monthly Vehicle Reports (Hi-Lift) by signing the verification section in the said reports.

**Notes of Proceedings dated 29.07.2025 at page 43
CLWS1**

“Q : *Ok, betul. Untuk pemahaman Mahkamah Encik, setuju ini bermaksud pekerja di bawah seliaan Encik, iaitu En Wan Zaidy, beliau bertanggungjawab untuk memantau Hi-Lift secara visual, betul?*

A : *Betul.*

Q : *Dan lepas beliau melakukan pemantauan secara visual, beliau akan mengisi borang laporan bulanan yang kita lihat tadi seperti di muka surat 1, COB-1, betul?*

J : *Betul.*

Q : *Ok. Dan sekiranya ada keperluan untuk penyelenggaraan berdasarkan pemantauan En Wan Zaidy, pemantauan visual, penyelenggaraan tersebut akan dilakukan oleh Khaw Chuan Auto Repairing, betul?*

A : *Betul.*

Q : *Dan selepas pemantauan visual oleh En Wan Zaidy, Encik akan mengesahkan monthly vehicle report tersebut dengan menurunkan tandatangan di kotak "Verification", betul?*

A : *Betul*

[56] In addition to the above admissions, it the Claimant in his submission also submitted that "physical inspection of each unit was delegated to subordinate technical staff under his charge". This Court agrees with the learned Counsel for the Company submission that it will be impossible for the Claimant to fill up the Monthly Vehicle Reports (HiLift) of the relevant hi-lifts from December 2022 until May 2023 if the physical inspection of the hi-lifts were carried out by CLWS-2. The fact that CLWS-2 confirmed during cross-examination that it was his responsibility to conduct the visual checks on the hi-lifts and filling up the Monthly Vehicle Reports clearly demonstrates that the Claimant had failed to adhere to the procedure provided by the Company.

Notes of Proceedings dated 29.07.2025 at page 89-90
CLWS2

"Q : *En Zaidy, saya akan tanya beberapa soalan. Encik dengar baik-baik. Jawab sahaja soalan saya. Kalau ada penjelasan nanti, Encik boleh jelaskan kepada peguam Encik ya. En Zaidy, lihat Penyata Saksi Encik yang ditanda*

CLWS-2 ini. Soalan 4, Jawapan 4 dengan Soalan Jawapan 7, muka surat 1, muka surat 2, Penyata Saksi Encik.

A : Ya.

Q : Ok, di sini Encik telah terangkan antara tanggungjawab utama Encik di dapur penerbangan Pulau Pinang, betul?

J : Ya.

Q : Ok. Setuju Encik antara tanggungjawab Encik, khususnya saya rujuk kepada September 2022 sehingga Jun 2023 adalah untuk melakukan semakan visual terhadap Hi-Lift-Hi-Lift, Hi-Lift 8, Hi-Lift 18, 25 dan 51 seperti di dalam COB-2, Encik. Encik tengok COB-2.

A : Muka surat?

Q : 1 sehingga 40.

A : 40.

Q : Ya, setuju Encik itu adalah antara tanggungjawab Encik?

A : Ya.

Q : Lepas itu, setelah Encik melakukan semakan visual, Encik akan mengisi borang monthly vehicle report seperti yang di muka surat 1 sehingga muka surat 40 ini?

A : Ya.

Q : Untuk merekodkan keadaan Hi-Lift pada waktu-waktu tertentu, betul?

A : Ya.

Q : Ok. Untuk pemahaman Mahkamah Encik, apabila Encik menanda ok di dalam borang-borang ini apakah maksud Encik setelah melakukan semakan visual?

A : Ya.

Q : Apakah maksud kalau tanda ok?

A : *Maknanya enjin-enjin berfungsi. Contoh enjin dan lain-lain, semua 16 lampu berfungsi. Hydraulic sistem.”*

[57] In this regard, this Court finds that the Claimant had breached Clauses 7.1 (page 30 of COB-1), 15.4 and 15.11 (page 33 of COB-1) of *Lampiran A*. Thus, the issue in relation to the 1st Charge & 2nd Charge of whether the Claimant had breached the Company’s Disciplinary Handbook, specifically Clauses 7.1 & 15.11 of Annexure A is clearly answered. The Claimant himself confirmed when cross-examined that he had signed and verified the Monthly Vehicle Report (HiLift) of HL 25 dated 23.06.2023 despite the said report not being filled out by his subordinate, CLWS-2.

