

IN THE INDUSTRIAL COURT OF MALAYSIA

CASE NO.: 22/4-1193/23

BETWEEN

SALINA BINTI KAMARUDIN

AND

UMPSA HOLDINGS SDN BHD

**(Substituted as the Company in this case in place of 'UMP Holdings Sdn Bhd' by
Court Order *via* Interim Award No. 1715/2024 dated 06 November 2024)**

AWARD NO. 1880 OF 2025

**BEFORE : Y.A. TUAN PARAMALINGAM A/L J. DORAISAMY
- Chairman**

VENUE : Industrial Court of Malaysia, Kuala Lumpur

DATE OF REFERENCE : 06.07.2023

DATES OF MENTION : 09.08.2023; 26.10.2023; 05.11.2024 & 23.01.2025

**DATES OF HEARING : 16.07.2024; 13.11.2024; 07.01.2025; 20.05.2025 &
21.05.2025**

**REPRESENTATION : Mr. Ravindra Murugavell
Messrs. Murugavell Arumugam
Counsel for the Claimant**

**Mr. Amardeep Singh Toor a/l Amar Singh
together with Ms. Roseveen Kaur Tyndall
Messrs. Lee Hishammuddin Allen & Gledhill
Counsel for the Company**

REFERENCE :

This is a reference made under Section 20 (3) of the Industrial Relations Act 1967 (Act 177), arising out of the dismissal of **Salina Binti Kamarudin** (hereinafter referred to as "*the Claimant*") by **UMPSA Holdings Sdn. Bhd.** (hereinafter referred to as "*the Company*") on 31 January 2023.

AWARD

[1] The Ministerial reference in this case required the Court to hear and determine the Claimant's complaint of dismissal by the Company on 31 January 2023.

I. PROCEDURAL HISTORY

[2] The Court received the letter pertaining to the Ministerial reference under Section 20(3) of the Industrial Relations Act 1967 on 10 July 2023.

[3] The matter was fixed for mention on 9 August 2023, 26 October 2023, 5 November 2024 and 23 January 2025.

[4] The trial proceeded on 16 July 2024, 13 November 2024, 7 January 2025, 20 May 2025 and concluded on 21 May 2025.

II. Factual Background

[5] The Claimant was employed by the Company as Vice President, Group Human Capital on 3 February 2022 on a fixed-term contract that was set to expire on 2 February 2024. As Vice President, Group Human Capital, the Claimant was the senior most personnel in the Human Capital division, i.e. the human resources department.

[6] Sometime around September and October 2022, the Company received several whistleblowing complaints against the Claimant, resulting in the Company commencing investigations into the said complaints. During the investigations, several other wrongdoings were discovered.

[7] On 20 December 2022, the Company issued a Show Cause letter to the Claimant containing 4 allegations:-

- i. **Allegation No. 1:** The Claimant had misused her power in the appointment of her brother, En. Azizul Rahman bin Kamaruddin (*“En. Azizul”*) as Senior Executive, Business Development of the Company;
- ii. **Allegation No. 2:-** The Claimant had repeatedly reported late to the office, the details of which are as follows:-

Date	Clock-in Time	Lateness of
04.11.2022	9.33 AM	1 hour 33 minutes
16.11.2022	8.33 AM	33 minutes
17.11.2022	8.32 AM	32 minutes
21.11.2022	8.45 AM	45 minutes

23.11.2022	9.39 AM	1 hour 39 minutes
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- iii. **Allegation No. 3:** The Claimant was absent from work without leave, prior approval by her immediate superior, or medical leave during working hours, the details of which are as follows:-

Date	Day
03.10.2022	Monday
04.10.2022	Tuesday
05.10.2022	Wednesday
06.10.2022	Thursday
07.10.2022	Friday
10.10.2022	Monday
11.10.2022	Tuesday
12.10.2022	Wednesday
13.10.2022	Thursday
14.10.2022	Friday
17.10.2022	Monday
18.10.2022	Tuesday
19.10.2022	Wednesday
20.10.2022	Thursday
21.10.2022	Friday
24.10.2022	Monday
25.10.2022	Tuesday
26.10.2022	Wednesday

- iv. **Allegation No. 4:** The Claimant had used words which were inappropriate, vulgar and uncouth targeted at Tuan Syed Alwi Bin Mohamad Sultan (COW-1; Group CEO of UMP Holdings Sdn Bhd), through WhatsApp with her staff members which is an act

of incitement towards creating hatred and insubordination as seen below:

“Ni dia si laknat syed. Jgn ingat dia baik”

“Ni lah CEO yg korang percaya”

[8] On 30 December 2022, the Claimant responded to the Show Cause letter. However, the Company found her Reply to the Show Cause letter to be unsatisfactory.

[9] As the Claimant was a probationer at the material time, the Company proceeded to issue the Letter of Non-Confirmation to the Claimant on 17 January 2023. Her last day of service with the Company was on 30 January 2023.

[10] The Claimant however contends that the Company had failed to prove the 4 Allegations against her on a standard of balance of probabilities.

III. The Function of the Industrial Court & The Burden of Proof

[11] It is established law that the function of the Industrial Court in a Section 20(3) Industrial Relations Act 1967 is two-fold, i.e. to determine:-

- (i) whether the misconduct of the employee alleged by the employer has been established; and
- (ii) whether the proven misconduct constitutes just cause or excuse for the dismissal.

[12] In the case of **Milan Auto Sdn Bhd v. Wong Seh Yen [1995] 4 CLJ 449** the Federal Court held (*vide* judgment of Mohd Azmi Bin Kamaruddin FCJ (at pp. 12-13):-

“As pointed out by this Court recently in Hong Leong Assurance Sdn Bhd v. Wong Yuen Hock [1995] 2 MLJ 753, the function of the Industrial Court in dismissal cases on a reference under s. 20 is two-fold firstly, to determine whether the misconduct complained of by the employer has been established, and secondly whether re proven misconduct constitutes just cause or excuse for the dismissal”.

