

INDUSTRIAL COURT OF MALAYSIA

CASE NO: 9(16)/4-986/22

BETWEEN

DINESH KUMAR A/L MANICKAM

AND

JOE GREEN PRECAST SDN. BHD.

AWARD NO: 1619 OF 2026

BEFORE : **Y.A. PUAN RUSITA BINTI MD LAZIM**
Chairman (Sitting Alone)

VENUE : Industrial Court of Malaysia
Penang

DATE OF REFERENCE : 07.06.2022

DATES OF MENTION : 05.07.2022, 27.07.2022, 14.09.2022,
09.04.2023, 16.07.2025, 06.08.2025,
25.08.2025, 09.09.2025

DATES OF HEARING : 21.09.2023, 19.11.2023, 20.02.2024,
21.02.2024, 01.07.2024, 07.11.2024,
18.12.2024

REPRESENTATION : Sritharan a/l K.Govindan from Messrs G
K Sritharan for the Claimant

S.K. Low from Messrs K. S. Pang &
Co. for the Respondent

REFERENCE: This is a reference dated 07 June 2022 by the Director General of Industrial Relations Malaysia to the Industrial Court of Malaysia under Section 20(3) of the Industrial Relations Act 1967 (hereinafter referred to as “the IRA”). This reference is regarding the dismissal of **Dinesh Kumar a/l Manickam** (hereinafter referred to as “the Claimant”) by his employer, **Joe Green Precast Sdn. Bhd.** (hereinafter referred to as “the Company”) effective 21 January 2022.

AWARD

[1] This Court has considered the following cause papers and documents in handing down this Award, namely:

- (a) the Claimant’s Statement of Case dated 04 July 2022;
- (b) the Company’s Statement in Reply dated 10 August 2022;
- (c) the Rejoinder dated 12 September 2022;
- (d) the Claimant’s witness statement (**Dinesh Kumar a/l Manickam**) is marked as “CLWS-1”;
- (e) the Claimant’s witness statement (**Koh Yi Ling**) is marked as “CLWS-2”;

- (f) the Claimant's witness statement (**Kumanan a/l Bathumalai**) is marked as "CLWS-3";
- (g) the Company's witness statement (**Kusmutarko Gatot Lestaryo**) is marked as "COWS-1";
- (h) the Company's witness statement (**Insinirawati Limarto**) is marked as "COWS-2A";
- (i) the Company's supplementary witness statement (**Puwira Jaya bin Othman**) is marked as "COWS-2B";
- (j) the Company's witness statement (**Incunirawati Limarto**) is marked as "COWS-4";
- (k) the Claimant's Bundle of Documents marked as "CLB-1";
- (l) the Claimant's Bundle of Documents marked as "CLB-2";
- (m) the Claimant's Bundle of Documents marked as "CLB-3";
- (n) the Claimant's Bundle of Documents marked as "CLB-4";
- (o) the Claimant's Bundle of Documents marked as "CLB-5";
- (p) the Company's Bundle of Documents marked as "COB-1";
- (q) the Company's Bundle of Documents marked as "COB-2";

- (r) the Company's Bundle of Documents marked as "COB-3";
- (s) the Company's Bundle of Documents marked as "COB-4";
- (t) the Company's Bundle of Documents marked as "COB-5";
- (u) the Company's Bundle of Documents marked as "COB-6";

A. Brief Facts of The Case

[2] The Claimant commenced his employment with the company as a safety officer for the Senai & Seelong Plant of the company under an Employment Agreement dated

[3] The Claimant was dismissed from his position with immediate effect, as stated in a letter dated 21 January 2022.

[4] On 7.02.2022, the Claimant and the Company entered into a mutual termination agreement. The Claimant's last drawn monthly salary was RM6,500.00.

B. The Claimant's Case

[5] The Claimant's averments are as follows:

- (a) The Claimant joined the services of the Company vide letter dated 5.4.2021 as the Safety Officer for Senai & Seetong Plant, commencing duties on 17.5.2021;
- (b) The Claimant was head-hunted by the Company, where he had received a telephone call from Ms. Charlina Lim, the Company HR Manager. The Claimant was with NSL Eastern Pretech (M) Sdn Bhd at that time for 6 and a half years when he was head-hunted by the Company to join them;
- (c) There has been no Show Cause letter levelling any allegation whatsoever against the Claimant;
- (d) There was no investigation or domestic enquiry conducted for any alleged wrongdoing by the Claimant;
- (e) The Claimant was handed a Letter of Termination dismissing his services with immediate effect. A perusal of the letter of termination would clearly show that no reason was given for the termination;

- (f) The Letter of Appointment expressly states that he would be employed for a period of two years and beyond;
- (g) The Claimant categorically denies any breach of express and implied conditions of his employment and the Company must prove any allegations against him;
- (h) The Claimant successfully reduced fines for the Company by liaising with the local authorities, which resulted in cost savings for the Company;
- (i) The Claimant had informed the Company and tried his best to register the machinery, but Mr David Ong Yong Su (The Director) did not take the Claimant's request seriously. This can be proved by WhatsApp conversation between Mr. David Ong and him;
- (j) The Company had not attempted to comply with JKKPJ's SOP;
- (k) The robbery happened on 19.01.2022 and not 20.01.2022 as alleged by the Company;
- (l) The allegation against the Claimant was merely from anonymous people and anonymous phone calls and lacks credibility;

- (m) Pursuant to the threat that his salary would not be released, the Claimant had no choice but to sign the resignation letter;
- (n) The Claimant denies that he has been charged with any criminal offence and puts the Company to strict proof;
- (o) The Claimant was informed that if he did not sign the resignation letter, his salary would not be released by the Company;
- (p) The Company did not carry out Domestic Inquiry;
- (q) The Company issued a termination letter dated 21.01.2022 without any reason stated therein; and
- (r) The Claimant's resignation was tendered pursuant to coercion, duress, and threats by the Company and further contends that the same amounts to a dismissal without just cause and/or excuse.