[58] Based on the evidence produced before this Court, including the Claimant’s own admissions, it is the Court findings that the Company had successfully established the 1st Charge and 2nd Charge on a balance of probabilities. In the case of **Md Daud Baba v Bank Islam Malaysia Berhad [2013] 2 LNS 1308** on the same issue, it was held that:

“[19] The charges against the Claimant had set out in detail the allegations and the policies of the Bank that were contravened. The Claimant had pleaded guilty to the two allegations in the DI but in the course of the proceedings before this court, he had attempted to water down the effect of his admission. He claimed that he had only admitted guilt to his action of sharing the relevant password and not to Articles 64 and 65 of the Garispanduan Pengendalian Tatatertib. He had also said that he had not known of the Garispanduan Pengendalian Tatatertib which in effect had been rebutted by COW2’s evidence. The Claimant had a show cause letter issued against him on 5 September 2006 and the Bank had made reference to paragraph 26 of the same Garispanduan which he had contravened. The Garispanduan Pengendalian Tatatertib had also been circulated vide the Bank’s memo dated 24 December 2003. The Claimant was crossexamined on his failure to state that he was not aware of the Garispanduan Pengendalian Tatatertib in his reply to the show cause letter on pages 11 and 12 of COB. He

had admitted he had made no mention of it. The Manual was made available to the Bank's employees in a memo dated 24 December 2003 and COW1 also stated that it was readily accessible. This court is of the view that the Claimant's contention of his ignorance about the two Articles of the Garispanduan Pengendalian Tata tertib were afterthoughts to absolve himself from his earlier admission of guilt in the DI. The court is satisfied that the Bank has proven the misconduct of the Claimant."

[Emphasis Added]

[59] This Court also agrees with the learned Counsel for the Company that the Claimant's contention that the Company had "failed to prove any intention to deceive" on the part of the Claimant is misconstrued. As stated earlier, this Court refers to the Court of Appeal case of **Telekom Malaysia Kawasan Utara v. Krishnan Kutty Sanguni Nair & Anor [2002] 3 CLJ 314** and the case of **International Times & Ors v. Leong Ho Yuen [1980] 1 MLJ 86**, where it is trite industrial relations jurisprudence that the standard of proof applicable in proving the grounds of dismissal 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.

[60] Further, in **K A Sanduran Nehru Ratnam v I Berhad [2007] 1 CLJ 347**, the Court of Appeal reaffirmed the High Court's decision among others 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 as follows:

"[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.

[22] The learned judge also referred to several other authorities and then said:

On the host of authorities aforementioned, it is clear that the Industrial Court is not a court of law where technicalities of the law should be its prime consideration. On the same token, in determining the misconduct of the employee, the Industrial Court should not have proceeded as if it is exercising the function of a criminal court. On the facts and circumstances of this case, and to quote Abdul Hamid Mohamad JCA in *Telekom Malaysia Kawasan Utara v. Krishnan Kutty Sanguni Nair (supra)* [2002] 3 CLJ 314 "the Industrial Court should not be burdened with the technicalities regarding the standard of proof, the rules of evidence and procedure that are applied in a court of law. The industrial Court should be allowed to conduct its proceedings as a 'court of arbitration', and be more flexible in arriving at its decision, so long as it gives special regard to substantial merits and decides a case in accordance with equity and good conscience". The Industrial Court has failed to observe this and, on this ground, alone, this court is prepared to issue an order of certiorari to quash the said decision. The Industrial Court has erred and misdirected

itself on the issue of burden of proof and has committed an error of law.