[13] And in the case of **Goon Kwee Phoy v. J & P Coats (M) Bhd [1981] 2 MLJ 129** the Federal Court (*vide* the judgment of Raja Azlan Shah CJ) held:-

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

[14] The burden of proof in an unfair dismissal claim lies on the employer to prove on a balance of probabilities that the employee had committed the misconduct

complained of. This principle was expounded by the Industrial Court in the case of **Stamford Executive Centre v. Dharsini Ganeson [1986] ILR 101:-**

“In a dismissal case the employer must produce convincing evidence that the workman committed the offence or offences the workman is alleged to have committed for which he has been dismissed. The burden of proof lies on the employer. He must prove the workman guilty and it is not the workman who must prove himself not guilty. This is so basic a principle of industrial jurisprudence that no employer is expected to come to this Court in ignorance of it”.

IV. Issues To Be Decided

[15] The issues to be determined in this case are:-

- (i) whether the allegations of misconduct levelled against the Claimant are proven on a balance of probabilities;
- (ii) whether the allegations of misconduct, if proven, justified the Company in not confirming the Claimant (who was under probation) in her position in the Company.

V. The Court’s Findings And Reasons

- (i) Whether the charges of misconduct levelled against the Claimant are proven on a balance of probabilities**

[16] The Claimant, at the material when the alleged incidents occurred, was still under a probationary period with the Company.

[17] It is trite law that a probationer cannot be dismissed from his employment whilst being under probation unless he/she has been found guilty of an act of misconduct. In all other instances, the Claimant will have to be assessed on his work performance before the decision to confirm him/her in his/her position is made. In the case of **Sulnayah Mohd Isa v. Sekolah Kanak-Kanak Pekak Selangor & Anor [1999] 6 CLJ 34** it was held by Azmel Maamor J:-

“The main issue that arose from this application concerned with the right of an employer to dismiss its employee during the period of probation. It was not disputed that the applicant was dismissed by respondent No. 1 during the currency of her probationary period. At p. 3 of the award the Industrial Court had quite rightly stated the legal principle concerning this issue i.e.:

In other words the employer has no right to terminate the service of an employee before the period of probation has expired, except on the ground of misconduct or other sufficient reasons in which case even the service of a permanent employee could be terminated.

This principle means that an employee cannot be terminated by the employer during the currency of his probationary period. However there is an exception to the rule, i.e. the employee can be terminated if he commits an act of misconduct for which reason even the services of a confirmed employee can be terminated.

In the light of the above principle what this court need to examine is whether the dismissal of the applicant who was still on probation was on the ground of misconduct”.

(Emphasis added)

[18] It is clear from the evidence before this Court that the Claimant had been dismissed from his employment due to her acts of misconduct, i.e. conflict of interest, habitual tardiness, absenteeism and insubordination.

[19] Learned Counsel for the Claimant submits that the only issues before this Court pertain to the 4 allegations contained in the Show Cause letter dated 20 December 2022 (at pp. 7-10 of COB-1), despite the Claimant's pleadings being peppered with several other side issues related to, amongst others, the whistleblowing and town hall meeting. As such, the Court will only analyse the 4 allegations contained in the said Show Cause letter to determine whether the Company was justified in cutting short the Claimant's probationary period and not confirming her in her position in the Company.

- **Allegation No. 1 : Abuse of Power**

[20] Allegation No. 1 contained in the Show Cause letter dated 20 December 2022 (at pp. 7-8 of COB-1) reads as follows:-

“1. ALLEGATION 1: Abuse of Power – as to the appointment of Encik Azizul Rahman Bin Kamarudin as Senior Executive, Business Development of the Company

Based in our finding, Encik Azizul Rahman bin Kamarudin is your brother and you have directly involved in the hiring process of Encik Azizul from the early stage of the said post is advertised which clearly an act of such conflict of interest. However you have failed to disclose your relationship with Encik Azizul at any earliest opportunity, i.e. as soon as you become aware of the conflict to the Company.

By the above said act and your conduct in the entire process of hiring Encik Azizul Rahman bin Kamarudin, you have therefore breached your express and/or implied duties as an employee of UMPH Group, with reference to the Conflict of Interest Policy UMPH Group, Topic 8.0 Breach of Policy and Employee Handbook, “Bahagian 7: Prosedur dan Tindakan Disiplin; Topic 7.1 Kesalahan-kesalahan Tata tertib. 7.1.1 Sengaja mengingkari atau enggan mematuhi sama ada secara perseorangan atau kumpulan kepada sebarang perintah yang sah di sisi undang-undang atau yang munasabah dari pihak Pengurusan”.

You have further acted beyond your power as the Vice President, Group Human Capital of UMPH Group by amending the position and salary package offered to Encik Azizul Rahman bin Kamarudin as can be seen in the Interview Summary for the interview date of 24.06.2022 despite the fact that the vacancy advertised for the position and salary and agreed proposed salary were different. This is seen as an act of misconduct of gaining benefit for your family member through manipulation of the original advertised vacancy.

By the above said act and your conduct of amending the position and salary package offered to Encik Azizul Rahman bin Kamarudin, you have therefore caused the company to incur unnecessary expenditure on recruitment.

By the above said act, you have therefore breached your expressed and/or implied duties as an employee of UMPH Group, with reference to the Employee Handbook, “Bahagian 7: Prosedur dan Tindakan Disiplin; Topic 7.1 Kesalahan-kesalahan Tatatertib. 7 7.1.29 Penyalahgunaan kuasa yang diberi bagi tujuan menjatuhkan syarikat atau untuk kepentingan sendiri””.

[21] Allegation No. 1 pertains to the Claimant’s alleged misconduct wherein she had acted in conflict of interest in the appointment process of one En. Azizul Rahman bin Kamarudin (“*En. Azizul*”) (who is the Claimant’s brother) to the role of Senior Executive, Business Development in the Company.

