

IN THE INDUSTRIAL COURT OF MALAYSIA

CASE NO: 7(21)(7)/4-2801/21

BETWEEN

MOHAMED FIRDAUS KAMAL BIN HASHIM KAMAL

AND

YAYASAN WILAYAH PERSEKUTUAN

AWARD NO: 970 OF 2025

BEFORE : **Y.A. PUAN VANITHAMANY SIVALINGAM**
- Chairman

VENUE : Industrial Court of Malaysia, Kuala Lumpur.

DATE OF REFERENCE : 06.09.2021.

DATE OF MENTION : 01.12.2021.

DATES OF HEARING : 07.06.2023 (P.H), 07.08.2023 (P.H), 08.08.2023
(P.H), 30.10.2023 (P.H), 22.11.2023 (P.H),
17.05.2024 (P.H), 11.06.2024 (P.H), 23.08.2024 (P.H)
& 28.08.2024.

REPRESENTATION : Mr. Irzan Iswatt Bin Mohd Noor together with
Mr. Muhammad Qurtubi Kamruldzaman
Messrs. Ahmad Danial Iswatt & Luqman
(Counsel for the Claimant)

Mr. Mohd Fikri Bin Abd. Rahman
Messrs. Radzlan, Low & Partners
(Counsel for the Company)

REFERENCE

This is a reference by Director General of Industrial Relations to this Industrial Court under Section 20(3) of the Industrial Relations Act 1967 (“The Act”) for an award in respect of the dispute arising out of alleged termination of **MOHAMED FIRDAUS KAMAL BIN HASHIM KAMAL** (“The Claimant”) by his employer, **YAYASAN WILAYAH PERSEKUTUAN** (“The Company”).

This Court takes cognizance of the following bundles, statements, submission, and cause papers filed.

DOCUMENTS IN COURT FILES

- I. Statement of case dated - 31.12.2021.
- II. Statement of reply dated - 03.02.2022.
- III. Rejoinder dated - 24.02.2022.
- IV. Claimant’s Bundle of Document - (CLB1, CLB2, CLB3)
- V. Company’s Bundle of Document - (COB1)
- VI. Witness Statement of the Claimant – MOHAMED FIRDAUS KAMAL BIN HASHIM KAMAL (CLWS1)
- VII. Witness Statement of the Company – MOHD. FADZIL BIN AB HAMID (COWS1)
- VIII. Witness Statement of the Company – ZAIDI BIN YUSOF (COWS2)
- IX. Company’s Written Submission dated - 30.09.2024
- X. Claimant’s Written Submission dated - 15.01.2025
- XI. Company’s Written Submission in Reply dated - 12.11.2024

XII. Claimant's Written Submission in Reply dated - 06.02.2025

XIII. Company's Bundle of Authorities

XIV. Claimant's Bundle of Authorities

BRIEF FACTS

CLAIMANT'S CASE

[1] The Claimant commenced his employment with the Company as an Executive in the *Pembangunan Pendidikan dan Kebajikan* department on 6.1.2014. The Claimant was promoted to the position of Senior Executive (*Eksekutif Kanan*) on 13.4.2015. The Claimant the promoted as the Manager (*Pengurus*) on 1.2.201 and transferred to few departments due to restructuring exercises of the Company. The Claimant was redeployed in the *Pembangunan Usahawan* department on 5.1.2021 before his termination. The Claimant's last drawn salary was RM8,429.30 and allowances of RM2,850.00 per month.

[2] On 11.1.2021, the Company's Human Resource Manager, Mr. Zaidi Yusoff ('Mr. Zaidi') contacted the Claimant via his mobile and requested the Claimant to meet him at the Company's Meeting Room at Level 2. The Company's Head Legal, Mr. Fadzil Ab Hamid ('Mr. Fadzil') was present in the meeting room and the Claimant was informed of an allegation of improper conduct and informed that a complaint was received from Puan Zaleha Binti Dullah ('Puan Zaleha'). The Claimant was alleged of sexual harassment against Puan Zaleha. The Claimant was shocked and perplexed to hear such an allegation. The Claimant denied ever sexually harassing Puan Zaleha and informed the Company that it was Puan Zaleha who was harassing the Claimant

and made inappropriate and sexual advances towards the Claimant. The Claimant informed the Company that the Claimant refused and reluctant to lodge a complaint against Puan Zaleha as the Claimant thought Puan Zaleha was simply being flirtatious.