B. The Company's Case

[6] The Company's averments are as follows:

- (a) The Company has learned about the Claimant through an "employee finding job advertisement" for the position of Safety & Health

Consultant at Jobstreet.com. Thereafter, an interview was conducted between the Company and the Claimant on 11.03.2021;

- (b) During the interview between the Company and the Claimant. The Company only offered the Claimant a monthly salary of RM 6,500.00, which was less than the salary offered by the Claimant's previous employer. Nevertheless, the Claimant accepted the Company's offer;
- (c) The Claimant ***signed the Company's Application Form dated 11.03.2021. Under the section for "Antecedents of Applicant- Have you been charged in a Court of Law (if yes, please specify)", the Claimant has written N/A;***
- (d) The Application Form also contains ***a statement declaring that the particulars stated are correct to the best of belief and knowledge and that he has not willfully suppressed any material fact;***
- (e) Clause 4 of the Employment Agreement states the scope of work for a Safety Officer, among others, to plan and implement OHS policies, advise and lead employees on various safety-related topics, adhere to all the rules and regulations, conduct risk assessments, and enforce preventative measures;

- (f) Clause 14 of the Employment Agreement states inter alia that the Company has the right to give immediate notice before terminating the employee if he/she is guilty of misdemeanor, misconduct, negligence or breach of any of the terms of this Letter of Employment;
- (g) The Claimant has full knowledge of his job responsibilities and/or job scope as a Safety Officer when he applied for the said position;
- (h) During the employment of the Claimant, the Company encountered a few incidents which resulted in a background check on the new employees. The Company also received two (2) blackmail emails dated 06.12.2021 and 21.02.2022 from an unknown sender;
- (i) The unknown person with a fake name has informed the “Jabatan Keselamatan dan Kesihatan Pekerjaan Johor” (**JKKPJ**) to inspect the Company;
- (j) The JKKPJ’s representative wrote a letter to the Company to stop work due to its failure to obtain the necessary approval;
- (k) The Company later found out that JKKPJ’s officer, Mr. Selvan, had commented to the Claimant as the safety officer regarding compliance with the rules imposed by the JKKPJ;

- (l) The Claimant replied that the Management had failed to act despite being informed by him. As a result, the Company was sealed by the JKKPJ. The Company asked the Claimant for the report regarding the Claimant's request asking the management to act. The Claimant failed to produce the same;
- (m) On 20.01.2022, a robbery took place in the Company's factory, resulting in missing equipment in the factory;
- (n) The sealing of Seelong Plant occurred on 20.01.2022 in the morning, and the robbery happened in the evening;
- (o) Upon receiving information that the Claimant was sentenced to 6 months' imprisonment for stealing a golf club set in Kuala Lumpur in 2003, the Claimant was asked for an explanation and justification. The Claimant failed to give a satisfactory explanation;
- (p) The Claimant has committed misconduct by concealing the fact that he has a criminal offence and breached Clause 14, which would warrant an immediate notice of termination being issued;
- (q) The Claimant consented to the termination, and then the Company issued a termination letter dated 21.01.2022, followed by a letter dated

7.02.2022 which was agreed, acknowledged and signed by the Claimant; and

- (r) The Claimant is at all material times fully aware that the termination was by mutual consent between the Company and him.

D. Issues

[7] The three-fold test to be determined by the court is as follows:

- (i) *Whether the Claimant's failure to declare his previous conviction results in the Claimant being guilty of misconduct;*
- (ii) *Whether the proven misconduct constitutes just cause or excuse for the dismissal; or/and*
- (iii) *Whether there was mutual termination by both parties and that termination was with just cause and excuse*

E. The Role and Function of The Industrial Court

[8] Reference is made to the decision of the Federal Court in **Goon Kwee Phoy v. J & P Coats (M) Bhd** [1981] 1 MLRA 415; [1981] 2 MLJ 129 on p 136, where His Lordship Raja Azlan Shah, CJ (Malaya) (as His Royal Highness then was) opined:

*"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 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**".*

[Emphasis Is This Court's]

[9] In *Milan Auto Sdn Bhd v. Wong Seh Yen* [1995] 2 MLRA 23; [1995] 3 MLJ 537; [1995] 4 CLJ 449; [1996] 1 AMR 049, His Lordship Mohd Azmi bin Kamaruddin, FCJ explained the role of the Industrial Court under s 20 of the IRA as follows:

*"As pointed out by this court recently in Wong Yuen Hock v. Syarikat Hong Leong Assurance Sdn Bhd & Another Appeal [1995] 1 MLRA 412; [1995] 2 MLJ 753; [1995] 3 CLJ 344; [1995] 2 AMR 2145, 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 the proven misconduct constitutes just cause or excuse for the dismissal.** Failure to determine these issues on the merits would be a jurisdictional error."*

[Emphasis Is This Court's]

Burden of Proof

[10] It is established that where the employer caused the dismissal, the employer must prove that the dismissal was with cause and excuse. This long-settled principle was demonstrated in the case of *Ireka Construction*

Berhad v. Chantiravathan A/L Subramaniam James [1995] 1 MELR 373; [1995] 2 ILR 11 (Award No 245 of 1995), wherein the learned Chairman opined 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 and 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**".*

[Emphasis Is This Court's]

Standard of Proof

[11] The onus or burden of proof is based on a standard of proof on the balance of probabilities as laid down by the Court of Appeal in ***Telekom Malaysia Kawasan Utara v. Krishnan Kutty Sanguni Nair & Anor*** [2002]

1 MELR 4; [2002] 1 MLRA 188; [2002] 3 MLJ 129; [2002] 3 CLJ 314; [2002]
3 AMR 2898 wherein His Lordship Abdul Hamid Mohamad, JCA opined:

*"Thus, we can see that the preponderant view is that the Industrial Court, when hearing a claim of unjust dismissal, even where the ground is one of dishonest act, including "theft", is not required to be satisfied beyond reasonable doubt that the employee has "committed the offence", as in a criminal prosecution. On the other hand, we see that the courts and learned authors have used such terms as "solid and sensible grounds", "sufficient to measure up to a preponderance of the evidence", "whether a case... has been made out", "on the balance of probabilities" and "evidence of probative value". In our view the passage quoted from Administrative Law by HWR Wade & CF Forsyth offers the clearest statement on **the standard of proof required, that is civil standard based on the balance of probabilities, which is flexible, so that the degree of probability required is proportionate to the nature or gravity of the issue.** But again, if we may add, these are not "passwords" that the failure to use them or if some other words are used, the decision is automatically rendered bad in law."*

[Emphasis is This Court's]

F. Evaluation of Evidence and Findings of the Court

[12] During trial, the Company has called 4 witnesses as follows:

- (a) Kusmutarko Gatot Lestaryo (**COW-1**), who is a factory manager in the Company's Senai and Seelong Plant;
- (b) Insinirawati Limarto ("**Cindy**") (**COW-2**), who is a director of the Company";
- (c) Puwira Jaya bin Othman, Penolong Pendaftar Jenayah at Ibu Pejabat PDRM Bukit Aman, Kuala Lumpur as subpoenaed witness (**COW-3**); and
- (d) Incunirawati Limarto ("**Charlina**") (**COW-4**), who is sales director cum HR Manager in Joe Green Marketing Pte Ltd (Joe Green Singapore).

[13] The Claimant has called 3 witnesses as follows:

- (a) Claimant himself (**CLW-1**) ;
- (b) Koh Yi Ling ("**Elyn**") (**CLW-2**), who is the former director of the Company; and

- (c) Kumanan a/l Bathumalai (**CLW-3**), who was the Production Manager of the Company and his Witness Statement has been marked as "**CLWS-3**".

[14] Vide the employment agreement dated 5 April 2021 ("**the employment contract**"), the Claimant commenced employment with the Company as Head of Maintenance. A copy of the employment agreement dated 5 April 2021 is reproduced as follows:



JOE GREEN PRECAST SDN BHD (914041-H)
 GM 293, LOT 514 Mukim Senai Industrial Park,
 Taman Desa Idaman 81400, Senai, Johor - Malaysia
 T: +607 5997875 F: +607 5997876
 GST No. : 001950638720
 www.joegreenpanel.com

Mailing Address :
 JOE Green Pte Ltd
 Amazana Building #02-01,
 50 MacPherson Road, Singapore 348471
 T: +65 67455377 F: +65 67451755
 E: sales@joegreenpanel.com

05 APRIL 2021

DINESH KUMAR A/L MANICKAM
87 JALAN PULAI MESRA 15
BANDAR BARU KANGKAR PULAI
81300 SKUDAI JOHOR

Dear Mr Dinesh Kumar A/L Manickam ,

EMPLOYMENT AGREEMENT

We are pleased to offer you the position of **SAFETY OFFICER FOR SENAI & SELONG PLANT**

Terms and conditions of the employment offered are as follows: -

1. COMMENCEMENT OF DUTY

Your employment commence **03 MAY 2021**

2. TERMS OF SERVICES

You will be required to serve the probationary period of three (3) months .
 Upon completion of your 3 months Probation period . Your Employment
 contract with the Company shall be for a period of minimum 2(two) years.
 At the end of 2(two) years contract, you shall continue full time employment
 with the Company unless otherwise informed by both parties.

3. REMUNERATION & ALLOWANCES

- Basic monthly salary RM 6,500 (Six Thousand Five Hundred Malaysian Ringgit)
- Year End bonus will be given at the end of the year subject to your working performance and Company performance.