[22] Learned Counsel for the Company had pointed out the Conflict of Interest Policy of the Company which stipulates that an employee should not directly or indirectly be in a position to influence the hiring or assessments of a family member. The relevant provision in the said Conflict of Interest Policy reads as follows (*at pp. 79-80 of COB-1*):-

“4.0 IDENTIFYING CONFLICTS OF INTEREST

4.1 *In general, a conflict of interest would arise where a person's ability to perform his/her duties effectively and impartially are potentially impaired by personal interests, considerations or relationships.*

Generally, conflicts of interest may be described under the following broad categories:

" ...

iv. Personal Relationships

*A conflict of interest would exist if a family member of an employee has a reporting relationship with the employee. **An employee should not be in the same department/division as a family member, and should not directly or indirectly supervise, or be in a position to influence the hiring, work assignments or assessments of the family member ...***

(Emphasis added)

[23] It is not disputed that the said En. Azizul is the Claimant's brother and that the shortlisting and interview process of En. Azizul for the position of Senior Executive, Business Development in the Company was done by the Claimant's subordinates in Group Human Capital, i.e. En. Ahmad Solehin ("*En. Solehin*") and En. Ali Saifullah. This was admitted to by the Claimant in her Reply to the Show Cause letter dated 30 December 2022 (*at p. 15 of COB-1*).

[24] The Claimant states in her Reply to the Show Cause letter dated 30 December 2022 (*at p. 15 of COB-1*) that in June 2022 the then Senior Vice President, Business

Division, i.e. En. Azman bin Ridwan (CLW-2), “*was looking high and low for an experienced Business Development personnel*” and thus had requested to hire an Executive at senior level and that a Manpower Requisition Form (MRF) was issued by CLW-2 and the Claimant’s Group Human Capital division had proceeded with the recruitment. The Claimant thereafter admits having submitted her brother’s (En. Azizul) CV to CLW-2 and declared to CLW-2 that En. Azizul is her brother and left it to CLW-2 to select his preferred candidates.

[25] En. Azizul was thereafter interviewed, amongst others, by the Claimant’s subordinate, i.e. En. Solehin. The said En. Solehin had also prepared En. Azizul’s Interview Summary. The said Interview Summary was then not only checked, but also recommended by the Claimant as the Vice President, Group Human Capital. The Interview Summary was thereafter approved by the Interim Chief Executive Officer, i.e. Professor Madya Dr. Ahmad Tarmizi bin Haron.

[26] The matter however did not end there. Subsequent to the approval of the Interview Summary, the Claimant then forwarded a photo of her handwritten notes pertaining to the proposed salary package to another of her subordinate, i.e. Pn. Noor Aidayuwati Binti Zakaria (COW-2) via WhatsApp messages (*at pp. 39 - 41 of COB-2*).

[27] It is evident from the Claimant’s said WhatsApp messages (*at pp. 40 – 41 of COB-2*) that she had clearly instructed COW-2 to forward the said notes to En. Solehin for him to add to the Interview Summary, which COW-2 duly complied with. En. Solehin had then incorporated the Claimant’s handwritten notes onto the Interview Summary (*at p. 32 of COB-2*). Thus, upon the Claimant’s instructions, En. Solehin had amended

the Interview Summary to now reflect a much higher salary package for her brother, En. Azizul, then what was originally indicated in the said Interview Summary.

[28] The said En. Azizul was then appointed as a Senior Executive, Business Development, Business Division (Grade: E5) effective 14 July 2022 (at pp. 30 – 31 of COB-2) and, more glaringly, his employment contract was signed by the Claimant on behalf of the Company.

[29] Throughout the proceedings before this Court, the Claimant's stand had been that she had declared to CLW-2 and Professor Madya Dr. Ahmad Tarmizi bin Haron that En. Azizul is her brother. However, when pressed upon with regard to any documentary evidence of such a declaration, the Claimant was unable to produce any.

[30] The Claimant admitted that she did not complete the Conflict of Interest Declaration Form as required under the Conflict of Interest Policy, wherein Clause 6.1 (at p. 82 of COB-1) provides:-

"Any conflict of interest must be declared by filling up the Conflict of Interest Declaration Form. The conflict of interest must be escalated to the HOD for further action. In the case of directors, the conflict must be disclosed to the Board of Directors and recorded by the Company's Secretary. The declaration shall be made as and when the conflict arises, and shall be made at the earliest opportunity, i.e., as soon as the director or employee becomes aware of the conflict".

[31] It is pertinent to note that Clause 6.1 of the Conflict of Interest Policy makes it mandatory for any conflict of interest to be declared by filling up the Conflict of Interest Declaration Form. Thus, it is insufficient for the Claimant to plead that she had informed her superiors, i.e. CLW-2 and Professor Madya Dr. Ahmad Tarmizi bin Haron. There is no discretion given to the employee to declare in any other form or manner other than completing and submitting the Conflict of Interest Declaration Form to the HOD, wherein the Legal and Governance Department of the Company will then review the conflict and decide on the steps to resolve the conflict. In bypassing the requirement of the submission of the Conflict of Interest Declaration Form and merely verbally informing CLW-2 and Professor Madya Dr. Ahmad Tarmizi bin Haron, the Claimant had wilfully and/or blatantly disregarded the mandatory requirement contained in Clause 6.1 of the Conflict of Interest Policy.

[32] The Claimant during examination-in chief testified that she did not submit the Conflict of Interest Declaration Form as Clause 4.1 (iv) of the Conflict of Interest Policy merely provides that a conflict of interest would only exist if a family member of an employee has a reporting relationship with the employee. Since her brother, En. Azizul, was being recruited to the Business Division, and the Claimant being in a different department, i.e. Group Human Capital, thus there was no requirement for the Claimant to submit the Conflict of Interest Declaration of Form.