[3] In the evening of 11.1.2021, Mr.Zaidi contacted the Claimant again and informed that the Chief Executive Officer, Datuk Zaizalnizam Bin Zainun ('CEO') has requested a meeting with the Claimant on 12.1.2021 to resolve this issue. On 12.1.2021, there was a meeting held between the Claimant, the CEO, Mr.Zaidi and Mr. Fadzil. The CEO suggested the Claimant to resign as a measure of resolving this issue, however the Claimant denied ever harassing Puan Zaleha. Mr. Fadzil further threatened to report to the Labor Department if the Claimant refused to resign.

[4] In the evening, Mr.Fadzil invited the Claimant for a lunch and told the Claimant that *'He actually wanted to kick you out from Yayasan'* (He was referred to the CEO). There was a proposal letter issued by the Company dated 13.1.2021, whereby the Company mentioned that the Company will compensate the Claimant in exchange for resignation. The Claimant replied to the above letter and denied the allegation leveled against him. The Company subsequently replied to the Claimant's letter on 21.1.2021 requesting for the Claimant to apologize and failing which the Company will not hesitate to initiate legal action against the Claimant and further mentioned in the letter that since the Claimant had rejected the settlement offer, the Company therefore will be referring the matter to Kuala Lumpur Labour and Industrial Relations Department. Furthermore, the Company issued a memo dated 27.1.2022 to the Claimant requesting time to conduct an investigation and to refer this matter to the Domestic Inquiry. After 2 months of waiting, the Company finally issued a Notice of Domestic

Inquiry dated 24.3.2021 requesting the Claimant to attend a Domestic Inquiry on 2.4.2021. The Company leveled 2 charges against the Claimant. The charges were:

PERTAMA : Sdr telah didakwa telah melakukan gangguan seksual kepada Pengadu yakni Puan Zaleha binti Dullah yang juga kakitangan dibawah seliaan Sdr pada tanggal 11 Disember 2020, sekitar jam 11.00 pagi di bilik Pengurus Bhg. Pembangunan Pendidikan.

KEDUA: Sdr juga telah melakukan perbuatan yang sama sejak dari tahun 2017 melalui pertuturan, reaksi muka, hantaran mesej di aplikasi whatsapp dan juga sentuhan sehingga meninggalkan Kesan malu dan rendah diri keada pengadu.

[5] The Claimant pleaded not guilty to all charges during the Domestic Inquiry on 2.4.2021. On 12.4.2021, Mr. Mohd Zakie Bin Soad ('Mr. Zakie'), the minute taker, contacted the Claimant and requested the Claimant to verify the Proceeding Notes. The Claimant requested for the recording of the Domestic Inquiry however Mr. Zakie informed the Claimant that no recording was done. On 13.4.2021, the Claimant received the Domestic Inquiry Note to be approved and verified by the Claimant, however the Claimant found out that these were lot of inconsistencies in the minutes. The Claimant was denied the recording of the proceeding therefore, the Claimant refused to approve the said Notes.

[6] Subsequently, the Claimant received a letter dated 19.4.2021 from the CEO informing him that based on the purported report from the Domestic Inquiry Panels,

the CEO had decided to terminate him from employment. The Claimant, by way letter dated 24.2.2021, sought the kind indulgence of the CEO to at least compensate him however the Claimant proposal was rejected by the CEO. Thereafter, the Claimant appealed against the decision of the CEO to the Appellate Disciplinary Board on 28.4.2021, however there was no response to date.

COMPANY'S CASE

[7] The Company averred that the Company has no knowledge regarding the Claimant's relationship with Puan Zaleha. The Company regarded both the Claimant and Puan Zaleha simply as colleagues. The approach of the CEO to ask the Claimant to resign was not designed to '*strong arm*' the Claimant to leave the Company but merely to protect both the Claimant and Puan Zaleha as the complainant in a sexual harassment complaint. The Company also took this opportunity to quickly and discretely solve this matter. The Company averred that the allegation of the Claimant was threatened and forced to resign as misconceived.