The learned judge went on to say as follows:

*As to errors of law, it has always been held that an inferior tribunal or other decision-making authority, whether exercising a quasijudicial function or purely administrative function, has no jurisdiction to commit an error of law. If an inferior tribunal or other public decision taker does make such error, then he exceeds his jurisdiction. (See: *Syarikat Kenderaan Melayu Kelantan Bhd v. Transport Workers Union* [1995] 2 CLJ 748; [1995] 2 MLJ 317 at page 342). The court of appeal in the said case further said that: It is neither feasible nor desirable to attempt an exhaustive definition of what amounts to an error of law for the categories of such an error are not closed. But it may be safely said that an error of law would be disclosed if the decision maker asks himself the wrong question or takes into account irrelevant considerations or omits to take into account relevant considerations (what may be termed an Anisminic error) or if he misconstrues the terms of any relevant statute, or misapplies or misstates a principle of the general law.*

I am of the view that the Industrial Court has committed an error of law in considering the issue as to the type of thinner that was allegedly taken out by the first respondent. This court is of the view that it is irrelevant for the purpose of the charge against the first respondent what the thinner was used for, be it for mixing paint or for the purpose of cleaning. The material issue before the Industrial Court should be the taking out of the thinner without authorization and there is clear evidence to that effect as found by the Industrial Court itself when it held at page 2 of the award that, "it is not in dispute that this taking out of the thinner is without the

authorization or prior approval of the relevant officers of the company".

The learned judge then concluded as follows:

Upon reviewing the manner in which the decision of the Industrial Court was made, I hold that the decision was flawed by the abovementioned reasons and such a decision must not be allowed to stand. In the circumstances, this application is allowed with costs. I further order that the matter be remitted to the Industrial Court to be dealt with accordingly before a different panel."

[61] On the Claimant's contention that that the Company had not conducted a fair inquiry and thus his dismissal cannot be sustained on the basis that the Company had failed to "produce material witnesses", it is the Court findings that the Claimant had been given all the opportunities to defend himself and to state his version of the case. The Claimant himself unequivocally admitted when crossexamined that he had been given an opportunity to provide his explanation to the charges levelled against him in the Second Show Cause Letter and subsequently, given another opportunity to defend himself to the charges levelled against him via the Second Domestic Inquiry Notice. Therefore, the court finds that the Claimant's contention that that the Company had not conducted a fair inquiry could not stand.

*Notes of Proceedings dated 29.07.2025 at page 32 L35-37 & page 33 L1-2
CLWS1*

"Q : *Ok. Lihat MNI-18, Encik. Setuju Encik telah diberi peluang dan Encik telah menjawab kepada tuduhan di dalam Surat Tunjuk Sebab MNI-17 melalui surat anda di MNI-18?*

A : *Betul."*

[62] This Court agrees with the learned Counsel of the Company that the Claimant was at all material times fully aware of the facts of the charges levelled against him. The Industrial Court in **Chong Peng Fai & Anor v CIMB Bank Berhad [2016] 1 ILR 315** discussed this issue as follows:

“...The essence of first charge was that the 1st claimant had by initialling on the said reports, misrepresented to the Bank that he had checked and verified the said reports. It is irrelevant whether those FDs belong to PA Extrusion or some other customer of the Bank. The 1st claimant in his answer to question 44 of his witness statement ... was well aware of the fact. Therefore, the court finds that the 1st claimant’s contention that the first charge was defective could not stand.”

[63] With regard to the Claimant contention that the Company had committed “procedural mala fides” as it had abandoned the first inquiry and initiated the second inquiry on charges that were “re-framed under new labels”, it is the Court findings that no punishment was imposed against the Claimant in respect of the charges levelled against him in the First Show Cause Letter and First Domestic Inquiry Notice. This was in fact conceded by the Claimant during cross-examination in which he had corroborated COW-1’s evidence.

**Notes of Proceedings dated 29.07.2025 at page 30 L30-36 & page 31 L14-22
CLWS1**

“Q : *Ok. So, Encik nyatakan di sini, Soalan 10, “Pihak Syarikat tidak memberikan keputusan siasatan tersebut.” Setuju Encik, Syarikat tidak menjatuhkan apa-apa hukuman terhadap Encik berdasarkan Surat Tunjuk Sebab bertarikh 14/07/2023, di MNI-9, dan Notis Siasatan Dalam bertarikh 03/08/2023, Exhibit MNI-11, betul?*

A : *Ya, tiada -*

...