[33] The Court however finds this explanation of the Claimant as being totally misconceived. Even though they were in different departments, nevertheless the nature of the Claimant's job functions as the Vice President in the Group Human Capital which involves, amongst other things, the recruitment of new staff placed her

in a precarious situation when the Claimant herself forwarded En. Azizul's CV to CLW-2 with a view of having her brother appointed to the role of Senior Executive, Business Development in the Business Division. At the very least, the Claimant, being a senior human resources officer, ought to have realised that she was under an obligation to declare the potential conflict of interest *via* the Conflict of Interest Declaration Form when she was instructing her subordinates pertaining to the interview of her brother and also the proposed salary package, which the Claimant herself had actively revised *via* her handwritten notes and forwarded to COW-2 *via* WhatsApp. In short, the Claimant had actively involved herself in the recruitment process of her brother and thus influenced the Company's decision in hiring him as the Senior Executive, Business Development in the Business Division.

[34] The Claimant held a senior position in the Group Human Capital division, i.e. the human resource department in the Company. Her job functions, amongst other things, would involve recruitment of new staff for the Company. By getting herself involved in the recruitment of her brother, i.e. En. Azizul, she had clearly breached the Company's Conflict of Interest Policy, whereby she had allowed her personal interests to seep into the recruitment process of her brother, thereby directly or indirectly clouding her judgment in the appointment of En. Azizul.

[35] In **Saifuddin Shah Sowkkatali v. Petroliam Nasional Berhad Petronas [2022] ILRU 0467** it was held by the learned Industrial Court Chairman, Reihana Abd Razak:-

“All the undisputed and unchallenged evidence adduced by the Company only goes to show the active role of the Claimant in the recruitment of Amir Alif, his nephew with CEFS PIC.

Based on the evidence adduced, the Court is satisfied that the Claimant was in a conflict of interest situation when he was involved in the hiring, supervision, management or career planning at PETRONAS in respect of all those individuals in Charges 1 to 5 and who were all related to him.

The Court finds that the Claimant reviewed the Intent to Hire and the Intent to Renew documents of all the individuals who are related to him, took an active role to recommend those related to him in their recruitment, influenced the decision of the interviewers to change their initial decision from "Reject" to "Recommend", asked for the questions and answers before the interviews session for his nephew from the interviewer and even instructed the interviewer to reschedule the interview for his nephew (Amir Alif) who had missed the interview.

As the Claimant had not denied his personal relationship with the persons named in Charges 1 to 5, and also no denial by the Claimant that he had not declared to the Company of his relationship with any of these persons prior or at the time they had been interviewed or post their interviews as required of him under Clause 1.3 of the Company's Code of Conduct and Business Ethic (CoBE) Part II: Duties of Good Faith, Fidelity, Diligence and Integrity under Part II A: Conflict of Interest, the Court is satisfied the Company had proven Charges 1 to 5 against the Claimant”.

[36] The Court finds that the Company had succeeded in proving, on a balance of probabilities, Allegation No. 1 against the Claimant.

- **Allegation No. 2 – Repeatedly coming late to work**

[37] Allegation No. 2 contained in the Show Cause letter dated 20 December 2022 (at pp. 8 – 9 of COB-1) reads as follows:-

“2. ALLEGATION 2: Repeatedly coming late to the office

We refer to the Clause 10 of your Letter of Employment which stated that:-

10.0 HOURS OF WORK

Employees are required to work such hours and days as the company from time to time directs.

Without prejudice to the foregoing:

The standard working hours per week is 39 hours (Monday to Friday: 8.00 am to 5.00 pm)

However, review on the Company’s Log Record of Staff Attendance for the month of November indicated that you have repeatedly reported late to office without prior permission and/or approval from your superior, on the following dates:

No.	Date	Clock-in Time	Lateness of
1	4-11-2022	9.33 AM	1 hour 33 minutes
2	16-11-2022	8.33 AM	33 minutes
3	17-11-2022	8.32 AM	32 minutes
4	21-11-2022	8.45 AM	45 minutes
5	23-11-2022	9.39 AM	1 hour 39 minutes

By the above said act, you have therefore breached your expressed and/or implied duties as an employee of UMPH Group as stated in your Letter of Employment and also the Employee Handbook, “Bahagian 7: Prosedur dan Tindakan Disiplin; Topic 7.1 Kesalahan-kesalahan Tata tertib. 7.1.10 Kerap datang lewat ke pejabat tanpa alasan munasabah”.

[38] Allegation No. 2 against the Claimant pertains to the Claimant’s habitual tardiness, in particular during the month of November 2022, i.e. on 4 November 2022, 16 November 2022, 17 November 2022 and 27 November 2022.

[39] The Claimant in her Reply to the Show Cause letter (*at p. 17 of COB-1*) had provided an explanation for turning up late for work on 4 November 2022, i.e. a delay of 1 hour 33 minutes, in that she was taken ill on that day. The Claimant states that she had informed the Interim GCEO and Group Human Capital team, but however failed to produce any documentary evidence to support her contention.

[40] As for turning up late to work on 16 November 2022 (delay 33 minutes), 17 November 2022 (delay of 32 minutes) and 21 November 2022 (delay of 45 minutes), the Claimant failed to give any explanation for her lateness. For the delay on 23 November 2022, the Claimant explained that she had to go to the clinic and that she had already informed the GCEO at 8.28am via WhatsApp (*at p. 22 of COB-1*) and the Group Human Capital team.

[41] Under Clause 7 of the UMP Holdings & Subsidiary Staff Policy (*“the Employee Handbook”*) (at pp. 25-64 of COB-1) it is expressly stated that habitual tardiness without reasonable excuse is an act of misconduct to which disciplinary could be taken against the employee concerned (at p. 53 of COB-1):-

“BAHAGIAN 7: PROSEDUR DAN TINDAKAN DISIPLIN

7.1 KESALAHAN-KESALAHAN TATATERTIB

Perkara-perkara berikut merupakan kesalahan-kesalahan yang mana boleh mengakibatkan tindakan disiplin diambil ke atas anggota pekerja:-

...