[8] The Company averred that the letter dated 21.2.2021 was just to inform the Claimant that there was a complaint made against him and further seeking an apology from the Claimant was a baseless allegation. The Company further stated that the Domestic Inquiry members and Panels were carefully selected. Basically, Mr. Fadzil and the CEO offered the Claimant an opportunity to resign rather than facing the Domestic Inquiry. The Company received a complaint from Puan Zaleha and a police report dated 2.3.2021 for the purpose of Domestic Inquiry. The Claimant was charged pursuant to the complaint lodged by Puan Zaleha on 21.12.2020. The Company's

decision to terminate the Claimant was made based on the findings and recommendation of the Panels dated 15.4.2021.

ISSUES

[9] In deciding this case based on the facts and evidences presented, the questions that need to be answered are:

- a) whether the sexual misconduct complained of the Claimant was established;
- b) whether the misconduct warrant a dismissal and whether the dismissal was done with just cause and excuse?

THE LAW

[10] In the case of **WONG CHEE HONG v. CATHAY ORGANIZATION (M) SDN BHD [1988] 1 CLJ 45; [1988] 1 CLJ (Rep) 298**, the Court had stated the followings:

“ 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 (of whether there was a dismissal, and if so, whether it was with or without just cause or excuse ”.

[11] See the cases of **MILAN AUTO SDN BHD v. WONG SEH YEN [1995] 2 MLRA**, and **HONG LEONG ASSURANCE SDN BHD -v- WONG YUEN HOCK**

[1995] 1 MLRA 412. In the case of **STAMFORD EXECUTIVE CENTRE -v- PUAN DHARSINI GANESAN (1986) 1 ILR 101**, it was held that:

‘..in a dismissal case, the employer must produce convincing evidence that the workman committed the offence. Burden of proof lies on the employer. He must prove that the workmen is guilty and it is not the workman who must prove that he is not guilty.’

[12] The burden of proving that the dismissal was done with just cause and excuse, squarely rest upon the Employer/Company. (**See PELANGI ENTERPRISE SDN BHD -v- OH SWEE CHOO & ANOR (2004) 6 CLJ 157**).

[13] In the case of **IREKA CONSTRUCTION BERHAD v. CHANTIRAVATHAN SUBRAMANIAM JAMES [1995] 1 MELR 373** it was decided that:

“It is a basic principle of industrial jurisprudence that 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 to prove that he has just cause or excuse for taking the decision to impose the disciplinary measure of dismissal upon the employee. The just cause must be, either a misconduct, negligence or poor performance based on the facts of the case “.

[14] In the case of **TELEKOM MALAYSIA KAWASAN UTARA -v- KRISHNAN KUTTY SANGUNI NAIR & ANOR (2002) 3 CLJ 314** the Court of Appeal held that the standard of proof that is required in the Industrial Court is that of balance of probabilities. Even if there is misconduct like theft or any dishonest conduct, the standard of proof is still on balance of probabilities and not of beyond reasonable doubt. What this means is that the Company bears the burden of producing convincing evidence that the Company has good grounds for the dismissal and that the exercise of this decision is made with just cause or excuse. (**WELTEX KNITWEAR INDUSTRIES SDN BHD -v- LAW KAR TOY & ANOR [1998] 4 MLRH 774; [1998] 1 LNS 258**). Where the dismissal is disputed, the burden of proof rests on the Claimant to show on balance of probabilities that he had been dismissed by his employer. In the present case, there is no dispute as to the dismissal, the only question now is whether the dismissal is done with just cause or excuse. See the Federal Court decision of **GOON KWEE PHOY -v- J & P COATS (M) BHD [1981] 1 MLRA 415**.