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4. SCOPE OF WORK

- Plan and implement OHS policies and programs
- Advise and lead employees on various safety-related topics
- Review existing policies and procedures
- Adhere to all the rules and regulations
- Conduct risk assessment
- Enforce preventative measures
- Identify process bottlenecks and offer timely solutions
- Check if all the employees are acting in adherence with rules and regulations
- Oversee workplace repair, installations and any other work that could harm employees' safety
- Any other duties as assigned by Management

5. *Any Taxes*

You will be accorded under normal Taxes & EPF

6. WORKING HOURS

Your official working hours are as follows:

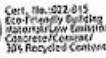
Daily working:

Monday - Friday : 09:00 AM - 18:00 PM

Saturday : 09:00 AM - 13:00 PM

7. PUBLIC HOLIDAYS & ANNUAL LEAVE

- A. Employees are entitled for all statutory holidays which eleven (11) days/year following Malaysia Employment Act.
- B. The paid annual leave entitlement only upon the completion of one (1) year service from the date of confirmation of your employment. It will be adjusted according to the Malaysia Employment Act. Pro-rated annual leave before the completion of one year's service is at the sole discretion of the Company.
- C. Any excess of untaken annual leave will be forfeited. Please note that any leave taken over and above the annual leave entitlement will be considered as unpaid leave.
- D. Unpaid leave shall be granted at the sole discretion of the Company. The Company reserves the right to terminate your employment without notice if you are absent from work more than two(2) days on unpaid leave without prior approval from the Company.
- E. You shall inform the Company in filling in the leave form at least 2 (two) weeks in advance of the date of annual leave you propose to consume. The time of such leave is subject to the approval of the Company.





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12. CONFLICT OF INTEREST

You will not during the continuance of this contract except with the knowledge and consent of the Company, embark, engage, or interest of yourself whether for reward or gratuitously, in any activity which would interfere with the performance of your duties with this Company or which to your knowledge would constitute a conflict of interest with the business of the Company.

13. STAFF REGULATION

The Company reserves the all rights to promulgate and amend staff regulation from time to time, which you will be required to observe.

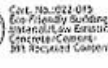
14. TERMINATION OF EMPLOYMENT

If you wish to terminate your service during probation period :

- a) During 3 months Probation period – either employer or employee can terminate the employment by giving a notice of 1 week.

If you wish to terminate the Service during 2 years contract :

- b) You must give us at least three (3) month notice or and the Company has found the replacement to hand over your job properly whichever earlier.
- c) If the Company has found the replacement earlier than three(3) months, you shall be able to hand over and be released earlier.
- d) If there is a training either locally or overseas, you are required to train a new staff until the new staff is able to take over your job and duty or you shall pay the penalty for the cost of the training.
- e) The Company, however, has the right to give immediate notice before terminating your services if you are guilty of misdemeanour, misconduct, negligence or breach of any of the terms of this Letter of Employment.
- f) The Company may (without prejudice to and in addition to any other remedy) forthwith terminate this Employment Agreement by written notice given to you if :
 - become unsound mind or be convicted or any criminal offence
 - become bankrupt or apply for a receiving order or has a receiving order made against you or enter into any arrangement or composition with your creditors
 - In the reasonable opinion of the Company, be guilty of neglect in the discharge of any duties to be performed under this Letter of Appointment or breaches any of the provisions of this Employment Agreement
- g) The Company reserves the right not to give any reasons for termination.
- h) Upon the termination of your employment you shall return to the Company all documents, records, items and materials in your possession or custody belonging to the Company or its clients and you shall not retain any copies (including electronic or soft copies) thereof.





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15. RESTRAINT OF TRADE

Any businesses and information of the company are treated strictly confidential. With respect of your background knowledge and previous experiences, you shall NOT seek any employment or set up your own company that the business is similar and or same to JOE Green Precast Sdn Bhd and JOE Green Marketing Sdn Bhd for a period of two (2) years after termination of your services.

16. GOVERNING LAW

This Letter of Employment shall be governed by and construed in accordance with the laws of Malaysia.

17. AMENDMENTS

You shall be subjected to such terms and conditions that the company may introduce from time to time, and any amendments to the above terms and conditions of the said contract made at the discretion of the Company and the reasonable notice will be given to you.

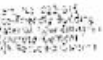
You hereby agree and accept the above terms and conditions. Kindly confirm your acceptance of the above terms of employment by signing and returning to us the duplicate copy of this letter.

Your Sincerely,

Charlina LIM

Acknowledged & Accepted by:

DINESH KUMAR/L MANICKAM



Misrepresentation and Dishonesty

[15] The Claimant applied for the Safety and Health Consultant position with the company via JobStreet.com. The Claimant has stated that his salary at his previous employer, Eastern Pretech (Malaysia) Sdn Bhd, was RM6,800.00.

[16] The Claimant's assertion that he was induced to join the Company while still employed elsewhere is unsupported by the evidence, given that the evidence shows the Claimant applied for the position via JobStreet.com and accepted the role despite his salary at his previous workplace exceeding the salary offered by Joe Green Precast Sdn Bhd. There was no element of inducement as contended by the Claimant.

