

INDUSTRIAL COURT OF MALAYSIA

CASE NO: 9/4-1477/23

BETWEEN

MAHAMOOD BIN MUBARAK ALI

AND

FGV HOLDINGS BERHAD

AWARD NO: 838 OF 2026

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

VENUE : Industrial Court of Malaysia
Pulau Pinang

DATE OF REFERENCE : 25.09.2023

DATES OF MENTION : 30.10.2023; 23.11.2023; 23.01.2024;
06.03.2024; 17.04.2024; 02.05.2024;
06.06.2024; 04.07.2024; 11.07.2025;
29.09.2025; 13.11.2025; 19.12.2025;
09.01.2026; 02.03.2026

DATES OF HEARING : 14.01.2025; 15.01.2025; 13.08.2025

REPRESENTATION : The Claimant presents himself

Mr. Shariffullah Majeed together
with Ms. Arissa Ahrom from
Messrs. Lee Hishamuddin Allen &
Gledhill for the Respondent

REFERENCE: This is a reference dated 25 September 2023 by the Director General of Industrial Relations Malaysia to the Industrial Court of Malaysia under Section 20(3) of the Industrial Relations Act 1967 (hereinafter referred to as “the IRA”). This reference is in respect of the dismissal of **Mahamood Bin Mubarak Ali** (hereinafter referred to as “**the Claimant**”) by his employer, **FGV Holdings Berhad** (from now on referred to as “the Company”), effective 04 April 2023.

AWARD

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

- (a) the Claimant’s Statement of Case dated 04 February 2024;
- (b) The Company’s Statement in Reply dated 15 April 2024;
- (c) The Rejoinder dated 30 May 2024;
- (d) The Claimant’s witness statement (**Mahamood Bin Mubarak Ali**) is marked as “CLWS-1”;
- (e) The Claimant’s witness statement (**Muhammad Shazni Bin Muhammad Shukri**) is marked as “CLWS-2”;
- (f) The Claimant’s witness statement (**Nurun Nadhirah Binti**

Mohamad) is marked as “CLWS-3”;

- (g) The Company’s witness statement (**Razman Radzi**) is marked as “COWS-1”;
- (h) The Company’s witness statement (**Nurul Hasanah Ahamed Hassain Malim**) is marked as “COWS-2”;
- (i) The Claimant’s Bundle of Documents marked as “CLB-1”;
- (j) The Company’s Bundle of Documents marked as “COB-1”;

A. Factual Matrix

[2] The Claimant commenced his employment as an Executive, Enforcement Grade 9, vide a Letter of Appointment dated 10 December 2019, with an effective date of 16 December 2019.

[3] At the time of resignation in April 2023, the Claimant’s last held position was Senior Executive (Grade 8) in the Environment & Climate Action Unit under the Company’s Sustainability Technical Department (“**STD**”) within the Group Sustainability Division (“**GSD**”).

B. The Claimant's Case

[4] In his Statement of Case, the Claimant avers that:-

- (a) Following the announcement of the restructuring of STD, the Environment & Climate Action would be headed by Miss Afni and the three executives (Mr Shafni, Miss Anis, and Miss Nadhirah) would now report to Miss Afni;*
- (b) The change of the Claimant's reporting line to Ms. Afni, without consulting him or obtaining his prior approval, constituted a breach of contract by the Company, which entitled the Claimant to resign;*
- (c) The Company's decision to change the reporting line of the 3 Executives under the Climate Action Unit to Ms. Afni directly without consulting the Claimant or obtaining his prior approval constituted a breach of contract by the Company which entitled the Claimant to resign;*

- (d) *The Company's decision to cancel programmes under Climate Awareness constituted a breach of contract by the Company which entitled the Claimant to resign;*
- (e) *The cancellation of projects such as the movie screening and panel discussion, and the climate action apprenticeship was unilateral. The Claimant was deliberately isolated from the project he initiated;*
- (f) *The company's management's negligence in the investigation and the way in which the Claimant's complaint of misconduct and breaches was dealt with further rendered the Claimant's position untenable, leading to his resignation;*
- (g) *The development, implementation, and challenges of the Company's Climate Action Plan, which was under the Claimant's purview, had been updated and reported to Head of GSD and the top management monthly and to the BSC and the Board on regular basis;*

- (h) The Claimant never brought up issues regarding his workload on climate action or his ability to oversee the three executives during the meeting;*
- (i) The Claimant has to undertake tasks that were the responsibility of the heads of departments.*
- (j) The Head of GSD had indeed been aware of the Claimant's pressing workloads and yet requested the Claimant to take on additional responsibilities representing the company at the ESG Summit;*
- (k) In February 2022, the Claimant asked Group Human Capital Department (GHC) Officer 1 about the options available if he wished to pursue studies, to which GHC Officer 1 explained that he would likely have to resign due to the company's policy not allowing sabbatical leave and would not allow unpaid leave for more than one month;*

- (l) The Claimant made his stance clear that the intended leave was to express his dissatisfaction with the dismissal and the scrapping of projects as stated in his email dated 11 August 2022;*
- (m) The Claimant committed to his stated intention by abstaining from work and engagement with the company to express his dissatisfaction against the dismissal and hostile environment set against him;*
- (n) Given the inaction and continuous neglect of the Claimant shown by the head of GSD, head of STD and STD Manager, the Claimant vide an email dated 14 October 2022 reported the dismissal and power abuse by the head of GSD to the CHRO who sits on the whistle blowing committee (WBC) and the Company's top management; and*
- (o) The company's handling of the Claimant's complaint did not adhere to the Company's policies.*

C. The Company's Case

[5] In its Statement in Reply, the Company avers that:

- (a) *The Company and the Claimant had executed a scholarship agreement (“Scholar Bond”) by which the Company via its “**Program Penghantaran Pelajar ke Luar Negara**” agreed to sponsor the Claimant’s pre-university level education and undergraduate degree course in BSc in Biotechnology with Management at Imperial College London, United Kingdom;*
- (b) *The terms of the Scholarship Bond provide, among others, that within 3 months of completing his undergraduate degree course, the Claimant is to return to Malaysia and serve any organisation under the Company’s Group of Companies for a period of not less than 10 years;*
- (c) *The Claimant was transferred to STD as an Executive (Grade 9) with effect from 20.07.2020 based on his request upon being confirmed in his position as an*

Executive in GSD after completing his 6 months probationary period;

(d) Later, the Claimant was posted as Project Lead of the Company's SMART4Climate, which the Company's Climate Action Unit was spearheading;

(e) To support the implementation of the programme under the Company's Climate Action Unit especially due to the urgency of work and the size of the programmes under the said unit, Miss Nurun Nadhirah ("Ms Nadhirah") Executive Grade 9 was transferred from Non-Palm Oil Unit under STD to the Climate Action Unit under STD wherein she reported to the Claimant being Lead of the Climate Action Unit;

(f) In recognition of the Claimant's satisfactory job performance and in view of his supervising 3 Executives within the Climate Action Unit, he was accordingly promoted as a Senior Executive (Grade 8) with effect from 1.05.2022;

- (g) *On 1.6.2022, Ms. Nurul, upon returning from New York, had updated the Claimant for a meeting to call from the latter on the Climate Action Programme, which was under his purview, particularly in relation to carbon inventory, as it had come to her attention that he was not meeting the necessary deadlines;*
- (h) *Given that the Claimant's failure to meet the necessary deadlines could result in the Company not being able to meet its SBTi commitments;*
- (i) *During the said discussion, the Claimant had informed Ms. Nurul, among others, that he was unable to focus on his main responsibility on carbon inventory, as he was unable to cope with the workload of **having to oversee the 3 Executives who reported to him in the Climate Action Unit**;*
- (j) *Upon being informed of the above, the Claimant broke down crying and started blaming the Company in general for his work-related stress;*

(k) *Despite the Company's multiple conversations with him and attempts to help him resolve his grievance, the Claimant declined to participate in any discussions by giving various excuses.*

D. The Role of the Industrial Court

Standard of Proof

[6] The Court of Appeal, in the case of ***Telekom Malaysia Kawasan Utara v. Krishnan Kutty Sanguni Nair & Anor*** [2002] 1 MELR 4; [2002] 1 MLRA 188; [2002] 3 MLJ 129; [2002] 3 CLJ 314; [2002] 3 AMR 2898, laid down the principles that the standard of proof in the Industrial Court is on a balance of probabilities. His Lordship Abdul Hamid Mohamad JCA opined:

"Thus, we can see that the preponderant view is that the Industrial Court, when hearing a claim of unjust dismissal, even where the ground is one of a dishonest act, including "theft," is not required to be satisfied beyond reasonable doubt that the employee has "committed the offense," as in 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 HWR Wade and CF Forsyth offers the clearest statement on the standard of proof required, that is, the civil standard is 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."

Burden of Proof

[7] The case of ***Weltex Knitwear Industries Sdn Bhd v. Law Kar Toy & Anor*** [1998] 4 MLRH 774; [1998] 7 MLJ 359 is relevant to 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 1st 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 Added]

[8] Given the above case and anchored on a claim of constructive dismissal where the Company denies dismissing the Claimant from his employment, it is now upon the Claimant to prove her case that he had been dismissed in line with the claim of constructive dismissal. The burden of proof, thus, had shifted to the Claimant to prove that he had been dismissed by the Company without just cause and excuse.

E. The Law on Constructive Dismissal

[9] In ***Western Excavating (ECC) Ltd v. Sharp*** [1978] 1 All ER 713, it was decided by Lord Denning MR that the correct test to be applied in the instance of constructive dismissal is the "contract test" as follows:

"If the employer is guilty of conduct, which is a significant breach going to the root of the contract, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then the employee terminates the contract by reason of the employer's conduct. He is constructively dismissed. The employee is entitled, in those circumstances, to leave at the instant without giving any notice at all or, alternatively, he may give notice and say that he is leaving at the end of the notice. But the conduct must, in either case, be sufficiently serious to entitle him to leave at once. Moreover, he must wake up his mind soon after the conduct of which he complains; for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the [varied] contract".

[10] In Malaysia, the concept of "constructive dismissal" was given judicial recognition by the Supreme Court in the case of **Wong Chee Hong v. Cathay Organisation (M) Sdn Bhd** [1987] 1 MELR 32; [1987] 1 MLRA 346; [1988] 1 MLJ 92; [1988] 1 CLJ (Rep) 298. His Lordship Justice Salleh Abas LP, in delivering the judgment of the Supreme Court, had this to opine:

"The common law has always recognised the right of an employee to terminate his contract of service and, therefore, to consider himself as discharged from further obligations if the employer is guilty of such breach as affects the foundation of the contract, or if the employer has evinced or shown an intention not to be bound by it any longer. It was an attempt to enlarge the right of the employee of unilateral termination of his contract beyond the perimeter of the common law by an unreasonable conduct of his employer that the expression "constructive dismissal" was used.....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."

[11] In the case of ***Quah Swee Khoon v. Sime Darby Berhad*** [2000] 1 MLRA 856; [2000] 2 MLJ 600; [2001] 1 CLJ 9; [2000] 2 AMR 2265, the Court of Appeal said "constructive dismissal" may take place as a result of a singular act or a series of acts. Further, the Court of Appeal said that it is not overly concerned with the label of whether the parties refer to a particular severance of the relationship between employer and employee as "dismissal" or "constructive dismissal". The concern of the Industrial Court is the making of a determination, (i) whether there is a dismissal; and (ii) if there is, then whether it is with just cause or excuse.