[15] The Court in the case of **AHMAD DATO SERI MOHD GHAZAU -v- AUGUST LAND HOTEL SDN BHD (2010) 2 LNS 1460**, held that:

“A charge of sexual harassment bring upon the one accused the potential prospects of enormous but underserved embarrassment and substantial damage not only to the accused, but also to social and personal reputation as well, if perchance the claim is grounded upon mendacious accusation. While it is the trite law that the employer is under a duty to inquire into the credible allegation of such misconduct in order to provide a safe and conclusive working environment in which all

its employees can function; the imperative is squarely upon the employer to substantiate the essentials of the charge by plausible fact tending towards a prudent possibility that the accused employee was guilty.”

[16] In the case of ***HONG LEONG EQUIPMENT SDN BHD -v- LIEW FOOK CHUAN & ANOTHER (1997) 1 CLJ 665***, Gopal SriRam JCA held that;

“The fact that an employer has conducted a Domestic Inquiry against his workman is in my judgment, an entirely irrelevant consideration to the issue whether the latter had been dismissed without just cause or excuse. The findings of the Domestic Inquiry are not binding upon the Industrial Court which rehears the matter afresh.”

COURT’S FINDINGS

[17] The Claimant had subpoenaed 6 witnesses to testify in the Court. The Claimant had been complained of sexually harassing Puan Zaleha on numerous occasions since 2017. An employee in search of this right to livelihood should be allowed to do so in a safe and secure working environment free of any aggression or harassment from any of the other employees or superiors. The case against the Company now is for the unlawful termination for the 2 alleged misconduct committed by the Claimant. The question now is, whether the Company had proved the sexual misconduct alleged of the Claimant which justifies the termination. The Claimant alleged that the Company’s allegation of misconduct was an excuse framed by the

Company to get rid of the Claimant from the Company following the complaint of sexual harassment lodged against him.

[18] Both COW1 and COW2 stated that they have received a complaint in January 2021, vide letter dated 31.12.2020. The Claimant is not disputing the fact that a Domestic Inquiry was held however the Claimant submitted that this Court should rehear this matter afresh and shall not rely on the findings of the Panels as the entire proceeding was flawed as the Prosecuting Officers were sitting as Panel in the Domestic Inquiry. The Claimant further averred that the charges were defective, and it was agreed by COW1 during the trial. Furthermore, the Claimant submits that the notes of the Domestic Inquiry proceeding was defective even after the Claimant raised this issue and refuse to sign the minutes of the Notes of the Proceeding, the Company still failed to show him the recording of the proceeding to verify the minutes.

[19] This Court refers to the case of ***DREAMLAND CORPORATION (M) SDN BHD -v- CHOONG CHIN SOOI & ANOR (1987) 1 MLRA 357***, which was approved by the Federal Court in the case of ***WONG YUEN HOCK -v- SYARIKAT HONG LEONG ASSURANCE SDN BHD (1995) 3 AMR 214***, whereby the Court held that the failure of an employer to hold a pre-domestic inquiry can be cured by the Industrial Court when it hears the reference of the employee for unfair dismissal. Further in the case of ***OSA HOLDINGS SDN BHD -v- MAHESWARAN SABARATNAM (1995) 2 ILR 377***, the Court held that a failure to convene a domestic inquiry would not render the dismissal as being without just cause or excuse. This Court is of the opinion that any flaw in the Domestic Inquiry that was conducted by the Company can be cured during the trial in the Industrial Court.

[20] Secondly, the Claimant averred that the Company never issued a show cause letter to the Claimant prior initiating the Domestic Inquiry. The Claimant should have been afforded an opportunity to explain or defend himself by all means. COW1 and COW2 admitted that no show cause letter was ever issued to the Claimant. The Company was alleged to have breached the principle of natural justice and industrial practice. The case of **BIMACH POWERHOUSE SDN BHD -v- SANIZAL BIN MAHAMAD (2021) MLJU 1642**, the Court enunciated the necessity of issuing the show cause letter in ensuring adherence to the natural justice.

