

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

RECTIFICATION AWARD NO. 970 OF 2025

UNDER SECTION 30(9) OF THE INDUSTRIAL RELATIONS ACT 1967

[1] On 19th of June, 2025, the Court handed down the Award No. 970 of 2025. Due to a typographical error, the stated under:

Document on Court Files of page 2 of the award:

IV. Claimant's Bundle of Document - (CLB1,CLB2, CLB3) to be read as:

IV. Claimant's Bundle of Document - (CLB1, CLB2)

IX. Company's Written Submission dated - 30.09.2024 to be read as:

IX. Company's Written Submission dated - 15.01.2025

XI. Company's Written Submission in Reply dated - 12.11.2024 is to be deleted.

Para [1] of page 3 of the award:

[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.

To be read as:

[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 then promoted as the Manager (*Pengurus*) on 1.2.2016 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.

Para [6] of page 5 of the award:

[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.

To be read as:

[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 20.4.2021, 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.

Para [8] of page 6 of the award:

[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.

To be read as:

[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 31.12.2020. The Company's decision to terminate the Claimant was made based on the findings and recommendation of the Panels dated 15.4.2021

Para [26] of page 16 of the award:

[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.”

To be read as:

[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."

Para [29] of page 18 of the award:

[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.”

To be read as:

[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.”

Para [31] of page 19 of the award:

[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.

To be read as:

[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 and sexually harassed by the Claimant.

[2] In the exercise of the powers under *Section 30(9) of the Industrial Relations Act 1967*, the Court hereby rectifies the aforesaid award.

HANDED DOWN AND DATED THIS 23rd DAY OF JUNE, 2025.

-signed-

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