F. Issue

[12] It is not in dispute that the Claimant tendered resignation on 4 April 2023 and then alleged that he was constructively dismissed; the only issue to be decided is whether the termination was with just cause or excuse.

G. Evaluation of Evidence and Findings of The Court

[13] In his Statement of Case (SOC), the Claimant avers that the Company had terminated his services wrongfully, without just cause and in violation of the rules of natural justice.

[14] The Company denies these averments. Instead, the Statement in Reply (SIR) states that "the Claimant tendered resignation on 4 April 2023 and breached the Scholarship Agreement, which had resulted in the termination of the Scholarship Agreement". In the present case, each party had called witnesses to testify as follows:

- (i) Mahamood bin Mubarak Ali - CLW-1 (The Claimant)*
- (ii) Muhammad Shazni Bin Muhammad Shukri-CLW-2*
- (iii) Nurun Nadhirah Binti Mohamad -CLW-3*

(iv) Razman Radzi- COW-1

(v) Nurul Hasanah Ahamed Hassain Malim- COW-2

[15] The Claimant had worked for four years from 2019 to the date of resignation in 2023. The Offer Letter dated 10 December 2019 is reproduced as follows:

FGV HOLDINGS BERHAD (800165-P)

PRIVATE & CONFIDENTIAL



Ref. : FGV/GHC/Staffing/Hiring-P/2019 (165)
Date : 10 December 2019

Mahamood bin Mubarak Ali
C27 Jalan Baiduri 2
Taman Baiduri
08000 Sungai Petani
Kedah
No. Tel.: 017-5103820

Dear Mahamood,

OFFER OF EMPLOYMENT

We are pleased to offer you employment with FGV Holdings Berhad (FGV) at Group Sustainability Division as Executive, Enforcement on Grade 9: Executive effective 16 December 2019.

This offer of employment is subject to you passing a medical examination by a doctor from a government hospital and/or a registered medical practitioner. The cost of the medical examination will be reimbursed by the Company.

Please note that you are under bond of service for 10 years ("Bond") under Clause 3(e) of the Scholarship Agreement dated 30 August 2015 ("Scholarship Agreement") which takes effect from 16 December 2019 to 15 December 2029. The terms and conditions under the Scholarship Agreement shall apply and remain binding.

As an employee of FGV Group, you shall be bound by all policies and procedures of the FGV and FGV Group's regulations and terms & conditions of employment, in particular the Code of Business Conduct & Ethics (CoBCE) including its amendments from time to time and you shall comply to the same.

Please find attached the Terms & Conditions of Employment. Kindly acknowledge your acceptance of this offer and completing the LD01 Form and return to us soonest possible.

Thank you.

Yours sincerely,


NOR ASIKIN ABDUL GHANI
Head, Talent Management
Group Human Capital Division

Rise with P.R.I.D.E
Partnership – Respect – Integrity – Dynamism – Enthusiasm

FGV Holdings Berhad (800165-P)
Level 13 (West), Wisma FGV, Jalan Raja Laut, 50350 Kuala Lumpur
T + 603 2789 0000 F + 603 2789 0588 www.fgvholdings.com



16

PRIVATE & CONFIDENTIAL

TERMS AND CONDITIONS OF EMPLOYMENT

(FGV HOLDINGS BERHAD)

DATE : 10 DECEMBER 2019

NAME : MAHAMOOD BIN MUBARAK ALI

IC NUMBER : 950729-02-5333

1	Designation	Executive, Enforcement.									
2	Grade	Executive (Grade 9).									
3	Basic Salary	RM3,000/- per month. (RM3,500/- per month upon confirmation)									
4	Employment Status	Permanent.									
5	Allowances	You shall receive allowances (where relevant) subject to FGV's Human Capital Policy and its amendments from time to time.									
6	Annual Leave	You shall be entitled to annual leave as follows; <table><tr><td>Years of Service</td><td>Leave Eligibility</td></tr><tr><td>Less than 5 years</td><td>20 days</td></tr><tr><td>5 to 10 years</td><td>22 days</td></tr><tr><td>10 years & above</td><td>25 days</td></tr></table> Other leave entitlement are subject to relevant FGV's Group Human Capital Policy and its amendment from time to time.		Years of Service	Leave Eligibility	Less than 5 years	20 days	5 to 10 years	22 days	10 years & above	25 days
Years of Service	Leave Eligibility										
Less than 5 years	20 days										
5 to 10 years	22 days										
10 years & above	25 days										
7	Employee Provident Fund (EPF) Contribution	The Company shall contribute 16% and the employee at 11% of base salary into EPF and subject to the relevant laws and regulations.									
8	PERKESO Contribution	The rate of contribution shall be as fixed by relevant laws and regulations.									
9	Employment Insurance Scheme (EIS) Contribution	The Company and employee shall both contribute 0.2% each of base salary into EIS and subject to the relevant laws and regulations.									
10	Medical Benefits	You shall be provided with medical coverage as follows; Inpatient treatment of RM45,000/- per annum Outpatient treatment of RM5,000/- per annum Other medical benefits are subject to relevant FGV's Group Human Capital Policy and its amendment from time to time.									