[21] COW2 further admitted that Charge 1 & 2 lacked precise description of the alleged sexual misconduct. This Court concedes with the Claimants counsel's submission that the 2 charges were lacked precise details of the alleged sexual misconduct as Charge 1 lack of the details how the Claimant conducted himself in sexually harassing Puan Zaleha. The precise conduct of the Claimant that constitutes as sexual harassment was lacking. As per the Charge 2, there were no exact time or date mentioned, the Charge 2 generally states '*sejak dari tahun 2017*'. The Claimant cited the case of **KEW CHEE SUN -v- HSL ELECTRICAL & ELECTRONICS SDN BHD (2013) 1 ILJ 50** and submits that the lack of details in the charges constitutes a gross defective as the Claimant was not afforded a reasonable opportunity to explain or defend himself properly. However, the Claimant argued that the broad framing of the Charge 2 indirectly reflects COW1 and COW2's nonchalant attitude in investigating and framing the Charge 2 against the Claimant.

[22] Thirdly, the Claimant alleged that Puan Zaleha had changed the date of the alleged sexual harassment date from 11.12.2020 to 2.12.2020 following the significant

doubt raised surrounding the attendance of Puan Zaleha on 11.12.2020 as there was no record of attendance in the punch card. The Company also failed to show the MySejahtera App which proves her attendance, further the Company fail to adduce the security log book to prove Paun Zaleha's attendance on 11.12.2020. COW1 testified that sometimes the employees do not punch the attendance card, and the scanning of My Sejahtera App was not made compulsory too during the Movement Control Order ("MCO") period by the Company. The Company did not adduce any cogent evidence to prove Puan Zaleha's attendance in the office on the alleged date. This testimony of COW1 is contrary to the Government ruling of scanning the My Sejahtera App or making record of any form of entry by the employee into the office premises during the MCO period. It appears to this Court that the Company was making a bare allegation against the Claimant without substantiating the claim. '*He who asserts must prove*' however, the Company failed to prove the very attendance of Puan Zaleha on the alleged date. The Claimant submits that the failure of the Company to prove Puan Zaleha's attendance shows that Puan Zaleha was not present in the office on the alleged date.

[23] In the case of ***LIEW WING FAI @ LEW WING FAI -v- DRY CUT SDN BHD (2017) 1 ILR 582***, the Court held that;

"It had not been reasonable or in accordance with industrial jurisprudence to terminate an employee purely on suspicion, without completing a proper investigation and without reliable and cogent evidence."

[24] The Claimant averred that Puan Zaleha had made known to COW1 that there were 4 to 5 staffs at the floor when the incident took place however, COW1 failed to take statements from them during the investigation. Puan Zaleha specifically mentioned that she informed Datin Ida Harlina Binti Ikhawan Nasir (“Datin Ida”) about the incident however, COW1 also failed to take statement from Datin Ida. The Company failed to adduce Datin Ida as witnesses in Court during the trial. COW1 admitted having failed to identify the potential witnesses being other staffs working at the same floor at the time of incident namely on 11.12.2020 and failed to take statements from Datin Ida. These staffs were not even called as witnesses in Court during the trial to prove that Puan Zaleha was working on 11.12.2020. The Claimant submitted that there was a gross error in the investigation by COW1 and COW2 in failing to take statement from the witnesses to prove that Puan Zaleha was working on the alleged date of incident. The very core ingredient of the Charge 1 has failed grossly. This Court will invoke Section 114g of the Evidence Act 1950 against the Company for the non-production of the Datin Ida and the CEO as the witnesses. Datin Ida was the witnesses who heard directly from Puan Zaleha about the sexual harassment and the CEO was the person who dismissed the Claimant. However, the Company elected not to produce the main and relevant witnesses in the case.

[25] Further, the Claimant averred that COW1 and COW2 being the investigation officers had failed to verify the CCTV footage. Both witnesses testified that there were 2 CCTV cameras located at the 3rd floor where the incident took place. The alleged incident was reported to have taken place on 11.12.2020 and the complaint was allegedly made to COW2 between 4th to 8th January 2021. The Company argued that the recording of CCTV camera will lapse within 30 days. However, the Claimant on