[17] The Claimant submits that he knowingly declared that the statements regarding personal details were true and correct to the best of his belief and knowledge, and that he had not willfully suppressed any material fact. The Claimant later signed the Employment Agreement dated 5 April 2021 and

accepted the Company's offer to work as the "**Safety Officer for Senai & Selong Plant**" despite his expected salary not being approved.

[18] Misrepresentation can also constitute serious misconduct, particularly where the employee deliberately gave false information to obtain employment. In *Norizan Bakar v Panzana Enterprise Sdn Bhd* [2013] 9 CLJ 408, which held that dishonesty in an employment declaration was treated seriously because it undermined the trust and confidence necessary for the employment relationship. If the employer discovers serious misrepresentation, the employer may ultimately dismiss the employee without notice, but it should generally follow a fair disciplinary process.

Whether the Claimant's failure to declare his previous conviction results in the Claimant being guilty of misconduct

[19] Safety and Health Officer is a position with integrity, compliance with the rules, and risk management skills. The Claimant realizes that if he admitted that he had been convicted and fined in Court for theft, his chances of being accepted for a key position were slim. This clearly shows that the Claimant's

ulterior motives have led to deliberate omissions that are hard to forgive. The Company's trust in the Claimant, who had a previous conviction, resulted in his appointment without hesitation. Hence, the Claimant's failure to disclose the conviction, which the Company submits is grave misconduct

[20] The Company's trust in the Claimant, despite his prior conviction, led to his appointment without reservation. Therefore, the Company treats the Claimant's failure to disclose this conviction as a serious act of misconduct.

[21] The Claimant showed no guilt for not declaring his previous conviction history before and after his service ended. This declaration is important for the Company to conduct due diligence when selecting truly capable candidates.

[22] The Claimant contended that his admission of guilt in court was made under a misconception, as he was unaware of the nature and consequences of the admission, particularly regarding the impact on his employment. The Claimant failed to prove that his termination from his previous employer bore absolutely no proximity or connection to the case currently before us.

[23] His attitude of maintaining that he was not aware of the meaning of the words “***charged in the Court of Law***” under section 381 of the Penal Code and paid the fine is reflected in his own evidence during examination-in-chief as follows:

“Pihak Penuntut : Para 4 rejoinder, your instruction to your solicitor is You have never been charged. What is that why is that so ?

Mahkamah: Why in para 4 of rejoinder you said you have never ?

Answers?

CLWS 1 : As for my understanding, why I said I was not charged is because I am not aware about court proceedings.

CLW 2 : Then when he collects the cheque, together sign the letter.

Mahkamah: I said I was not charged because I was not aware. Aware ?

CLWS 1: Aware about court proceedings.

Mahkamah: About court proceedings.

CLWS 1: And also the legality about the case.

Pihak Menuntut : You were, you went to court, right ?

CLWS 1: Yes, I went to court and I paid a fine which I thought it is just a normal procedure of fine.

Mahkamah: went to court and I was fined. How much ?

CLWS 1: 5,000 Ringgit.

[24] Section 381 of Penal Code provides that “Whoever, being a clerk or servant, or being employed in the capacity of **a clerk or servant**, commits **theft in respect of any property in the possession of his master or employer**, shall be punished with **imprisonment for a term which may extend to seven years, and shall also be liable to fine**”.

[25] One of the Claimant's key contentions was that he did not know that being "charged in court" implied imprisonment. In his previous case, the Claimant had been charged with and convicted of theft by servants under section 381 of the Penal Code. This justification for deliberately stating “N/A”

for the question Have you been charged in any court of law (if yes please specify) in the Jobs Application Form is untenable.

[26] The relationship between an employee and employer is fundamentally based on trust. If an employer discovers that a position has been offered to an employee based on false information, this trust is inherently violated, granting the employer the right to terminate the employment contract due to this breach.

[27] The Claimant's false declaration regarding his prior conviction is a serious matter, particularly given that the offense for which he was charged and convicted was under Section 381 of the Penal Code—theft by a servant. The Claimant had served the company for several months as the Officer of Safety and Health; upon assuming this role, he should have been fully briefed on the duties and responsibilities expected of him. His role was to ensure that no harm, such as trespassing on the Company's property, occurred under his purview.

[28] The Employer's trust in him was betrayed when the Company discovered that the very person appointed to safeguard its high-value assets had a prior conviction for stealing from an employer. The Company's case is supported and corroborated by the evidence given by the Company's factory manager, Mr. Gatot (**COW-1**), Ms. Cindy (**COW-2**), the police officer, Puwira Jaya bin Othman (**COW-3**) and Ms. Elyn (**CLW-2**).