Page 1 of 3



17

PRIVATE & CONFIDENTIAL

11	Insurance	You shall be provided with insurance coverage (both Group Personal Accident and Group Term Life) subject to the relevant FGV's Group Human Capital Policy and its amendment from time to time.
12	Business Travelling	If you are required to travel on official duties, your travelling entitlement shall be subject to the relevant FGV's Group Human Capital Policy and its amendment from time to time.
13	Annual Salary Increment	You shall receive annual salary increment at the discretion of the Management.
14	Bonus	Based on your performance upon yearly assessment and will be at the discretion of the Management.
15	Official Working Hours	The Company's official working hours are as follows; Monday to Friday – 8.30 am to 5.30 pm or any other hours as may be determined/practised by the Company.
16	Probation Period	You shall undergo a probationary period of at least six (6) months. In the event that your performance during probationary period does not meet the satisfactory level set by the Company, the probationary period may be further extended for a period of not more than six (6) months.
17	Transfer, Secondment & Attachment/Assignment within or outside FGV Group	You can be transferred, seconded, attached or assigned to any Company within or outside FGV Group where your service is required.
18	Termination of Employment	The company or you may terminate the employment as follows; During the probationary period – 14 days notice After confirmed in service – 1 month notice Or pay salary in lieu of notice Either party has the right to waive the notice provided the party is the one whom the notice is given. All Terms and Conditions of Employment shall be deemed to be frustrated if without default of either party, the contractual obligation has become incapable of being performed and/or radically different from that which the parties contemplated.
19	Retirement Age	Your retirement shall be upon reaching the age of 60 and subject to the relevant laws and regulations.
20	Code of Conduct	In terms of both your business activities and personal endeavours, your conduct must be in accordance with FGV Group of Companies' Code of Business Conducts and Ethics as may be amended from time to time. You will be required to complete our Asset Declaration proviso upon reporting for duty.

Page 2 of 3



18

PRIVATE & CONFIDENTIAL

21	Confidentiality	You are under a strict duty to maintain the confidentiality of all Company's information including (but is not limited to) information relating to the technology, commercial, financial, business or affairs and/or activities of the Company and all its subsidiary and/or associate companies and you will not disclose the same unless express written consent is given for such disclosure.
22	Miscellaneous	All other terms and conditions, if not specified in this contract, will be as per the "Syarat-Syarat Perkhidmatan Petugas Syarikat Kumpulan". The terms and conditions specified in this contract will prevail should it contradict the "Syarat-Syarat Perkhidmatan Petugas Syarikat Kumpulan". All other terms and conditions not specified will be interpreted at the discretion of the Company. You are also required to adhere to the policies and procedures of FGV Group including its amendments from time to time and you shall comply to the same. The Company has the right to amend, change, increase or decrease any.
23	Report for Duty	On 16 December 2019, please report for duty to; Head, Group Sustainability Division FGV Holdings Berhad Level 20 (West) Wisma FGV Jalan Raja Laut 50350 Kuala Lumpur Time: 8.30 am

ACCEPTANCE OF EMPLOYMENT

I, IC Number:
hereby understand and accept the terms and conditions of employment as stipulated above
and I further agree that the Terms & Conditions of Employment and Code of Business
Conduct & Ethics (CoBCE) and its amendments shall be fully binding on me.

Signature :

Date :

**please strike out where necessary*



19

[16] At the time of the dismissal, the Claimant was still under the Company's scholarship bond. The following are the chronological facts leading to the resignation and constructive dismissal as claimed by the Claimant.

Date	Event
30.8.2015	Company and Claimant executed the Scholarship Bond.
10.12.2019	Via the Appointment Letter, the Claimant was appointed as Executive, Enforcement (Grade 9) in GSD.
1.5.2022	In recognition of the Claimant's satisfactory job performance and his supervising 3 Executives role within the Climate Action Unit, he was accordingly promoted as a Senior Executive (Grade 8) with effect from 1.5.2022.
2.6.2022	COW-2 announced during the ESG Town Hall on 2.6.2022 that the Sustainability Palm Oil (Environment) Unit and Climate Action Unit would be merged into the Environment & Climate Action Unit to be headed by Ms. Afni.
23.6.2022	- Following the announcement of the restructuring of the STD, COW-2 via email dated 23.6.2022, had highlighted among others, as follows: - Ms. Afni would head the Environment & Climate Action and hence, the Claimant as well as the 3 Executives who were reporting to him, Mr. Shazni, Ms. Anis and Ms. Nadhirah would now report directly to Ms. Afni.

28.6.2022 (9:00 a.m.)	The Claimant via his e-mail dated 28.6.2022 (at 9:00 a.m.) to Ms. Alissa had requested for a sabbatical leave from 1.10.2022 to pursue the MSc Environmental Technology programme at Imperial College London in view of the Conditional Offer dated 27.6.2022.
28.6.2022 (9:30 a.m.)	After the meeting on 28.6.2022, the Claimant via his e-mail dated 28.6.2022 (at 9:30 a.m.) had among others, expressed his appreciation to COW-2 for her efforts in restructuring the STD.
Via the Claimant's e-mail also dated 28.6.2022 (at 2:43 p.m.) to Mr. Ilangovan, he had among others notified the latter that he had applied for unpaid leave from 1.10.2022 until October 2023.	Via the Claimant's e-mail also dated 28.6.2022 (at 2:43 p.m.) to Mr. Ilangovan, he had among others notified the latter that he had applied for unpaid leave from 1.10.2022 until October 2023.
17.7.2022	Via Dato' Nazrul's reply dated 17.7.2022 to the Claimant, the former had congratulated the latter and informed him that the Company is fully supportive of his enrolment in Imperial College London and would not object to his unpaid leave application.
3.8.2022	Via a letter dated 3.8.2022, the Claimant was notified that the Company had approved his unpaid leave period of 13 months from 1.10.2022 until 31.10.2023 on the condition that he would return to the Company to perform his responsibilities as a Senior Executive in GSD at the conclusion of his approved unpaid leave period.

