IN THE INDUSTRIAL COURT OF MALAYSIA

CASE NO.: 22/4-39/20

BETWEEN

TAN YEN WEI

AND

JEFLOY SDN. BHD.

AWARD NO.: 1114 OF 2020

Before	:	Y.A. Tuan Paramalingam A/L J. Doraisamy - Chairman
Venue	:	Industrial Court Malaysia, Kuala Lumpur
Date of Reference	:	19.12.2019
Date of Mention	:	22.01.2020; 07.02.2020; 21.02.2020; 06.03.2020
Date of Hearing	:	12.08.2020
Representation	:	Claimant absent
		En. Abdul Razak Bin Abu Bakar Messrs. Abdul Razak & Partners 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 **Tan Yen Wei** (hereinafter referred to as "*the Claimant*") by **Jefloy Sdn. Bhd.** (hereinafter referred to as "*the Company*") on 23 September 2019.

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 23 September 2019.

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 2 January 2020.

[3] The matters were fixed for mention on 22 January 2020, 7 February 2020, 21 February 2020 and 6 March 2020.

[4] The following documents had been filed into Court:-

i. Claimant's Bundle of Documents (Part 1) (marked as *CLB-1*);

ii. Claimant's Bundle of Documents (Part 2) (marked as *CLB-2*);

iii. Claimant's Bundle of Documents (Part 3) (marked as *CLB-3*);

iv. Company's Bundle of Documents (marked as *COB-1*).

[5] The matter was fixed for hearing on 12 August 2020. However, the Claimant was not present in Court even though she had been notified of the hearing date *vide* email on 8 July 2020 (*Court Enclosure No. 36*). The Court also had contacted the

Claimant *via* telephone to remind her of the impending hearing date on 12 August 2020 as she was unrepresented. However the Claimant responded by saying that she does not wish to attend the hearing and that all proceedings be conducted without her presence since all the documents had already been presented to the Court (*Court Enclosure No. 37*). Due to the absence of the Claimant and her apparent lack of interest to present her case before the Court *via viva voce* evidence, the Court accordingly exercised its powers under Section 29 (d) of the Industrial Relations Act 1967 and declared this proceeding to be heard *ex parte*. Section 29 (d) of the Industrial Relations Act 1967 provides that the Court may, in any proceedings before it, "*hear and determine the matter before it notwithstanding the failure of any party to submit any written statement whether of case or reply to the Court within such time as may be prescribed by the President or in the absence of any party to the proceedings who has been served with a notice or summons to appear*".

[6] The trial proceeded by way of *ex parte* hearing on 12 August 2020 with only the Company's representative, i.e. James Wong Mun Chuen ("COW-1") being the sole witness. Oral submissions were heard thereafter at the end of the trial.

II. Factual Background

[7] The Claimant commenced employment on 2 September 2019 as an Admin and Cost Control Manager with a basic salary of RM5,400.00, transport allowance of RM500.00 per month and phone allowance of RM100.00 per month. The Letter of Appointment is dated 29 August 2019 (*at pp. 168-174 of CLB-1*).

[8] It is not disputed by both parties in their respective pleadings that the Claimant was placed on probation pursuant to Clause 7 of the Letter of Appointment which states the probationary period for '*Executive and above level*' as 6 months or extension of another 3 months.

[9] Clause 9 of the Letter of Appointment provides for one month's notice of termination or one month's salary *in lieu* of notice to be given to staff under probation.

[10] The Claimant was dismissed on 23 September 2019. She worked for a mere 21 days only. Whereupon the Claimant was paid her salary for the 21 days that she had worked (RM4,580.00) plus one month's salary *in lieu* of notice of termination (i.e. RM5,400.00) Thus, the total amount that was paid out to the Claimant (less statutory deductions) was RM9,496.35 (*at p. 8 of COB-1*).

[11] The Claimant in her pleadings, in particular at paragraph 8 of her Statement of Case, stated that she was not clear what was the reason for her dismissal from her employment by the Company. Instead she merely pleaded that the Company had "*created issues*".