the hand, submits that the 30 days' time did not lapse until 11.1.2021. COW2 testified of having control and access to the CCTVs in the building yet did not provide satisfactory reason as to his failure to verify the CCTV footage upon receiving the complaint. The complaint was made on 8.1.2021. If it's true that the Company received the serious complaint of sexual harassment from Puan Zaleha which affected her reputation and humiliated her, the Company should have immediately viewed the CCTV footage to verify the complaint. The Company failed to do so although this has been termed as a serious offence by the Company. This Court is puzzled as to the reason why the Company fail to verify the facts before levelling the serious charges against the Claimant. The Claimant submitted that the COW1 and COW2 had conducted an incompetent investigation before charges were levelled against the Claimant and the Company has no proof to substantiate the allegations against the Claimant in the first place and cast significant doubt and suspicious surrounding the allegations. By looking at the COW1 and COW2's conduct of failure to verify the CCTV footage, this Court concedes with the Claimant's argument that the Company might have something up in the sleeve to get rid of the Claimant.

[26] The Claimant argued that there was no sufficient time afforded to the Claimant to prepare his defence before conducting the Domestic Inquiry. The Claimant was given Notice of Domestic Inquiry on 29.3.2021 and the Domestic Inquiry took place on 2.4.2021 which gives the Claimant 2 working days to prepare his explanation and defence. The Claimant also argue that the Company failed to comply with the procedures stated in the Company's Handbook. The offences charged against the Claimant was not according to the issued offences in the Company's Handbook and Clause 17.0 of the Handbook stated that the power to dismiss an employee rests on

the Board of Trustee and/or Chairman of the Company. The Domestic Inquiry shall refer their findings to the Company's Disciplinary Committee for further determination prior taking up to the Chairman or/and the Board of Trustee. In the present case, the CEO issued the dismissal letter upon the finding of the Domestic Inquiry Panels. The Company failed to adduce evidence to prove that the matter was referred to the Board of Trustee or the Chairman for the ultimate decision. However, the Company on the other hand, made an assertion that the Company's Board of Trustees agreed to their finding. The Claimant had made an appeal to the Appellate Board however there was no reply from them. The Claimant referred to the case of **TAN CHENG CHUAN -v- UHY TAX ADVISORY SDN BHD (2020) ILJU 123**, where the Court held that;

..it must be stressed that where the same Handbook is relied on by the Company to dismiss the Claimant from employment, it is flabbergasting to observe how the Company decide that the Handbook does not bind them. It would be unreasonable to have the Handbook be binding on the Claimant relied on and cited in order to dismiss the Claimant, but the same Handbook has no application and not binding on the Company. The Company cannot be allowed to depart from following the proper dismissal procedures stipulated in the Handbook."

[27] There were discrepancies in the minutes of the Domestic Inquiry proceedings (**Reference made to page 44 to 46 of the Claimant's Submission**) The Claimant averred that the Company deliberately omitted many key statements during the Domestic Inquiries. The Notes prepared by the Company were full of inaccuracies that that is the reason the Claimant refused to sign the notes. The Claimant averred

that the charges levelled against him was baseless and without merit. The definition of sexual harassment can be found in the case of **MOHD RIDZWAN ABDUL RAZAK -v- ADMAH HJ MOHD NOR(2016) 4 MLJ 282**, wherein the Federal Court defined sexual harassment as;

“...a persistent and deliberate course of unreasonable and oppressive conduct, targeted at another person which is calculated and does cause that person alarm, fear or distress which involves;

- i) sexualisation of a professional relationship;*
- ii) unwanted and unwelcomed behaviour both verbal and non verbal in nature; and*
- iii) a continuum from sexist remarks to non verbal seductive gestures to sexual assault.”*

[28] Basically, there must be an occurrence of conduct that is sexual in nature, the conduct being unwanted and the conduct is perceived as threatening the victim’s ability to perform her job. The Company on this account, failed to prove Puan Zaleha’s attendance to work on 11.12.2020. No evidence has been adduced to prove the same although her attendance been disputed by the Claimant. No evidence been tendered vide the CCTV footage that Puan Zaleha at least entered the Claimant’s room as alleged. The burden is on the Company to prove that the Claimant had committed the misconduct as alleged. Reference made to the case of **AHMAD IBRAHIM BIN DATO SERI MOHD GHAZALI -v- AUGUST LAND HOTEL SDN BHD (2010) 2 LNS 1460**, where the Court held that:

“...the imperative is squarely upon the employer to substantiate the essentials of the charge by plausible fact tending towards a prudent possibility that the accused employee was guilty.”