	• <i>The Claimant had utilised his remaining annual leave between 19.8.2022 until 30.9.2022 and commenced is unpaid leave on 1.10.2022.</i>
14.10.2022	• <i>Via e-mail dated 14.10.2022, COW-1 informed the Claimant that the management would look into the issues raised by him. Accordingly, the management commenced an internal investigation into the matter and obtained a written statement from COW-2.</i>
13.3.2023	• <i>Mr. Emeir via his e-mail dated 13.3.2023 to the Claimant had requested that the Claimant to meet a representative of GHC in London, to further understand the details of his grievances.</i>
4.4.2023	• <i>Via his e-mail dated 4.4.2023 to COW-1, the Claimant had attached his Resignation Notice wherein he deemed himself constructively dismissed.</i>

Contractual Test

[17] In the case of **Anwar Abdul Rahim v. Bayer (M) Sdn Bhd** [1997] 1 MELR 50; [1997] 2 MLRA 327; [1998] 2 MLJ 599; [1998] 2 CLJ 197; [1998] 2 AMR 1801, Mahadev Shankar JCA affirmed the decision of the High Court and reiterated that the test for constructive dismissal is the "contract test" as follows:

*[16] At p 54 (MELR); p 331 (MLRA), Justice Shankar said:
It has been repeatedly held by our Courts that the proper approach in deciding whether constructive dismissal has*

taken place is not to ask oneself whether the employer's conduct was unfair or unreasonable (the unreasonableness test) but whether "the conduct of the employer was such that the employer was guilty of a breach going to the root of the contract or whether he has evinced an intention no longer to be bound by the contract".

[18] In the case of ***Yew Mun Khean v. Kumpulan Liziz Sdn Bhd*** [2019] 5 MLRH 548; [2018] 9 MLJ 729; [2018] 10 CLJ 345; [2018] 4 AMR 98, the learned Judge had this to say on the trend for constructive dismissal:

"[31] It is settled as in the Anwar Abdul Rahim case that the prerequisite in filing a claim for constructive dismissal are as follows: (a) there must be a breach of contract by the employer/defendant. This may either be an actual breach or an anticipatory breach; (b) that breach must be sufficiently important to justify the employee/plaintiff resigning, or else it must be the last in a series of incidents, albeit an erroneous interpretation of the contract by the employer will not be capable of constituting a repudiation in law; (c) the employee must leave in response to the breach and not for some other, unconnected reason; and (d) the employee must not delay too long in terminating the said contract in response to the alleged breach by the employer or else he may be deemed to have waived the alleged breach."

[19] The Court refers to the case of ***Tan Lay Peng v. RHB Bank Berhad & Anor*** [2025] 1 MELR 699; [2024] 5 MLRA 171; [2024] 3 MLJ 506; [2024] 2 ILR 535; [2024] 6 CLJ 315, the Federal Court Judge held that:

*"[50] In the circumstances and based on reasons alluded to earlier, the answer to the leave question is as follows: **There is a difference between the contract test and the reasonableness test. The appropriate test for determining a constructive dismissal case is the contract test. The reasonableness of the employer's conduct is a factor that may be taken into consideration in determining whether there is any fundamental breach of the contract of employment or an intention no longer to be bound by the contract**".*

[Emphasis is added]

[20] Following the trite principles laid down by the Federal Court recently in ***Tan Lay Peng v. RHB Bank Berhad & Anor (supra)*** the Court must determine by virtue of the **contract test**. The grounds raised by the Claimant are changes made to the reporting line and the cancellation of Climate Awareness. The question that arises before this Court is whether there were substantial changes, and whether every change must seek the Claimant's approval.

[21] This Court refers to the case of ***Moo Ng v. Kiwi Products Sdn Bhd Johor & Anor*** [1998] 3 MELR 116; [1998] 2 MLRH 203; [1998] 3 CLJ 475 at pp 133-134 MELR, and p 221 MLRH, which laid down the principle of constructive dismissal as applicable to a complaint that the employer has made such substantial changes to the duties and status:

"If an employee asserts that he has been constructively dismissed, he must establish that there has been conduct on the part of the employer which breaches an express or implied term of the contract of employment, going to the very root of the contract. It can safely be said that one term which, if not express, may be implied in a contract of employment and it is that the employer will not make such a substantial change in the duties and status of the employee as to constitute a fundamental breach of the contract". What has to be ascertained is whether, in all the circumstances of the case, the responsibilities and duties of the employee have been so altered by the employer as to constitute a breach of a fundamental term of the contract of employment.

[22] In the recent case of ***CIMB Bank Bhd v. Ahmad Suhairi Mat Ali & Anor*** [2024] 1 MELR 145; [2023] 6 MLRA 652; [2023] 5 MLJ 829; [2023] 4 ILR 1; [2023] 9 CLJ 345, the Court of Appeal held that:

“(3) A dissatisfied employee is entitled to consider the variations to be a repudiation of his contract and is entitled to complain that he had been constructively dismissed and so, he must, as soon as he perceived that his contract had been varied without his consent, walk out of his employment. If he stays on without protest and continues to work under the new terms/conditions imposed on him by the employer, the employee would be regarded as having affirmed the contract and impliedly consented to these changes. For a complaint of constructive dismissal to succeed in the Industrial Court, it is essential that the employee should act with haste. The evidence pointed overwhelmingly to the conclusion that the claimant was being placed in an inferior and invidious position. It was, by all accounts, a demotion. In light of all that took place, including the several emails by the claimant to the bank etc, it was strange that the Industrial Court could say that the claimant did not protest. The Industrial Court's finding that the claimant did not protest flew in the face of the evidence. It was that the claimant was making every effort to seek a good outcome and to extricate himself from the position in which the bank had put him in. The claimant walked out after one month and 18 days as the team leader of the SAT whilst temporarily located in Alor Setar. Even if there was a delay on the claimant's part, on the facts, it could not be construed as an affirmation of the unilateral variations of the contract of employment”.