[29] The documentary evidence from the Company Bundle had shown that the Claimant had deliberately declared and affirmed that he had not been charged in any Court of Law to qualify for the position of safety and health officer. The Claimant also failed to disclose his previous conviction when working for a new employer after leaving the Company in 2022, to secure the position offered to him. The Application Form dated 11 March 2021 and Employment Agreement dated 5 April 2021 are reproduced as follows:



JOE GREEN PTE LTD
 Anderson Building #02-00,
 50 Raffles Road, Singapore 348471
 T : +65 6745 5377
 F : +65 6745 1755
 E : sales@joegreenpanel.com
 Co., Reg/ GST No. : 200613764H
 www.joegreenpanel.com

Malaysia Factory :
 GM 293, LOT 514
 Mukim Senai Industrial,
 Taman Desa Idaman 81400,
 Senai, Johor - Malaysia
 T: +607 5977825
 F: +607 5977876

APPLICATION FORM

Insert your
Photo

Date : 11.03.2021

Position Applied For : safety officer
 Interviewer :

PERSONAL PARTICULARS

Name : DINESH KUMAR A/L MANICKAM

Local Address : 87 JALAN PULAI MESSA 15 BANDAR BARU KANGKAR PULAI
 81300 SKUDAI JOHOR

Foreign Address :

E-mail Address : dmanickam75@gmail.com

Telephone No.	:		Mobile No.	:	010-6637609
NRIC/Passport No.	:	740911-14-5045	Marital Status	:	MARRIED
Gender	:	MALE	Race	:	INDIAN
Date of Birth	:	11-09-1974	Age	:	46
Country of Birth	:	INDONESIA	Citizenship	:	INDONESIAN
Dialect	:	ENGLISH & MALAY	Religion	:	HINDU



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JOE GREEN PTE LTD
Amazonia Building #02-00,
50 MacPherson Road, Singapore 348471
T : +65 6745 5377
F : +65 6745 1755
E : sales@joegreenpanel.com
Co. Reg: GST No. : 200613764H
www.joegreenpanel.com

Malaysia Factory :
Gta 293, LOT 514
Mukim Senai Industrial,
Taman Desa Idaman 81400,
Senai, Johor - Malaysia
T: +607 5907875
F: +607 5907876

NATIONAL SERVICE

From	To	Vocation	Rank
------	----	----------	------

- N/A -

MEDICAL HISTORY

Any physical disability (if yes, please specify):

- N/A -

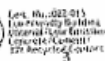
Any Major illness/accident in last 6 months (if yes, please specify):

- N/A -

ANTECEDENTS OF APPLICANT

Have you been charge in a Court Of Law (if yes, please specify):

- N/A -



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JOE GREEN PTE LTD
 Alhazana Building 202-00,
 59 MacPherson Road, Singapore 148471
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Malaysia Factory :
 G26 793, LOT 514
 Majlis Senai Industrial,
 Taman Desa Idaman 81403,
 Senai, Johor - Malaysia
 T : +607 5997875
 F : +607 5997876

AVAILABILITY

When is the earliest date you are able to commence work?

2 months. →

EXPECTED SALARY

What is your expected salary?

7.5 - 8K →

I declare that the particulars stated herein are true and correct to the best of my belief and knowledge, and that I have not wilfully suppressed any material fact.

I further declare that the reproduced documents (if not duly certified to be true) I have submitted with this application are accurate and exact reproductions of the originals with no defacement or alternations of their original contents.

11.03.2021

Date

Signature of Applicant

For Official Use

Date of Commencement

Position

S\$

Salary

Points to Note (if any):



Gov. No. 022-093
 Eco Friendly Building
 Multi-Occupancy Building
 GreenMark Platinum
 30% Recycled Content



S\$ 200,000 2022
 Singapore Direct

WMRAS



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JOE GREEN PRECAST SDN BHD (914041-H)
 GM 293, LOT 514 Mukim Senai Industrial Park,
 Taman Desa Idaman 81400, Senai, Johor - Malaysia
 T: +607 5997875 F: +607 5997876
 GST No. : 001956638720
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 JOE Green Pte Ltd
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 50 MacPherson Road, Singapore 348471
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 E: sales@joegreenpanel.com

05 APRIL 2021

DINESH KUMAR A/L MANICKAM
87 JALAN PULAI MESRA 15
BANDAR BARU KANGKAR PULAI
81300 SKUDAI JOHOR

Dear Mr Dinesh Kumar A/L Manickam,

EMPLOYMENT AGREEMENT

We are pleased to offer you the position of **SAFETY OFFICER FOR SENAI & SELONG PLANT**

Terms and conditions of the employment offered are as follows: -

1. COMMENCEMENT OF DUTY

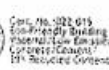
Your employment commence 03 MAY 2021

2. TERMS OF SERVICES

You will be required to serve the probationary period of three (3) months. Upon completion of your 3 months Probation period, Your Employment contract with the Company shall be for a period of minimum 2(two) years. At the end of 2(two) years contract, you shall continue full time employment with the Company unless otherwise informed by both parties.

3. REMUNERATION & ALLOWANCES

- Basic monthly salary RM 6,500 (Six Thousand Five Hundred Malaysian Ringgit)
- Year End bonus will be given at the end of the year subject to your working performance and Company performance.




JOE GREEN PRECAST SDN BHD (914041-H)

GM 293, LOT 514 Mukim Senai Industrial Park,
Taman Desa Idaman 81400, Senai, Johor - Malaysia
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Mailing Address :

JOE Green Pte Ltd
Amazona Building #02-01,
50 MacPherson Road, Singapore 348471
T: +65 67455377 F: +65 67451755
E: sales@joegreenpanel.com

12. CONFLICT OF INTEREST

You will not during the continuance of this contract except with the knowledge and consent of the Company, embark, engage, or interest of yourself whether for reward or gratuitously, in any activity which would interfere with the performance of your duties with this Company or which to your knowledge would constitute a conflict of interest with the business of the Company.