[29] CLW6, CLW4 and CLW5 confirmed that Puan Zaleha was not present in the office on 11.12.2020, however the Company did not adduce any evidence to prove the contrary. CLW2 testified that he did not receive any application from Puan Zaleha to physically present in office on 11.12.2020 however, COW2 contend that Puan Zaleha was present in office on 11.12.2020 without adducing any evidence therein. On the other hand, CLW3 testified that she did not hear or saw Puan Zaleha sobbing or crying as contended by Puan Zaleha in her police report. The complainant, Puan Zaleha from the day the complaint was made until the date of Domestic Inquiry proceeding maintained that the alleged misconduct happened on 11.12.2020, however upon the Claimant challenging her attendance on 11.12.2020, with the attendance of COW2, Puan Zaleha had varied the alleged date of sexual harassment from 11.12.2020 to 2.12.2020. Puan Zaleha had made a 2nd police report (*refer to page 120 of COB1*) which appears to be an afterthought to this Court. There is no precision with the complainant, Puan Zaleha's allegation. The Claimant referred to the case of **TAN BENG HOONG -v- LEGACY DELIGHT SDN BHD/PACIFIC REGENCY HOTEL SUITES (2016) ILJU 30**, whereby the Court held that;

“ It is trite law that allegations of misconduct against an employee must be clear, precise and accurate and provide full details of the alleged offence. Otherwise , it would be difficult for an employee to defend herself.”

[30] The Company on the other hand, claimed that Puan Zaleha was under depression however the Claimant on the other hand adduced Puan Zaleha's Facebook posts as evidence that on the alleged day and thereafter Puan Zaleha showed no sign of depression or any sign of been sexually harassed, reference made to **pages 104 to 269 of CLB1**. The Claimant also referred to the WhatsApp conversation between the Claimant and Puan Zaleha which shows a normal conversation between 2 colleagues (**Refer to pages 79 to 103 of CLB1**). This Court did not notice any sign of depression, feeling threatened or humiliation of the complainant by looking at these messages especially when the Company alleged that the misconduct has been happening since 2017. No indication of any sign of depression could be found vide this evidence. In fact, vide the WhatsApp conversation of Puan Zaleha shows that it was her who was trying to make jokes and being flirtatious towards the Claimant. COW1 testified that it was a norm and culture to make jokes to each other in the Company. The Claimant submits that it is not fair to punish the Claimant when the Company itself did not take any measures to deter this norm or culture. The Claimant had mentioned during the Domestic Inquiry that Puan Zaleha had mentioned to the Claimant that '*Biar kes saya dah selesai, kita kan kahwin. Saya akan pergi masuk minang dekat Kak Syikah*'. However, the Company has discarded this evidence during the Domestic Inquiry. (**Refer to page 10 of CLB 1 and page 109 CLB2**)

[31] If the allegation made by Puan Zaleha was true, she could have indicated how repulsive the aggressor's attitude was or at least Puan Zaleha could have avoided texting or replying to the WhatsApp messages to the Claimant. This Court doubt that there was unusual situation occurred from 11.12.2020 or 2.12.2020, from the

behaviour of the Puan Zaleha. Puan Zaleha lodged the police report with regards to the allegation after 3 months, it is rather surprising how the Puan Zaleha took her own time (almost 3 months) to lodge a police report about an incident that could be do demeaning and embarrassing and changed the date of incident thereafter vide her 2nd report. Puan Zaleha also had a conversation with the Claimant in a pleasant way even after the alleged incident occurred on 11.12.2020. Puan Zaleha's behaviour or response did not show any form of anger, hatred, fear or unhappiness. Puan Zaleha did not show any kind of unhappiness or unpleasant reaction thereafter in the office. Reference made to the case of **EZRUL NIZAM MOHAMAD MUNGAWAN -v- MBSB BANK BERHAD (2022) 2 ILR 250**. In the present case, Puan Zaleha had failed to adduce evidence that she was victimised by the victimised and sexually harassed by the Claimant.