[23] A fundamental breach of an implied term of the employment contract entitles an employee to claim constructive dismissal. Nevertheless, the Claimant is bound by the reasons given by him to claim constructive dismissal, *inter alia*, as follows:

- (a) “Unilateral variation of the claimant’s job content without consultation or reasons” (“Ground 1”);*
- (b) “Victimising the claimant without cause” (“Ground 2”);*
- (c) “Putting the claimant into cold storage” (“Ground 3”); and*
- (d) “Negligence and Breach of Duty & Trust by the Company” (“Ground 4”).*

[24] The Company’s counsel submits that there are no provisions or policies in the Company that require **COW-2**, as Vice President, Head of GSD, to inform the Claimant or obtain his agreement as a Senior Executive before the restructuring of the STD for operational efficacy. The Claimant even went on to admit that in relation to Ground **1** pertaining to the decision of the Company to restructure the STD, the Company had not breached the terms of his employment as follows:

“Q: Prior to the decision of the Company to restructure the STD specifically, or any other division, the Company

has had no breach of the terms of your employment contract, agree? If yes, if you disagree, if you disagree, show me the terms where the Company ought to comply, show me the terms. You agree or disagree?

A: *I agree.*"¹

Breach of fundamental terms of the employment contract

[25] Given that the Claimant had felt overwhelmed by his responsibilities as Lead of the Climate Action Unit, the Company announced that the Sustainability Palm Oil (Environment) Unit and Climate Action Unit would be merged into the Environment & Climate Action Unit to be headed by Miss Afni.

[26] The Claimant contends that by implementing the merger and restructuring, the Company demonstrated malicious intent to victimize him. Clearly, the restructuring of STD was executed in good faith, based on the management's discretion, aimed at enhancing operational and business efficiency and alleviating the Claimant's workload, following his

assertion that he felt overwhelmed by the responsibility of supervising three executives, which ultimately led to his breakdown.

[27] The Claimant's demand for him to be consulted or for his approval to be obtained before the management can undertake the restructuring of STD, with his contractual entitlements, is unreasonable and is not stipulated under any terms of the agreement between the Company and the Claimant.

[28] Upon reviewing the Offer Letter dated 10 December 2019, the Company intends to employ the Claimant for the entire bonding period of ten years (16 December 2019-15 December 2029). There was no indication from the Company's actions that it no longer intended to be bound to the employment contract. Moreover, the Company via the said offer letter reminded the Claimant that he was bound by the Scholarship Bond for a period of 10 years from 16 December 2019 until 15 December 2019 in accordance with clause 3 € of the Scholarship Bond.

[29] On the other hand, the Claimant's action in submitting his resignation letter on 4 April 2023 was a violation of the main terms of his

appointment to the Respondent Company and also intended to no longer be bound to the Company after the Company covered his undergraduate fees.

[30] The Claimant also acted decisively by submitting his resignation letter when his application for sabbatical leave and unpaid leave was not approved. The Claimant had only served the Company for 4 years and still had 6 years left before the scholarship bonding period with the Respondent Company expired.

[31] The Claimant's actions to avoid fulfilling the contractual obligations to the Company upon completion of studies financed by the Company were unethical and do not appreciate the support that he received previously. This situation recalls the Malay proverb: “***seperti kacang lupa kan kulit***”.

[32] It is also the Claimant's complaint that by virtue of the Company's decision to change the reporting line of the 3 Executives under the Climate Action Unit to Ms. Afni directly without consulting him or obtaining his prior approval constituted a breach of contract by the Company as he was allegedly “put into cold storage”. With due respect, this is not a valid

ground for claiming constructive dismissal. In this regard, the Court refers to the case of ***Tokyo Marine Insurans (Malaysia) Berhad v. Tan Kooi Luang & Anor*** [2014] MLRHU 1301; [2015] 3 AMR 713 it was held by S Nanthan Balan JC (as His Lordship then was):

"Quite clearly, all the relevant cases referred to in the earlier part of this judgment do not support the theory that a re-designation, which entails a change in job scope or reporting line or deprivation or diminution of support staff justifies a claim for constructive dismissal. Here, the First respondent had admitted that he could be transferred and that there was no demotion. Whilst it may be true that the 1st respondent was not consulted or his consent obtained, he was nevertheless informed in advance, which in my view is in keeping with good industrial relations practice. Counsel for the First respondent criticized COW-1's handling of the meeting which he had with the First respondent on 28 September 2004 where it was said that COW-1 did not allay the First respondent's fears and failed to speak about his job prospects or his career advancement"

[33] Based on the above case decision, the Company's failure to obtain the Claimant's approval to merge *Climate Action Unit into the Environment & Climate Action Unit* and transfer the reporting line from the Claimant to Miss Afni is not consequential. In any event, there is no intention on the

part of the Company to force the Claimant to resign since the Company still needs his services due to the Company's scholarship of hundreds of thousands of ringgits when he continued his studies at Imperial College London.

[34] The Claimant's allegations of misconduct and abuse of power by his superiors, who forced him to leave his job and continue his studies abroad during the scholarship bonding period, are not valid grounds for a constructive dismissal claim.