7.1.10 Kerap datang lewat ke pejabat tanpa alasan munasabah...”

[42] The Claimant was not any ordinary employee in the Company. She held the senior position of Vice President in the Group Human Capital department, overseeing the affairs and welfare of all employees in the Company. Thus, she held a bigger responsibility in ensuring the Company’s Employee Handbook is adhered to. By turning up late to work herself, the Claimant had sent all the wrong signals to the other employees of the Company that any non-compliance of the Employee Handbook and/or Staff Policy will be tolerated by the Company. The Claimant’s explanation in her Reply to the Show Cause letter (at p. 17 of COB-1) that her job responsibilities as a Vice President, Group Human Capital required her to work around the clock and that she did not have time to sleep is certainly no excuse and does not give her *carte blanche* to turn up for work at whatever time that she deems fit. Rules are there to be obeyed, and the Claimant as the Vice President of Group Human Capital had the

responsibility to ensure such compliance of the Employee Handbook and/or Staff Policy, including herself.

[43] The Claimant in fact admitted during cross-examination that her late attendance on the stated dates without any reasonable explanation was indeed an act of misconduct.

[44] In **Aezrine Shah Abdullah v. Fat Boys Records Sdn Bhd** [2017] 2 ILR 409 it was held by the Industrial Court:-

“Coming to work late or lateness is a form of absence without leave for the period between the time the employee is required to arrive and the time he actually does arrive and as a species of unauthorized absence, it too, is misconduct.

Cases have held that even lateness for only a few minutes may be misconduct especially when the employee has been warned to be punctual. An employer has every right to demand punctuality up to the very minutes if he chooses. The misconduct is aggravated when the lateness is persistent. In the case of *Crystal Products (Eire) v. Irish Transport & Gen Workers'* U.Recommendation No.1394, 18 February 1961 (mimeo) the Irish Labour Court held as follow:

The Court feels that it must be accepted that, in order to obtain smooth and efficient working, Management is entitled to regular and punctual attendance on the part of the employees, and that is has the right to take disciplinary action amounting, if necessary,

to dismissal in order to ensure that these requirements are fulfilled

The dismissal of the worker concerned in this dispute must therefore be accepted as a normal measure adopted by an employer to ensure adherence to the regulations governing the question of time keeping.

In the case of Hong Voon Holdings Sdn Bhd, Kuantan v. Puan Rosnani Bte Sidin, Jerantut [1986] 2 ILR 1643 (Award No. 378 of 1986), the learned Industrial Court Chairman held as follow:

The Company contended that coming to work late habitually was a good ground for dismissal and cited The Chartered Bank and Kuching Bank Employees Union (Award 10 of 1966) to support the contention. I agree with the contention, and dismiss the Claimant's claim.

On the facts, the claimant has admitted to his late attendance to work, as frequent as 3 times in a week and the duration varies from ½ hour to 3 ½ hours. The claimant had serious issue of late attendance to work. His tardiness, in duration and frequency were simply excessive and unacceptable”.

(Emphasis added)

[45] The Court finds that the Company had succeeded in proving, on a balance of probabilities, Allegation No. 2 against the Claimant.

- **Allegation No. 3 : Absenteeism**

[46] Allegation No. 3 contained in the Show Cause letter dated 20 December 2022 (at p. 9 of COB-1) reads as follows:-

“3. ALLEGATION 3: Absenteeism

You are alleged to be absent from work without leave, prior approval by your immediate superior or medical leave during the working hours on the following dates:-

No.	Date	Day
1	3/10/2022	Monday
2	4/10/2022	Tuesday
3	5/10/2022	Wednesday
4	6/10/2022	Thursday
5	7/10/2022	Friday
6	10/10/2022	Monday
7	11/10/2022	Tuesday
8	12/10/2022	Wednesday
9	13/10/2022	Thursday
10	14/10/2022	Friday
11	17/10/2022	Monday
12	18/10/2022	Tuesday
13	19/10/2022	Wednesday
14	20/10/2022	Thursday
15	21/10/2022	Friday
16	24/10/2022	Monday
17	25/10/2022	Tuesday
18	26/10/2022	Wednesday

As to date, you have failed to produce medical certificates (MC) or any other supporting documents to justify on your continuous absence on the above particular dates.

By the above said act, you have therefore breached your expressed and/or implied duties as an employee of UMPH Group, with reference to the Employee Handbook, “Bahagian 7: Prosedur dan Tindakan Disiplin; Topic 7.1 Kesalahan-kesalahan Tatatertib. 7.1.8 Pekerja tidak hadir bertugas tanpa memohon cuti atau kebenaran terlebih dahulu melebihi dua (2) hari berturut-turut”.

[47] As stated earlier, the Claimant’s work days are from Mondays to Fridays between 8.00am to 5.00pm.

[48] The Employee Handbook provides as follows on the working hours of the employees (at p. 34 of COB-1):-

“BAHAGIAN 2: WAKTU KERJA DAN KERJA LEBIH MASA

2.1 WAKTU KERJA HARIAN

2.1.1 Waktu bekerja yang telah ditetapkan oleh Syarikat adalah selama lapan (8) jam sehari seperti mana berikut:-

Hari	Waktu
Isnin hingga Jummat	08:00 pagi hingga 05:00 petang (sebarang perubahan akan ditentukan oleh Pihak Pengurusan Syarikat dari masa ke semasa)

2.1.2 Waktu rehat yang telah ditetapkan oleh Syarikat adalah seperti mana berikut:

Hari	Waktu
Isnin hingga Khamis	01:00 petang hingga 02:00 petang (1 jam)
Jumaat	12:30 petang hingga 02:30 petang (2 jam)

- 2.1.3 Semua kakitangan dikehendaki merekodkan kedatangan harian bertugas menggunakan sistem pada masa-masa berikut:
- 2.1.3.1 Pada masa datang ke pejabat pada waktu pagi.
- 2.1.3.2 Pada masa meninggalkan pejabat untuk urusan di luar pejabat.
- 2.1.3.3 Pada masa balik semula ke pejabat selepas selesai urusan di luar pejabat.
- 2.1.3.4 Pada masa meninggalkan pejabat selepas waktu bekerja.
- 2.1.4 Pekerja yang tidak dapat merekodkan waktu pergi dan balik atas alasan tugas seperti kerja luar, menghadiri mesyuarat, temu janji dan sebagainya dikehendaki mengisi permohonan **Kelulusan Kerja Luar Pejabat** melalui sistem dan disahkan oleh Pegawai Atasan/Ketua Unit.
- 2.1.5 Pekerja yang gagal merekodkan waktu pergi dan balik tanpa alasan yang kukuh dikehendaki menulis memo kepada pihak Sumber Manusia dan disahkan oleh Pegawai Atasan/Ketua Unit”.