[32] In the case of **KANAVATHI RAJARATNAM -v- LION WATERWAY LOGISTICS SDN BHD (2017) 2 LNS 0567**, it was held that;

“Mere allegations, vague suggestions and insinuations are insufficient for the court to conclude on the issue of victimization. Victimization is a serious charge by an employee against an employer which reflects to a degree upon subjective attitude of the employer evidenced by certain acts and conducts. The onus of establishing victimising is upon the person who allege it.”

[33] This Court refers to the judgment of the Federal Court in the case of **Maritime Intelligence Sdn. Bhd. v. Tan Ah Gek [2021] 4 ILR 417**, where the Court held that

the Industrial Court must discharge its duties upon hearing a representation under **Section 20(3) of "The Act"** in the following manner:-

*" By virtue of the clear statutory content of **s. 20(3)**, the function of the Industrial Court is tied inextricably to the representations of the workman of a dismissal without just cause or excuse. Those representations are made by the workman at the time of his dismissal, for reasons which he feels are without any reasoned basis or for reasons that are insufficient to warrant a dismissal. The focus of the enquiry of the Industrial Court under **s. 20(3) of the Act**, is therefore premised on matters and events as they occurred at the time of the dismissal. The reasons operating in the mind of the employer, which preceded the decision to terminate, and resulted in the decision to terminate, comprise the matters to be considered and adjudicated upon by the Industrial Court under **s. 20(3)**.*

[34] See also the case of **LIM POH SENG -v- RESORT VILLA GOLF COURSE BERHAD AWARD NO. 471 OF 2023.**

DECISION

[35] The Company's allegation of sexual misconduct against the Claimant appears to be an attempt to get rid of the Claimant from the Company. This Court noticed that the Company's has made a submission on constructive dismissal which this Court opines to be an irrelevant issue. This Court is of the opinion that Puan Zaleha's allegation of sexual harassment is just a bare assertion. This Court finds that, the Claimant's termination purportedly was lacking in good faith, improper and unfair for

reasons which I have enumerated herein above. Having considered the evidence adduced before this Court, the submissions of both parties and the authorities cited, the Court finds that the dismissal of the Claimant in our present case is was without just cause or excuse. It is the Court's finding to conclude and holds that the Claimant has succeeded to prove on the balance of probabilities that his dismissal was without just cause or excuse. Accordingly, the Claimant claim is hereby allowed.

REMEDY

[36] Based on the Court's assessment of the Industrial climate between the parties, it is certainly not conducive to reinstate the Claimant as the relationship between the Company and the Claimant has been badly strained. In the circumstances, it is inappropriate to order for reinstatement. Therefore, the monetary award of compensation in lieu of reinstatement would be more suitable. The Claimant's last drawn salary was RM8,429.30 and for the purpose of calculation, this Court disregard variable figures such as reimbursement, commission and allowances. The Court is also mindful of the provisions of **Section 30(5), Section 30(6A) and The Second Schedule of the Industrial Relations Act 1967** in considering the appropriate relief to be awarded to the Claimant. This Court hereby orders that the Claimant be allowed the relief of back wages equivalent to 24 months of his last drawn salary. However, the back wages for the Claimant are subject to a deduction of contributory conduct and post dismissal earnings 20%.

Back wages of 24 month:

RM8,429.30 x 24 months = RM202,303.20

Deduction of 20% for post dismissal earning = RM40,460.64

Compensation in lieu of reinstatement

RM8,429.30 x 7 months = RM59,005.51

[37] It is hereby ordered that the total sum of **RM220,848.07 (Ringgit Malaysia Two Hundred Twenty Thousand Eight Hundred Forty Eight And Seven Cents Only)** after statutory deductions if any, is to be paid by the Company to the Claimant's solicitor MESSRS. AHMAD DANIAL ISWATT & LUQMAN within 30 days from the date of this Award.

HANDED DOWN AND DATED THIS ON 19TH DAY OF JUNE, 2025

-signed-

**(VANITHAMANY A/P SIVALINGAM)
CHAIRMAN
INDUSTRIAL COURT OF MALAYSIA
KUALA LUMPUR**