13. STAFF REGULATION

The Company reserves the all rights to promulgate and amend staff regulation from time to time, which you will be required to observe.

14. TERMINATION OF EMPLOYMENT

If you wish to terminate your service during probation period :

- a) During 3 months Probation period – either employer or employee can terminate the employment by giving a notice of 1 week.

If you wish to terminate the Service during 2 years contract :

- b) You must give us at least three (3) month notice or and the Company has found the replacement to hand over your job properly whichever earlier.
- c) If the Company has found the replacement earlier than three(3) months, you shall be able to hand over and be released earlier.
- d) If there is a training either locally or overseas, you are required to train a new staff until the new staff is able to take over your job and duty or you shall pay the penalty for the cost of the training.
- e) The Company, however, has the right to give immediate notice before terminating your services if you are guilty of misdemeanour, misconduct, negligence or breach of any of the terms of this Letter of Employment.
- f) The Company may (without prejudice to and in addition to any other remedy) forthwith terminate this Employment Agreement by written notice given to you if :
- become unsound mind or be convicted or any criminal offence
 - become bankrupt or apply for a receiving order or has a receiving order made against you or enter into any arrangement or composition with your creditors
 - In the reasonable opinion of the Company, be guilty of neglect in the discharge of any duties to be performed under this Letter of Appointment or breaches any of the provisions of this Employment Agreement
- g) The Company reserves the right not to give any reasons for termination.
- h) Upon the termination of your employment you shall return to the Company all documents, records, items and materials in your possession or custody belonging to the Company or its clients and you shall not retain any copies (including electronic or soft copies) thereof.



[30] In numerous instances, it has been determined that a prior criminal conviction may justify dismissal in Malaysia, particularly if the employee has concealed this information or falsely claimed to have no criminal record. Nevertheless, a criminal conviction does not automatically entitle an employer to dismiss an employee. However, where the employee deliberately misrepresents or conceals a material criminal conviction during recruitment, such dishonesty may constitute serious misconduct and provide just cause or excuse for dismissal. The employer must nevertheless establish the misconduct and comply with the applicable disciplinary requirements, including due inquiry where required.

[31] The learned counsel for the company refers to the case of ***Ruth Chai Mei Hui v. Berjaya Steel Product Sdn Bhd*** [2020] MELRU 476:

“The very substratum underlying an employment relationship between an employer and an employee, ie, trust and confidence, is irretrievably shattered when such dishonesty occurs. The Company was perfectly entitled to deem the employment to be at an end when they could no longer repose any trust and confidence in the claimant”.

[32] Despite an omission of inquiry, a criminal conviction may constitute a legitimate basis for dismissal if the nature of the offence makes the employee unsuitable for employment. For example, a conviction for fraud, dishonesty or theft would be particularly serious for someone employed in a position involving trust.

[33] The Malaysian Industrial Courts acknowledge that an employee's misrepresentation of significant facts can constitute serious misconduct that warrants dismissal. There have been instances where misrepresentation has been regarded as potentially serious misconduct, although the dismissal faced challenges due to procedural complications. In the Application Form, if an employee responds "No" despite having a prior conviction, this may be considered misrepresentation or dishonesty, especially if the question was crucial to the employer's hiring decision.

[34] It is clearly stated that the employment agreement included a specific provision allowing the employer to terminate an employee who misrepresented his background or failed to disclose any matter that may have materially influenced the employer's decision to employ him. In a worst-

case scenario, the Claimant does not disclose his work background in his current application by omitting his service tenure with the Company in 2021.

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Dinesh Kumar Manickam
Safety & Health Consultant(1yr)
DKMSafety Resources

Last updated 1 month Last active 1 month

Retrieved by Cindy Lim
11 Jul 2022 1:03 PM

\$ MYR 7,500 | Master's Degree | Johor

Experience

16 years of total experience

Jun 2021-Present
1 year 1 month

Safety & Health Consultant
DKMSafety Resources|Johor,Malaysia

Industry	Construction / Building / Engineering
Specialization	Engineering - Environmental/Health/Safety
Role	Management
Position Level	Manager
Monthly Salary	MYR 9000.00

Mar 2015-May 2021
6 years 2 months

Senior Safety, Health & Environment Officer
Eastern Pretech (Malaysia) Sdn Bhd|Johor,Malaysia

Industry	Construction / Building / Engineering
Specialization	Engineering - Environmental/Health/Safety
Role	Management
Position Level	Manager
Monthly Salary	MYR 6800.00