[49] Under Clause 7 of the Employee Handbook (at pp. 25-64 of COB-1) it is expressly stated that being absent from work without leave, prior approval by your immediate superior or medical leave during the working hours is an act of misconduct to which disciplinary could be taken against the employee concerned (at p. 53 of COB-1):-

“BAHAGIAN 7: PROSEDUR DAN TINDAKAN DISIPLIN

7.1 KESALAHAN-KESALAHAN TATATERTIB

Perkara-perkara berikut merupakan kesalahan-kesalahan yang mana boleh mengakibatkan tindakan disiplin diambil ke atas anggota pekerja:-

...

7.1.8 Pekerja tidak hadir bertugas tanpa memohon cuti atau kebenaran terlebih dahulu melebihi dua (2) hari berturut-turut..."

[50] And as stated earlier also, the Claimant as the Vice President in the Group Human Capital department in the Company had the responsibility of ensuring that all staff of the Company, more so herself, adheres to the Employee Handbook and/or staff policy.

[51] The Claimant however was absent on various dates in October 2022. The Claimant in her Reply to the Show Cause letter (*at pp. 18-19 of COB-1*) had stated that out of the 18 dates mentioned under Allegation No. 3:-

- i. 3, 4, 5, 6 and 7 October 2022 - Claimant was on medical leave/working from home
- ii. 10 October 2022 was a public holiday (Prophet Muhammad's Birthday);
- iii. 11 October 2022 – Claimant attended Zumba class at UMPH Hall together with other UMPH & Group employees;
- iv. 12 October 2022 – Claimant attended discussion with Interim GCEO, Prof. Madya Dr. Ahmad Tarmizi at BIM Office on preparation for the UMPH Board Townhall;

- v. 13 October 2022 – Claimant attended Budget Meeting 2023 – BOD Meeting Room;
- vi. 17 October 2022 – Claimant attended UMPH Board Townhall;
- vii. 18 October 2022 – Claimant attended Zumba class at UMPH Hall together with other UMPH & Group employees;
- viii. 19 October 2022 – Claimant attended meeting with IGU on Whistle Blower allegations at Board Meeting Room;
- ix. 21 October 2022 – Claimant attended UMPH HOD Mesyuarat Khas Lembaga Pengarah Bil 05/2022 (26) at Double Tree By Hilton, Putrajaya;
- x. 24 October 2022 – Public holiday (Deepavali);
- xi. 26 October 2022 – Claimant coordinated the Executive and Assistant Level staff sessions with Tn. Haji Basharuiddin at Training Room UCTS.

[52] After the explanation given by the Claimant in her Reply to the Show Cause letter, the Company narrowed down on the following dates where she was alleged to have been absent from work without prior approval:-

- i. 11 October 2022 – the Claimant contends she was in a Zumba class at UMPH Hall;
- ii. 12 October 2022 – the Claimant attended discussion with Interim GCEO at BIM Office on preparation for the UMPH Board Townhall;
- iii. 14 October 2022 – the Claimant did not give any explanation on her absence from work;

- iv. 18 October 2022 – the Claimant attended Zumba Class at UMPH Hall;
- v. 19 October 2022 – the Claimant attended meeting IGU on Whistle Blower allegations at Board Meeting Room;
- vi. 25 October 2022 – the Claimant did not give any explanation on her absence from work.

[53] With regard to the Claimant's absence from work on 11 October 2022 and 18 October 2022, despite the Claimant contending that she had attended the Zumba Class at the UMPH Hall, the evidence produced by the Company, in particular the "*Zumba Fitness*" poster at *p. 48 of COB-2*, shows that the Zumba classes were only carried out between 4.30pm to 5.30pm, which was after work hours, and certainly does not justify her absence from work the entire day. The Claimant during cross-examination testified that she had no evidence of what she was doing before the Zumba classes on both the dates of 11 and 18 October 2022.

[54] With regard to the Claimant's absence from work on 12 October 2022 and 19 October 2022, the Claimant had explained that she had to attend to some discussions with the Interim GCEO on preparation for the UMPH Board Townhall and also the meeting with IGU on the whistleblower allegations at the Board Meeting Room respectively. However the Claimant did not produce any evidence to prove her contention that she was in discussion with the Interim GCEO on 12 October 2022 and how long that discussion had lasted. As for her purported meeting on 19 October 2022 with IGU on the whistleblower allegations, the meeting only took place at 2.00pm and certainly does not justify her absence from work for the whole day.

[55] As for her absence from work on 14 October 2022 and 25 October 2022, the Claimant failed to give any explanation whatsoever.

[56] From the evidence produced before the Court, it is evident that the Claimant had been absent from work without any justification on 11 October 2022, 12 October 2022, 14 October 2022, 18 October 2022, 19 October 2022 and 25 October 2022. There was no evidence produced by the Claimant to prove that she had reported for work on the said dates. In fact, the Claimant tried to suggest that she must have been at work on 11 and 18 October 2022 as she had attended the Zumba class at the UMPH Townhall and that it would be illogical for her to travel all the way from her home in Kuantan to the UMPH Hall in Gambang just for Zumba classes. The Claimant may contend that it is illogical, but what is even more shocking is that the Claimant being the Vice President in the Group Human Capital and having control of the employees' attendance record, could not even find any evidence whatsoever that she had reported for work in accordance with the Company's work hours as stated in her Employment Contract and the Employee Handbook. This clearly shows the ineptitude of the Claimant in managing her own department, which is the human resource department.