III. The Role Of The Industrial Court

[12] 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 there is a dismissal on the facts; and

(ii) if so, whether the dismissal was with or without just cause or excuse.

[13] In the case of **WONG YUEN HOCK v. SYARIKAT HONG LEONG ASSURANCE SDN BHD & ANOR APPEAL [1995] CLJ 344** the Federal Court had held:-

> "*On the authorities, we were of the view that the main and only function of the Industrial Court in dealing with a reference under section 20 of the Act (unless otherwise lawfully provided by the terms of the reference), is to determine whether the misconduct or irregularities complained of by the Management as the grounds of dismissal were in fact committed by the workman, and if so, whether such grounds constitute just cause or excuse for the dismissal*."

[14] 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".

[15] The burden of proof in an unfair dismissal claim lies on the employer to prove on a balance of probabilities that the employee is guilty of the allegation or the reason for the dismissal. 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

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

(i) whether the Claimant is guilty of the allegations of misconduct levelled against her by the Company; and

(ii) whether the allegations of misconduct constitute just cause or excuse for the Claimant's dismissal.

V. The Court's Findings And Reasons

[17] The Court had taken into account the pleadings filed by both parties as well as the Claimant's Bundle of Documents (i.e. CLB-1, CLB-2 and CLB-3) and the Company's documents (i.e. COB-1).

[18] The Company's Director, i.e. COW-1, had also given his evidence in Court and tendered his Witness Statement (marked as "COWS-1") as evidence-in-chief. COW-1 testified that the Claimant had been dismissed due to her act of insubordination in refusing to follow the instructions of one of the Directors in the Company, i.e. one Ms. W.Y. Low as is evidenced by the Claimant's emails responding to the said Ms. W.Y. Low (*at pp. 12-15 of COB-1*).

[19] The Court accepts the oral and documentary evidence of the Company that the Claimant had indeed been guilty of the act of insubordination against her superior, i.e. Ms. W.Y. Low, when she had repeatedly questioned her superior's instructions and warnings.

[20] Insubordination is a serious misconduct justifying an employer to dismiss the employee. In **KESATUAN PEKERJA-PEKERJA PERUSAHAAN ALAT-ALAT PENGANGKUTAN & SEKUTU v. KILANG PEMBINAAN KERETA-KERETA SDN BHD [1980] 1 MELR 615** it was held by the Industrial Court:-

> "*Insubordination on the part of an employee undermines the orderly system of conduct and discipline within an undertaking and amounts to a breach of the implied obligation of the employee to be subjected to the system of conduct governing employer/employee relationship and also the accepted norm of relationship between an employee and that of his superior officer. Where this implied obligation is breached the supervisory position of the superior officer is undermined and this could lead to indiscipline thereby jeopardising the projected result of the undertaking. Under such circumstances the employer is justified in taking remedial action even to the extent of terminating the indisciplined employee from employment provided of course that proper steps be taken and justifiable reasons are shown why such action was necessary in compliance with the proper laws of industrial relations*".

[21] Despite the act of insubordination on the part of the Claimant, the Company nevertheless was gracious enough to pay the Claimant her salary for the 21 days that she had worked plus the one month's salary *in lieu* of notice of termination.

[22] As it stands, the Company's documentary evidence and COW-1's testimony remains unrebutted by the Claimant. On the other hand, the majority of the documents produced by the Claimant in CLB-1, CLB-2 and CLB-3 is wholly unrelated to the case and entities at hand and to compound matters the Claimant was not even in Court to explain the relevancy of the said documents.

[23] The Court accordingly finds that the Claimant's dismissal by the Company had been done with just cause or excuse.

VII. Conclusion

[24] The Company's action in terminating the Claimant's employment was done with just cause and excuse.

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

HANDED DOWN AND DATED THIS 13 AUGUST 2020

-Signed-

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