[35] The Claimant alleged that the Company's action to restructure the STD and withdraw the executive was a violation of the Claimant's right to perform his duties and caused the loss of the supervisory authority of the 3 executives under him. However, what the Claimant failed to consider was that Miss Afni still retained Nurun Nadiah (CLW-3) in the unit the Claimant led. The fact is that the movement of workers within the Company is at the Company's discretion, which does not require consultation with the head of the unit or the head of the division. Accordingly, the discretion was exercised in good faith and bona fide for the smooth administration and operation of the Company. The Court

refers to the case ***Hamdan Rasid Hj A Manan v. Telekom Malaysia Berhad*** [2019] 1 ILR 325 it was held:-

“The claimant alleged that the company’s action in transferring his subordinate, one Johardi, without first consulting him tantamount to a fundamental breach of his employment contract. However, the company’s decision to transfer its employees is well within its managerial prerogative. The claimant was not contractually entitled to subordinates, a fact which was admitted by the claimant during cross-examination. As such, this allegation of the claimant is without substance.”

[36] The Company’s counsel submits that the Claimant’s trivial complaint herein cannot amount to a fundamental breach of his employment contract, which entitles him to claim constructive dismissal. The Claimant’s complaint of being put into cold storage is not made out. *Su Geok Yiam J*, in the case of ***Razali Husain V Sapura Research Sdn Bhd & Mahkamah Perusahaan Malaysia*** [2016] 1 LNS 1640 opined:

“[67] Before this Court, the applicant contends that the 2nd respondent erred when it did not find that the applicant’s transfer is mala fide because in his new position, he did not have any subordinate reporting to him and he was also directed to change his room (see Q&A 12 of the applicant’s

*Witness Statement in Exhibit “RH-5” of the applicant’s affidavit-in-support and also para. 3 (i) of the applicant’s Order 53 Statement). However, **this Court agreed with the 1st respondent’s submission that the 2nd respondent was correct in its finding because these grievances of the applicant did not go to the root of the employment contract so as to constitute a fundamental breach of his employment contract and to entitle him to consider himself constructively dismissed.***”

[Emphasis is added]

Leave the Company without delay

[37] It is an established legal principle that to assert a claim for constructive dismissal, the employee is required to resign as a direct response to the breach and must not delay the termination of the contract for an excessive period following the alleged breach by the employer; otherwise, the employee may be considered to have waived the claimed breach.

[38] The Claimant only made a complaint via his e-mail dated 14th October 2022, approximately **2 weeks** after he commenced his unpaid leave on 1 October 2022 and **4 months** after the announcement on 2nd

June 2022. Further, he only left the Company on 4 April 2023, more than **10 months** after the announcement of the restructuring of STD. If the Claimant genuinely asserts that he was constructively dismissed due to the Company's decision to restructure the STD, alter his reporting line, and modify the reporting lines of the three Executives, he ought to have promptly left the Company's employment.

[39] Having considered the Claimant's grievance that led to his resignation, the Company tried to resolve the issue by holding a physical meeting in London at the Claimant's convenience between 17 March 2023 and 20 March 2023, or the Claimant could drop by the Company's Malaysian Career Fair booth in London on 18 March 2023 or 19 March 2023. Unfortunately, no date aligned with the Claimant's availability and the Claimant averred that the individual he was supposed to meet was not authorized by the Whistleblowing Committee.

[40] Due to the Claimant's failure to respond to Mr. Emeir's email dated 16 March 2023, the management proceeded with its efforts to resolve the Claimant's grievances by arranging a Microsoft Teams meeting on 30 March 2023, as proposed by the Claimant in his email dated 15 March 2023. The link for this meeting was subsequently sent to the Claimant on

25 March 2023. Nevertheless, in his response dated 25 March 2023, the Claimant indicated that the purpose of the meeting was "highly obscure" and requested clarification regarding the meeting's objective, despite being fully aware that the meeting was organized to address his grievances.

[41] The Claimant's failure to keep physical and online appointments made it difficult for the Company to investigate the validity of the Claimant's complaint regarding abuse of power by his superiors.

Resignation

[42] The Claimant via his e-mail dated 4 April 2023 to **COW-1**, had attached his notice of resignation dated 4 April 2023 and notified the Company of his resignation "***in response to a repudiatory breach***" wherein he deemed himself constructively dismissed. Therefore, the Company was unable to conclude its internal investigation into the Claimant's grievances.

[43] Upon receiving the Notice of Resignation, the Company responded to the Notice to Show Cause via Notice of Acceptance of Resignation dated 3 May 2023, confirming its acceptance of the Claimant's resignation as being of his own free will. The Notice of Resignation dated 4 April 2023 is reproduced as follows:

Subject: Notice of Resignation - Mahamood Mubarak Ali
Date: Tuesday, 4 April 2023 at 6:04:27 AM British Summer Time
From: Mahamood Bin Mubarak Ali (FGVHB)
To: Razman Bin Radzi (FGVHB)
CC: Dato' Mohd Nazrul Izam Mansor (FGVHB), Nor Asikin Abd. Ghani (FGVHB), Emeir Hamzah bin Md Dewa (FGVHB), Mahamood Mubarak Ali
Attachments: Annex 3 - Feedback.pdf, Annex 2 - Disputes Settlement.pdf, Annex 1.pdf, Resignation Letter - Mahamood Mubarak.pdf, Email Attachment.zip

Hi Razman,

I am writing to inform you of my resignation from my position as Senior Executive at FGV Holdings Berhad. Please find attached all relevant documents, including my resignation letter.

Given the nature of my resignation and the case I presented here, I would appreciate it if you could kindly communicate my resignation to the relevant individuals within the company as appropriate. If you require any further information or clarification, please do not hesitate to contact me. Thank you again for your time and understanding.

Sincerely,
 Mahamood Mubarak Ali



69

Mahamood Mubarak Ali

Weeks Building,
16-18 Prince's Gardens,
South Kensington,
London SW7 1NE
United Kingdom.