[57] The Claimant in fact answered in the affirmative when questioned during cross examination that being the Vice President, Group Human Capital, she must lead by example and be a role model in ensuring compliance with the working hours in the Company. Further, she also admitted that the system that manages the employees' attendance, "*the clock-in, clock-out systems*", fell under her purview as the Vice President, Group Human Capital.

[58] In Syahrizal Salam @ Mansor v. Desaru Damai Beach Resort Sdn Bhd

[2018] 1 ILR 381 it was held by the learned Industrial Court Chairman, Sumathi Murugiah (as Her Ladyship then was):-

“This court is of the opinion that being a probationer, the claimant's actions in this case is very unbecoming, as the number of leave days required by the claimant had not been one (1) or two (2) days but much more than that. Especially so, considering the fact that his position in the company was the Human Resource Manager and the responsibilities that come with that position is of great importance, the claimant should have taken the trouble to contact his superior and or the Resort Manager to explain the situation and request for the approval of his leave in order to settle his personal matter and return to work as soon as possible.

This situation is made worse by the fact that the claimant was a probationer. As such, this court is reminded by the statement made by the court in the case of Fakir Abdul Jalii Pakir Mohamed v. Shell Refinery Co Bhd (Award No. 20 of 1974), where the following was said:

The dictionary meaning of "probation" is given as the "testing of conduct or character of a person" and a "probationer" is one who "is on trial or in a state to give proof of certain qualifications for a place or state". The idea of probation in all cases of services contracts is, therefore, a testing of the character and capabilities of the servant on the employer's side, and also a testing of the conditions of service on the employee's part. The period of probation in a service contract can, therefore, be taken as a

communication by the employer that in case the employee proves himself, within the period of probation, to the satisfaction of the employer, that he (the probationer) is a fit and proper person to perform the duties for which he has offered his services, the probationer would be entitled to be confirmed or taken in on a permanent basis. The appointment of a person on probation is, therefore, tentative and dependent on the employer's satisfaction as to his suitability.

In echoing the Chairman in the Fakir Abdul Jalil Pakir Mohamed's case, this court finds that based on the evidence and findings produced before this court, the company would be in a better position to judge the performance of the claimant under the circumstances.

This court also opines that the claimant's nonchalant attitude in handling this matter left it open to the company to exercise its managerial prerogative of dismissal against him. The number of days where the claimant had been absent from work without prior approval and without informing the company had made the company lose all trust and confidence in the claimant, not only as an employee but more so an employee holding such big responsibility who is incidentally still on probation".

[59] The Court finds that the Company had succeeded in proving, on a balance of probabilities, Allegation No. 3 against the Claimant.

- **Allegation No. 4: Incitement towards creating hatred and insubordination**

[60] Allegation No. 4 contained in the Show Cause letter dated 20 December 2022 (at p. 10 of COB-1) reads as follows:-

“4. ALLEGATION 4: Incitement towards creating hatred and insubordination

You are alleged to have used words which are inappropriate, vulgar and uncouth targeted at the GCEO through WhatsApp with your staff members which is deemed to be an act of incitement towards creating hatred and insubordination which is an offence, with reference to the Employee Handbook, “Bahagian 7: Prosedur dan Tindakan Disiplin; Topic 7.1 Kesalahan-kesalahan Tata tertib. 7.1.28 Melakukan perbuatan melawan penyelia secara lisan atau menghasut anggota pekerja lain melakukannya”.

[61] Allegation No. 4 pertains to the incident where the Claimant had used inappropriate language or word in reference to COW-1, who was the Group Chief Executive Officer at the material point in time, and the said impugned words were stated by the Claimant in the Company’s MyExec WhatsApp group, which consisted of human resource executive employees.

[62] The impugned words in the WhatsApp group uttered by the Claimant are as follows (at p. 52 of COB-2):-

“Ni dia si laknat syed. Jgn ingat dia baik”

“Ni lah CEO yang korang percaya...”

[63] The term “*laknat*” is a curse word in the Malay language. The Dewan Bahasa & Pustaka dictionary defines the word “*laknat*” as “*kemurkaan Allah dan jauh drpd petunjuk dan Rahmat-Nya*” and “*terkutuk, keji, hina, celaka, teruk diseksa*” (at p. 173 of COB-2). Whereas the Oxford Fajar dictionary (*Kamus Dwibahasa Oxford Fajar*, 6th Edn.; Joyce M. Hawkins) defines the word “*laknat*” as “adj. *damned; condemned to hell; condemned as failure*, -k.n. & sr. *damn; uttered curse*”.

[64] The Claimant, on her part, did not deny uttering the said word in the WhatsApp group but that she had said it out in frustration as she was hospitalised and under medication at that moment in time and COW-1 had allegedly not shown any empathy towards her condition wherein he had purportedly harassed her on how long she would be hospitalised.

[65] Whether or not COW-1 had shown any empathy towards her condition, it is wholly inappropriate to utter such inappropriate language in reference to her superior at a platform where other employees were also present and participating, i.e. the Company’s MyExec WhatsApp group. Learned Counsel for the Claimant submits that this was a one-off situation and that an employee should be judged by the standards of man and not that of angels. However, that saying is certainly misplaced in the current situation. Usage of curse words and inappropriate language towards a superior or colleague cannot be tolerated, be it by standards of men or even angels. The Claimant typed the inappropriate words against COW-1 in the WhatsApp group for the other employees to look at. A person in a fit of anger may regrettably utter inappropriate language, but when such inappropriate words are instead written or typed out, it shows more often than not, that it was pre-meditated where the person

would have had a tiny window of time to think it over and calm down before deciding to write or type such words. As the other famous saying goes, “a pen is mightier than the sword”.

