

IN THE INDUSTRIAL COURT OF MALAYSIA

CASE NO.: 6/4-874/25

BETWEEN

TENG KEAT HUI

AND

CEMENT INDUSTRIES OF MALAYSIA BERHAD

INTERIM AWARD NO.: 843 OF 2026

Notice of Application Encl. 17A

Before : Y.A. Tuan Amrik Singh - Chairman

Venue : Industrial Court Malaysia, Kuala Lumpur

Date of Reference : 19.05.2025

Dates of Mention : 01.07.2025, 28.08.2025, 11.11.2025, 24.02.2026

Date of Mediation : 24.09.2025

Representation : Mr. Azfar Asadullah
Messrs. Asadullah
Counsel for the Claimant

Ms. Arissa Ahrom
Messrs. Lee Hishamuddin Allen & Gledhill
Counsel for the Company

REFERENCE :

This is a reference made under Section 20(3) of the Industrial Relations Act (Act 177), arising out of the dismissal of **Teng Keat Hui** (referred to as “the Claimant”) by **Cement Industries Of Malaysia Berhad** (referred to as “the Company”) on 15.01.2025.

INTERIM AWARD

(Production of Documents)

- [1] This is the Claimant's application for a pre action discovery of documents made pursuant to Section 29 (c) of the Industrial Relations Act 1967. It raises the question whether the Claimant is entitled to compel the Company to disclose the following documents requested for in his application:

No.	Document	Description / Title of Document
1	Document 1	Approved Board Paper – Proposed Quotation for Precast Reinforced Concrete U Drain to Dhaya Maju Infrastructure (Asia) Sdn Bhd for KTM Berhad's Klang Valley Double Track Phase 2 Project.
2	Document 2	Utama Concrete Industries Sdn Bhd's Quotation for Precast Reinforced Concrete U Drain to Dhaya Maju Infrastructure (Asia) Sdn Bhd for KTM Berhad's Klang Valley Double Track Phase 2 Project.
3	Document 3	CIMA's Quotation for Precast Reinforced Concrete U Drain to Dhaya Maju Infrastructure (Asia) Sdn Bhd for KTM Berhad's Klang Valley Double Track Phase 2 Project.
4	Document 4	Price Comparison Table for Precast Reinforced Concrete U Drain in preparation for quotation to Dhaya Maju Infrastructure (Asia) Sdn Bhd for KTM Berhad's Klang Valley Double Track Phase 2 Project.
5	Document 5	Dhaya Maju's Purchase Order to Tekun Concrete shared with CIMA on Precast Reinforced Concrete U Drain to Dhaya Maju Infrastructure (Asia) Sdn Bhd for KTM Berhad's Klang Valley Double Track Phase 2 Project.
6	Document 6	Management Paper To Seek Mandate To Initiate Discussion With Potential Ready-mix Companies For Merger And Acquisition.
7	Document 7	MDC's list of plant locations, plant capacity, number of trucks and production volume.
8	Document 8	Files for Zenith Highway Package 2 (Ayer Itam–Lebuhraya Tun Dr Lim Chong Eu Bypass).

[2] The Show Cause Letter outlined 4 charges against the Claimant:

13.1. *“Evidence indicating that you are affiliated with and / or you are the owner of the company / organization, namely ‘Concrete Engineers Malaysia’ and that you have failed to declare your involvement with the said company / organization to CIMA as required under our company’s Code of Conduct” (“1st Allegation”);*

13.2. *“Evidence indicating that around the months of August 2024 to October 2024, you contacted several industry professionals, including personnel from Petronas, Sapura Energy Berhad and Vodapruf Pte Ltd to recruit them into a private business venture. The evidence indicates that you would first present yourself as a CIMA representative and would subsequently disclose your involvement in an IPO project unrelated to CIMA. These actions were conducted without any knowledge or approval from CIMA management” (“2nd Allegation”);*

13.3. *“Evidence indicating that you used CIMA’s official email and devices to promote and recruit for your personal business. Multiple recruitments meetings took place during official CIMA*

working hours. This use of company resources was neither authorized nor sanctioned by CIMA” (“3rd Allegation”); and

13.4. “Evidence indicating you would first introduce yourself as a CIMA representative to establish contact with external parties, then shifted to promoting your private venture, thus leading these individuals into believing CIMA might be involved in your business venture, thereby exposing CIMA to reputational risk.” (“4th Allegation”).

Background Facts

[3] The Claimant’s employment with the Company began on 15.06.2016 as the General Manager, Business Development /Specialist Projects. Sometime in March 2019, the Claimant was subsequently made the Head of Business Development reporting to Head, Strategy And Transformation Departments.

[4] His job scope among others are to obtain information that could contribute to the Company’s growth and enable it to remain competitive.