Q : *Tiada hukuman, baik. Jadi, penamatan perkhidmatan Encik, di MNI-21, Surat Penamatan Perkhidmatan bertarikh 26/10/2023. Ok, setuju penamatan perkhidmatan Encik bukanlah berdasarkan tuduhan dalam Surat Tunjuk Sebab tadi di MNI-9 dan Notis Siasatan Dalam di MNI 11, betul? Yang dalam surat penamatan ini, dia tidak merujuk kepada Surat Tunjuk Sebab bertarikh 14hb Julai ataupun Notis Siasatan Dalam bertarikh 03hb Ogos.*

J : Ya. Surut hukuman merujuk kepada siasatan dalaman kedua.”

[64] Based on COWS-1 evidence (Q&A 13 of COWS-1), the Company had decided not to impose any punishment against the Claimant and had instead commenced further technical investigations into the issues discovered during the inquiry on 10/08.2023 as a result of the evidence produced by the Claimant during the said first inquiry, where the Company had discovered that there were further misconducts that had been committed by the Claimant. As such this Court could not agree with the submission of the learned Counsel for the Claimant as the doctrine of double jeopardy only applies if the Claimant was punished in respect of a disciplinary charge pursuant to First Domestic Inquiry and was charged in the Second Domestic Inquiry on the same facts.

[65] Thus, this Court is in agreement with the learned Counsel for the Company's submission that in order to avail to the doctrine of double jeopardy, it is incumbent upon the Claimant to prove in the present case that the Company had previously acquitted or punished him for the same charges as those in the Second Domestic Inquiry Notice.

[66] It is also the Court findings that the Company had conducted a fair inquiry against the Claimant and the Claimant submission that he was not given a fair inquiry was not supported by any evidence produced by the Claimant throughout the hearing of this matter to prove that he had ever raised this issue to the Company. In any event and importantly, this Court has heard this case “de novo” where the parties put forward their case through evidence and the testimony of witnesses. The Supreme Court in the case of **Dreamland Corp Sdn Bhd v Choong Chin Soo [1988] 1 MLJ 111** held that the absence of domestic inquiry or the presence of a defective inquiry is not a fatality but merely an irregularity and it is open to the employer to justify his action before the Industrial Court by leading all relevant evidence before it and by having the entire matter referred before the Court.

[67] The Claimant's misconducts in this case clearly points to a breach of his duties to faithfully and diligently discharge his duties owed to the Company as his employer.

His conduct made it unsafe and unreasonable for the Company to keep him in his employment. The Claimant has failed to exercise the responsibilities and accountabilities expected of employee in his position. It is clear from the evidence that the Claimant had chosen to ignore the standard procedures that had been placed to safeguard the Company and its interest. Hence, the punishment of dismissal was appropriate in this case and was indeed commensurate with the misconduct.

[68] Section 14(1) of the Employment Act, 1955 permits dismissal for misconduct after due inquiry. The statutory framework makes it clear that once misconduct is proven, dismissal is a permissible sanction if the facts justify it. In the case of **Norizan Bin Bakar v Panzana Enterprise Sdn Bhd [2013] 6 MLJ 605**, the Federal Court held inter alia that the disciplinary penalty imposed must be commensurate with the gravity of the misconduct: -

“[35] However, the same cannot be true with regard to the dismissal cases involving private sector employees. Any complaint of unfair dismissal by an employee has to be dealt with under the IRA. The duty of the Industrial Court in dealing with such cases had been laid down in Hong Leong Assurance and Milan Auto, ie 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. In deciding whether the proven misconduct would constitute just cause or excuse, the Industrial Court is fully endowed with the power to consider whether the misconduct proved warrants the punishment of dismissal.”