Razman bin Radzi

Level 13, Wisma FGV,
Jalan Raja Laut, Chow Kit,
50350 Kuala Lumpur,
Malaysia.

4 April 2023

Dear Razman,

I am writing to formally confirm my resignation from the position of Senior Executive at the Group Sustainability Division in FGV Holdings Berhad (FGV). Please accept this letter as an official notice of my resignation, effective from the earliest possible date after notice is given.

I have exhibited strong dedication to commit to my employment contract which is supposed to expire on 16 December 2030 (revised date after one year deferment of service bond made in 2022). This decision has not come easily, alas, I am resigning in response to a repudiatory breach, and I therefore consider myself constructively dismissed. The case for my resignation is further explained in Annex 1.

The arrangement on the settlement of contractual disputes, return of FGV asset(s), and relevant pending matters from my end are outlined in Annex 2.

Given the rudimentary of feedback to professional growth of your company, I have taken the courtesy to reflect on my experience with FGV. Since I am out of the country throughout my studies, material matters I intend to relay to GHC and GSD are elucidated in Annex 3.

Thank you for the opportunities the company has provided me with.

Yours sincerely,

Mahamood



70

[44] It is a settled law that the burden of proof of forced resignation and constructive dismissal lies on the Claimant. However, the Claimant failed to provide the following evidence:

- (a) That the Company by its conduct had breached the contract of employment;*
- (b) That the terms which had been breached went to the foundation of the contract;*
- (c) The Claimant, pursuant to the breach, had left the employment and not for some other reason;*
- (d) That the Claimant left at an appropriate time soon after the breach.*

[45] The Company's action to restructure the STD was not a breach of any contractual term entered into between the Company and the Claimant. None of the Claimant's allegations in his Statement of Case, namely from (a) to (n), constitutes a breach of any term of the Claimant's employment contract.

[46] The Claimant also failed to comply with the timelines set by his superiors. For example, he failed to prepare a Greenhouse Gas (GHG) inventory and to update the Group Management Committee from January

2022 to June 2022, which formed part of his core duties at the Climate Action Unit.

[47] The reason the Claimant did not leave the Company immediately is that he was fully aware of his scholarship bonding agreement with the Company, which he signed before pursuing his undergraduate studies. His decisive action of resigning notice on 4 April 2023 was to justify his decision to apply and ultimately be accepted to continue his studies at Imperial College London, commencing in October 2022, in line with his approved unpaid leave.

[48] The Court refers to the case of ***Kanavathi Rajaratnam V Lion Waterway Logistics Sdn Bhd*** [2017] MELRU 567, the Industrial Court held that:

[34] It is trite law that in a constructive dismissal case, the court must only look at the grounds stated in the constructive dismissal letter to determine the issue before it, as was held in the case of Bayer (M) Sdn Bhd v. Anwar Abd Rahim [1995] 4 MLRH 53; [1996] 2 CLJ 49: "If the employee leaves in circumstances where these conditions are not met, he will be held to have resigned and there will be no dismissal within the meaning of the Act. The crucial document that I must critically examine is the said letter and the reasons

given therein for him to walk away from his job, claiming constructive dismissal. Having carefully considered the reasons stated in the said letter, it seems clear to me that the respondent is not entitled in law to walk away from his job".

[49] During re-examination, the Claimant stated that in relation to the breach, the Claimant alleged that he was victimised. On the contrary, CLW-3, during the cross-examination, affirmed that **COW-2** had never announced in the town hall on 2nd June 2022 that the Claimant had been dismissed as Project Lead of the Climate Action Unit. The learned counsel for the Company refers to the case of ***Kanavathi Rajaratnam V Lion Waterway Logistics Sdn Bhd (supra)***, the Industrial Court held as follows:

"... Mere allegations, vague suggestions and insinuations are insufficient for the court to conclude on the issue of victimization. In support of the issue on victimization is the book on "The Law of Industrial Dispute" (6th Edition) Vol, at page 2096 by OP Malhotra:

"Victimization is a serious charge by an employee against an employer which reflects to a degree, upon a subjective attitude of the employer evidenced by certain acts and conducts. The onus of establishing victimizing is upon the person who alleged it. The charge of victimization being a serious one, it must be properly and adequately pleaded;

giving all particulars upon which the charge is based to enable the employer to fully meet them. In other words, the charge must not be vague and indefinite. The act of victimization being an amalgam of facts relating to acts and conduct, inferences and attitudes, these have to be established by safe and secure evidence. Mere allegations or vague insinuations are not enough”

[50] In the case of ***Selangor Medical Centre v. Zainal Abidin Md Tamami*** [2002] 2 MELR 1; [2002] 2 ILR 527, it was stated that failure on the part of the employee to prove his case against the employer would mean that an employee would not be entitled to regard himself as constructively dismissed. Having perused the evidence, the Court is of the view that if an employee departs from the Company without meeting the primary element for constructive dismissal after submitting a resignation letter to the employer, he is considered to have resigned of his own accord.

Final Award

[51] This Court considered the evidence in totality of both documentary and oral, adduced by both parties, their submissions and bearing in mind

s 30(5) of the Act 177 which mandates the Court to act according to equity, good conscience and the substantial merits of the case without regard to the technicalities and legal form, finds that the Claimant failed to prove on a balance of probabilities that he was constructively dismissed due to a fundamental breach of the contract of employment and this was a case of voluntary resignation.

[52] Hence, the Claimant's claim is hereby **DISMISSED**.

HANDED DOWN AND DATED THIS 25TH DAY OF MAY 2026.

-signed-

(RUSITA BINTI MD LAZIM)

CHAIRMAN

INDUSTRIAL COURT OF MALAYSIA

PENANG