- [5]** A Show Cause letter dated 30.01.2023 was issued to the Claimant which required him to provide explanation for his non attendance at the office without obtaining prior approval from his superior between 04.01.2023 and 18.01.2023.
- [6]** However, upon considering his explanation and his pledge to strictly adhere to the Company's policies and procedures, the Code of Conduct and Employees Handbook, the Company by way of a letter dated 24.03.2023 reminded the Claimant to keep the Company informed of his whereabouts in future.
- [7]** Sometime in October 2024, the Company became aware of the Claimant's violation of its policies and procedures in his capacity as the Head of Business Development, Strategy and Transformation. A suspension letter was issued to the Claimant pending the conclusion of the inquiry into the allegations of his misconduct. This was then followed by the issuance of a Show Cause letter.

- [8]** In the Show Cause letter, the Company required the Claimant to response to four (4) allegations of misconduct. The Company thereafter granted the Claimant's request for an extension of time r to provide his response to the Show Cause.
- [9]** The Claimant responded to the Show Cause and in the same letter requested for additional information relating to the charges. The Company, initially decline to provide further information sighting that the Show Cause letter has sufficient information which he needed, but later provided the additional information for him to provide further opportunity to submit a detailed explanation and response.
- [10]** Thereafter, the Claimant insisted that he be furnished with the necessary evidence to enable him to defend himself. However, he was instead directed to submit his final response to the Company in respect of the charges levelled against him. In response, the Claimant attached further documents in support of his reply to the Show Cause letter.

[11] The Company then, deliberated on the response and explanation provided. As it could no longer repose the necessary trust and confidence in the Claimant, the Company, vide letter dated 15.01.2025 terminated his employment.

The Claimant's Case

[12] In reply to the 1st Charge the Claimant stated that Concrete Engineers Malaysia (CEM) was not a registered entity but a blog on which he posted articles relating to engineering specifically relating to cement and concrete technology. He explained that he used the platform out of his passion as a registered Engineer, to network with other professionals and that when business opportunity arose, he would refer them to the Company.

[13] The Claimant further avers that the platform had been inactive for at least 2 years and had not even been in his contemplation until it was brought up by the Company. He avers that his superior was aware of CEM and had never raised any objections. The Claimant avers that CEM platform

was used to obtain information and contacts for the benefit of the Company whenever needed.

[14] In reply to the 2nd Charge, the Claimant stated that he was prepared to address any alleged conversations once the Company provided further details and context regarding the same. He further contends that in order to carry out his role effectively, he was required to establish a network with Industry professionals outside the Company and potential clients. In that regard, he asserts that it would be normal to have discussions.

[15] In respect of the 3rd Charge, the Claimant contends that the charge was vague and ambiguous and further requested the Company to provide the email referred to in the Show Cause letter in order to enable him to give a detailed explanation.

[16] In relation to the 4th Charge, the Claimant raised that the charge was vague.

[17] The Claimant contends that the Company disagreed with his assertion that the Charges were vague, and nevertheless

provided him with eleven (11) supporting document as alleged evidence.

[18] He further stated that the eleven (11) documents were random vague and/or ambiguous and were not specifically tied to any of the 4 allegations.

The Company's Reply

[19] The Company asserts that the alleged misconducts the Claimant was accused of relates to events that took place between August to October 2024, while the documents sought by the Claimant relates to past tenders of market-intelligence projects which have no bearing on the Claimant's dismissal.

The Law

[20] In *Yekambaran Marimuthu v Malayawata Steel Berhad* [1994] 2 CLJ 581 the High Court held that :

“[1] the essential elements for an order for discovery are threefold, namely first, there must be a “document”, secondly, the document must be “relevant” and thirdly, the

document must be or have been in the “possession, custody or power” of the person against whom the order for discovery is sought. It is indisputable that the items sought were document and were in the possession, custody or power of the defendant.

[2] As to the “relevance” the Rules of the High Court limit discovery to document which are “relevant to” or relate to the factual issues in dispute. The discovery obligation applies to documents “relating to matters in question in the action” (O 24 r1(1)) or “relating to any matter in question in the cause or matter” (O 24 r3(1)) . In practice relevance is primarily determined by reference to the pleadings but there need not be pleadings for a matter to be in issue.”

[3] Relevance does not extend to documents merely to a party’s credibility unless itself is a fact in issue. However, if the document’s relevance is to a fact in issue, not simply to credibility, it had long been settled that relevance of an indirect kind suffices.”

The Claimant's Grounds

[21] The Claimant submitted that based on the Affidavits filed by parties, the existence of the documents and the fact that they are in the Company's possession are not in dispute. On that score, the Claimant submission centres on the relevance of the documents sought.

[22] The reasons the Claimant sought the documents are as follows:

- i. To show that the Company not only benefited from valuable information that was obtained by the Claimant in discharging his duties and/or as instructed by his superiors at that time;
- ii. To show whether the Company stating the truth in regard to his unfair dismissal;

[23] The Claimant sought the documents as listed in Appendix A of encl. (17) the Application which the Company contends are not relevant.

The Company's Rebuttal

[24] The Company contends that the dismissal of the Claimant was solely on grounds that his actions violated the Company's policies and procedures when :

- (i) The Claimant failed to declare his involvement with a company / organization named "Concrete Engineers Malaysia" as required under its Code of Conduct and Employee Handbook.
- (ii) The misconducts accused of relates to events which took place in or around August to October 2024, while the documents sought by the Claimant relate to tenders of market intelligence projects of years past which have no bearing on his dismissal.