[66] The Claimant’s conduct in uttering inappropriate language towards her superior and undermining him in front of the other employees certainly speaks volume of her character and personality, and the Company was justified in coming to a decision that she was not suited to the Company’s working culture and environment, and thus not confirming her in her position in the Company.

[67] The usage of inappropriate language towards one’s superior is a serious misconduct, irrespective of the circumstances in which it was uttered. In **Acidchem (M) Bhd v. Goh Hock Teong [2003] 1 ILR 904** it was held by the learned Industrial Court Chairman, K. Ramakrishnan:-

“The counsel also submitted that the utterance of "India Pariah" from a smoking room of a factory canteen could not positively establish that the remarks were specially directed at the personnel officer and furthermore the personnel officer did not even hear or was aware of such utterance coming from the smoking room.

The evidence of the personnel and administrative officer would show that he heard what the claimant had uttered. This evidence is further corroborated by the evidence of Azahar (COW4) who was with the claimant in the room at the material time. COW4 specifically told the claimant not to say such words to COW2. COW2 clearly heard what the claimant uttered. Furthermore COW4 was in the room when the claimant

uttered such word to COW2. The claimant also admitted using the word to COW2. There was no denial by the claimant.

The use of abusive language towards the superiors is a serious misconduct because it creates such a situation in which it becomes impossible to maintain proper discipline in an establishment. The use of abusive language generally arises when a worker is dissatisfied with some order or action of the superior officer. Such abusive language is also resorted to by workmen when they use the expressions indiscriminately showing laxity in the use of language. This arises out of lack of sense of discipline coupled with the impact of the circumstances existing at a particular time. Whatever may be the reason for use of abusive words, it is a recognised misconduct and unlike use of defamatory words it has no exceptions. It means that use of abusive language will be misconduct irrespective of the circumstances in which it has been uttered. The use of insulting and abusive language towards superiors is an indication of physical and mental resistance to authority and, therefore, misconduct. If rude behaviour towards superiors is allowed then it will not be possible to maintain discipline in the factory which is of utmost importance to the smooth running of all operations. See Misconduct In Employment by BR Ghaiye.

On the issue of quantum of punishment, the learned author states that:

When an employee uses vulgar and indecent language towards the officers then he is liable to be dismissed and the dismissal cannot be objected to on the ground that the punishment is excessive. The industrial peace will be at stake if the servant is given the immunity of maliciously scandalising the master and other workmen who work under him. The same principle will apply to the allegations of unrestrained and abusive attacks launched upon the proprietors and officers of the Company and cannot be said to be a legitimate trade union activity. If the abuses are made in the presence of others then it is held to be an aggravating factor. When the evidence given by the witnesses in the enquiry clearly shows that the opponent was not only impertinent and insolent towards the foreman but the language used by him was abusive and indecent and the opponent used such language in the presence of his co-workers then his dismissal is justified".

[68] In M Anathan Muniandy v. HS Optimus Wood Products Sdn Bhd (Formerly Known As KLW Wood Products (M) Sdn Bhd) [2024] ILRU 1841 it was held by the learned Industrial Court Chairman, Mohd Taufik Mohd @ Mohd Yusoff:-

"By uttering vulgar words and abusive language in a group which has other members, such an action will surely lower the dignity or the position of Mr. Albert, as a director, in the judgment of the other employees. The claimant should have abstained from doing so. The claimant misconduct will create such a situation where it becomes impossible to maintain proper discipline in an establishment (see B.R Ghaiye in his book

"Misconduct of Employment" (*2nd Edn*), referred to in the case of Barney Production BC Sdn Bhd (*supra*)).

[69] The Court finds that the Company had succeeded in proving, on a balance of probabilities, Allegation No. 4 against the Claimant.

(ii) Whether the allegations of misconduct justified the Company in not confirming the Claimant (who was under probation) in her position in the Company.

[70] As can be seen from the findings above, the Company has succeeded in proving, on a balance of probabilities, that the Claimant is guilty of all the allegations levelled against her in the Show Cause letter dated 20 December 2022.

[71] The misconduct complained of by the Company in the said Letter of Termination constitute serious misconduct. Being an officer holding a senior and important position, i.e. the Vice President in the Group Human Capital division, it cannot be gainsaid that the Claimant had added responsibilities and a fiduciary duty to always act in the best interests of the Company. Under the circumstances, the non-confirmation of the Claimant in her position whilst she was under the probationary period is proportionate to the act of misconduct complained of. The Claimant, being a senior human resources personnel, ought to have known that being a probationer, she was an employee on trial at the material point in time. By behaving in the manner in which she did, the Claimant had displayed characteristics and mannerisms which are wholly unsuitable for employment in the Company, let alone the position of a Vice President, Group Human Capital.

[72] The Claimant's conduct was against the Company's best interest and faithful discharge of her duty to the Company. In the oft-quoted case of **Pearce v. Foster** [1886] QBD 536 it was held by Lord Esher MR:-

"The rule of law is, that where a person has entered into the position of servant, if he does anything incompatible with the due or faithful discharge of his duty to his master, the latter has a right to dismiss him. The relation of master and servant implies necessarily that the servant shall be in a position to perform his duty duly and faithfully, and if by his own act he prevents himself from doing so, the master may dismiss him. It is not that the servant warrants that he will duly and faithfully perform his duty; because, if that were so, upon breach of his duty his master might bring an action against him on the warranty. But the question is, whether the breach of duty is a good ground of dismissal".

[73] Upon analysing the evidence and facts of the case in its entirety, the Court is satisfied and do hereby find that the Company was justified in not confirming the Claimant in her position whilst she was still under the probationary period, due to serious acts of misconduct.

VI. Conclusion

[74] The Company's action in not confirming the Claimant in her position was wholly justified in the circumstances.

[75] The Claimant's case is hereby dismissed.

HANDED DOWN AND DATED THIS 9TH DAY OF DECEMBER 2025.

-signed-

**(PARAMALINGAM A/L J. DORAISAMY)
CHAIRMAN
INDUSTRIAL COURT, MALAYSIA
KUALA LUMPUR**