[Emphasis Added]

[69] Last but not least, that the Claimant’s length of service does not absolve serious misconduct. In the case of **CIMB Bank Berhad v Norlidah Mhd Shah [2022] 4 MLRA 626**, S Nantha Balan JCA states at pp. 663-664 therein as follows:

“[100] In so far as the issue of proportionality of punishment is concerned, the appellant took the view that the respondent’s conduct was serious enough to warrant dismissal. And her long

unblemished service with the appellant and her contributions to the appellant over the years, just did nothing to mitigate or dilute the seriousness of her conduct. In ESSO Malaysia Bhd v. Chiang Lick Teck [2003] 2 MELR 39; [2003] 2 ILR 716 (IC), the Industrial Court had occasion to enunciate the principle that long unblemished service of an employee will not immunize the employee from the extreme punishment of dismissal... ...

[101] ... there was no error on the part of the Industrial Court in concluding that the respondent had committed misconduct and that her dismissal was not disproportionate or unreasonably severe having regard to the gravity of the charges of misconduct that were levelled against her and which were proven.”

[Emphasis Added]

[70] Similarly, in the case of **Telekom Malaysia Bhd v Zulkifli Bin Shahari & Anor [2018] MLJU 1746**, the learned Chairman inter alia held that “unblemished service neither entitled the Claimant to a license to commit such serious misconduct nor immunized him from dismissal” :

“Issue (9): Whether the Industrial Court committed an error of law and / or fact when it ordered the remedies of reinstatement and backwages in favour of the 1 st respondent when the 1st respondent had committed serious acts of misconduct?”

[210] I decided issue (9) in the affirmative. ...

[212] However, I found that the Industrial Court committed an error of law and or fact when it ordered the remedies of reinstatement and back wages when it was diametrically opposed to the totality of the proved or admitted evidence on record as in doing so, the Industrial Court failed to appreciate and / or consider that the remedies of reinstatement and backwages were totally unsuitable in view of the following factors [pgs. 71 - 74, para 3.14, Enclosure (2)]:

...

(3) *Given the proved and / or admitted evidence adduced before the Industrial Court, which puts the 1st respondent's credibility and capability to discharge his functions as Assistant General Manager in doubt, the applicant's decision to dismiss the 1st respondent from service could not be said to be unjustified and / or unwarranted in the circumstances;*

(4) *The 1st respondent's long years of unblemished service neither entitled him to a license to commit such serious misconduct nor immunized him from dismissal. The very fact that the 1st respondent had served the applicant for such a long period shows that there was no excuse for his serious misconduct and he ought to have displayed strict compliance of the applicant's policies and procedures."*

[Emphasis Added]

[71] In these circumstances, the Court finds that the disciplinary process taken by the Company was comprehensive, procedurally fair, and consistent with industrial due process. The Claimant's dismissal was therefore justified on both substantive and procedural grounds.

[72] For all the reasons above, this Court finds that Company has successfully discharged the onus of proving the misconduct levelled warranting the punishment of dismissal given the gravity of such misconduct. As such, the Claimant is found guilty of serious misconduct, which warrants his dismissal.

Conclusion

[73] In view of all the above and after taking into consideration the evidence adduced in Court as well as the submissions by both parties, this Court is satisfied that it is safe to conclude that the explanation given by the claimant has no merit and as such the claimant is found guilty of serious misconduct, which warrants his

dismissal. In short, the dismissal of the Claimant was proportionate to the misconduct of the Claimant. For the reasons given, this court finds that the dismissal of the claimant is for just cause or excuse in accordance with the principles of fairness and industrial justice.

[74] Pursuant to section 30(5) of the IRA 1967 and after having considered the totality of the evidence adduced, this Court is of the view that the Company had established on the balance of probabilities that the Claimant was guilty of the charge of misconduct levelled against the Claimant and the decision of the Company to dismiss the Claimant was within the range of reasonable responses and done with just cause and excuse. The termination of the Claimant by the Company with immediate effect via letter dated 26.10.2023 is now declared as just and lawful.

[75] In the circumstances, in the light of the particular facts of the present case and guided by the principles of equity, good conscience and substantial merits of this case without regard to technicalities and legal forms, the Claimant's claim is hereby dismissed.

HANDED DOWN AND DATED THIS 4TH DAY OF FEBRUARY 2026

~Signed~

**(AHMAD RAZIF BIN MOHD SIDEK)
CHAIRMAN
INDUSTRIAL COURT OF MALAYSIA
KUALA LUMPUR**