Evaluation And Findings

[25] Document 1 to 8 sought by the Claimant do not indicate when it was made which would have been relevant in assessing its temporal connection to the allegations level

against him. It also does not demonstrate how it would show the Company's personnel named in the Affidavit In Support were aware of the Claimant's involvement specifically from August to October 2024.

[26] The Court notes that the Claimant, in his Written Submission In Reply, admitted that the documents would show that any actions on his part were within the knowledge of the Company for several years prior to the allegations. This reasoning, however, undermines the relevance of the documents sought as it was not disputed that the alleged misconduct occurred between August to October 2024 and not years earlier. Despite this, the Claimant failed to show the temporal connection between the documents sought and the alleged misconducts referred to by the Company.

[27] The Claimant's argument is that the documents sought would show that the Company actively approached competitors to obtain various market information. However, this does not establish the relevance to the charges levelled against the Claimant which concerns his personal involvement with CEM in recruiting certain individuals into a private business venture

for personal business and leading these individuals into believing the Company might be involved in his business venture. The production of the 8 documents or any of them which has no relevance to CEM would defeat the purpose of their production at the trial.

[28] In respect of Document 3, the Claimant avers that it would show that the Company's quotation matched the Board Paper and the competitor's quotation, thereby confirming reliance on competitor's information which he had helped to obtain for the Company and was within the Company's knowledge.

[29] However, the Court finds no relevance in seeking such documents to establish that the Company's quotation matched the Board Paper as the central issue in the misconducts allegations concerns the Claimant's involvement with CEM. There is also not indicated anywhere in the Claimant's Affidavits that such information was derived from CEM.

[30] The purpose of seeking Document 4 is to show that the competitor prices were compared side by side and incorporated into the Company's quotations and that the

Company consistently sought and used competitor's information. Such grounds clearly did not indicate that Document 4 would reveal that it has obtained the prices from CEM.

[31] The reason for seeking Document 5 is to show that Tekun, a major competitor, had shared its customer's purchaser order with the Company, thereby confirming the use of competitor's information in the Company's quotation and Board Paper. However, the Claimant's assertion that Tekun had shared its customer's purchase order with the Company does not in anyway indicate the Claimant's involvement was through his CEM platform. The Claimant did not state such facts in his Affidavits

[32] In respect of Document 6, the Claimant seeks to establish its relevancy by asserting that the Company used his network to initiate talks with competitors and obtained valuable internal information. However, the Claimant failed to indicate which specific information he requires to refer to usage of his network to prove its relevancy to the misconducts alleged

that took place within the period specified by the Company. Nonetheless, nothing prevents the Claimant from producing available evidence from his network to substantiate his claim that the Company had used his network to initiate such discussions.

[33] Document 7 is sought to show that the Company obtained competitor's confidential internal information to assessed its profitability. Again, it is not shown the relevancy with the issues that led to his dismissal specifically in relation to his involvement in the misconduct alleged.

[34] Document 8 is to show that the Company obtained tender information and assistance from competitors such as MJC Precast and used such information to prepare its quotation. It is not demonstrated on what basis is document 8 relevant to the allegations that led to his dismissal.

[35] It is noted that the Claimant conceded in his written submission that the documents requested by him are directly related to at least 2 of the 4 charges. In light of this assertion, as the Claimant did not clarify in his Affidavits

which are the charges he was referring to, 2 of the 4 charges and not all 4, the request appears to be a fishing expedition, rather than a bona fide attempt to obtain relevant documents.

[36] The Company's submission that the 8 documents have no connection with entities such as Concrete Engineers Malaysia, Petronas, Sapura Energy Berhad and Vodapruf Pte Ltd which the Company considers relevant to the Claimant's reasons for dismissal or the charges further diminishes and undermines the relevance of the documents sought. The facts in issue concerns Concrete Engineers Malaysia, Petronas, Sapura Energy Berhad and Vodapruf Pte.Ltd. and not entities such as Dhaya Maju Utama and Tekun Concrete.

[37] The Claimant appears to have missed the point that the documents sought must be relevant to or connected with the allegations levelled against him and not relate to a period preceding the alleged misconducts. For the documents to be relevant to the alleged misconducts, it is incumbent upon the Claimant to demonstrate how documents created earlier are material to his defence or how he intends to rely on their

contents in relation to his network or platform to rebut the allegations against him.

[38] The Court must be mindful that in a reference under s 20(3), the burden of proving that the dismissal was with just cause or excuse lies on the employer and accordingly, it is not for the employee to compel the employer to produce evidence which, in the employer's view, would not be required in the proceedings.

[39] In conclusion, the Court fails to see how the 8 documents sought would be relevant to the Claimant's case as they do not emanates from entities brought into question by the Company.

Final Order

[40] The Claimant's Application (encl 17 A) is hereby dismissed.

HANDED DOWN AND DATED THIS 26TH DAY OF MAY 2026

-Signed-

(AMRIK SINGH)
CHAIRMAN
INDUSTRIAL COURT MALAYSIA
KUALA LUMPUR