To advise the employer through safety and health committee on the measures to be taken in the interest of safety and health of the person at the work place.
To inspect work place in a regular interval for once in a week with Safety and Health Committee.
To organize safety audits and reports to be distributed to the Management for their approval and action.
To investigate any accident, near miss accident, dangerous occurrence, and occupational disease.
To assist in organizing and implementing safety and health programs.
Secretary to Safety and Health Committee.
To collect, analysis, and maintain statistics of accident at the place of work.
Report sent to DOSH (JKKP 6).
To carry out instruction made by the Management on any matter with regards to the Safety and Health in the work place
To prepare monthly report on the activity undertaken and future plans to the Management.
To prepare safety and Health meeting minutes and distributes to the committee members.
Formulating and implementing of safety policy, safety procedures, safe work system, and work instructions.
Hazard Identification, unsafe act and practices, and unsafe conditions in the place of work.
Responsible for conducting a Risk assessment and risk control and ensure that



the measures to be practiced by sections.
 Engaging consultants to conduct noise monitoring, CHRA and propose to the Management the measures recommended.
 Organizing safety training e.g. forklift, First Aider, Safety induction, Toolbox meeting, Fire Drill activity (BOMBA) etc.
 Prepare materials for safety induction and toolbox meeting.
 Regular checking on the Scaffolds, lifting belt, sling, boom, crane driver competency, and PMA/PMT/PMD certificate.
 Review OSHA, FMA and all the other latest addition relating to occupational safety and health.
 Review and revise the safe work system, safety procedure and work instruction from time to time when need arise.
 Responsible to maintain the safety documents.
 Conduct safety audit against the compliance.
 Issuance of PPE items to worker on weekly basis, and maintain their record.
 Ordering of all PPE items from suppliers by raising Purchase request to purchasing dept.
 Verifying Permit to Work (PTW) before the task take into place.
 Conducting 5S activity (Housekeeping) in the work place.
 To prepare audit checklist for auditors on ensuring the 5S activity on monthly basis.
 To ensure the First Aid boxes on all station has been checked regularly.
 To issue warning letter to workers who miss conduct unsafe system at work place.
 Engaging suppliers to conduct schedule waste activity on monthly basis, when contaminated items need to be dispose (Schedule Six Consignment Note), required under Regulation 12 of the environmental Quality (Schedule Waste) Regulation 2005 in the Delivery Order.
 Regular inspection on Forklifts and Cranes maintenance to ensure it's safe for operation.
 Verifying heavy lifting job on document before the activity starts.
 Update all safety programs, LTI/AFD on all station notice boards regularly on monthly basis.
 Provide Training on EOTC, 5S to all new employees, when necessary.
 Conduct safety briefing for clients and visitors before they enter into work place.
 To assist DOSH officer (JKKP) whenever inspection carried out at work place such as (license renewal and PMA/PMT/PMD)

Education

Nov 2022

Universiti Malaysia Pahang (UMP)
 Master's Degree in Others | Malaysia

Grade On-going

Skills

Advanced

Safety Management System, Accident & Incident Investigation, Behavioural Based Safety, Environmental Impact & Aspect, ISO 14001, ISO 45001, Internal Auditing, Risk Management



Whether Proven Misconduct Constitutes Just Cause or Excuse for the Dismissal

[35] It is a trite law that an employee's misrepresentation can justify dismissal, including dismissal without notice, but there is an important distinction: the employer does not have an automatic right to dismiss merely because there was "misrepresentation." The employer must still be able to establish just cause or excuse for the dismissal.

[36] Integrity is the cornerstone of harmonious relationships between employees and their employer. When trust is shattered, previously close relationships can disappear in the blink of an eye. False declarations and misrepresentation end every good relationship. The Claimant's failure to disclose his prior conviction when securing a job resulted in the company employing an unqualified candidate.

[37] The Claimant's counsel submits that the Company's termination letter was in breach of Clause 14 (e), of the Contract. Clause 14(e) clearly states;

*Cl. 14 (e) The Company, however, has the right to give **immediate notice before terminating your services if you are guilty of misdemeanor, misconduct, negligence or breach of any of the terms of this letter of employment**"*

[38] When we read clause 14 of the agreement as a whole, there is a proviso requiring notice before termination and immediate termination without notice is also provided under the employment agreement. Clause 14 (f) clearly states:

*Cl. 14 (f) The Company may (without prejudice to and in addition to any other remedy) **forthwith terminate the Employment Agreement by written notice given to you if:***

- *become unsound mind or be convicted of any criminal offence;*
- *In the reasonable opinion of the Company, be guilty of neglect the discharge of any duties to be performed under the Letter of Appointment or breaches any of the provisions of this Employment Agreement;*

Cl. 14 (g) The Company reserves the right not to give any reasons for termination.

[39] It is clearly stated that misconduct, negligence and breach of any terms of the employment contract are sufficient grounds for immediate dismissal. What holds significance is that the Company must prove that the Claimant committed serious misconduct, was convicted in a court of law, and made misrepresentations in the job application, thereby inducing the Company to enter into a contract with the Claimant.

[40] The Claimant submits that the Claimant was terminated without just cause and excuse solely on his previous conviction without any right to be heard in the inquiry. It is established that the hearing at the Industrial Court is actually a rehearing of the industrial dispute where all disputed issues can be ventilated at the Industrial Court afresh. Justice Wan Suleiman SCJ in ***Dreamland Corporation (M) Sdn Bhd v. Choong Chin Sooi & Industrial Court of Malaysia*** [1987] 1 MELR 39; [1987] 1 MLRA 357; [1988] 1 MLJ 111; [1988] 1 CLJ (Rep) 39, where His Lordship, in his speech, stated:

"The absence of domestic inquiry or the presence of a defective inquiry is not a fatality but merely an irregularity, it is open to the employer to justify his action before the Industrial Court by leading all relevant evidence before it and by having the entire matter referred before the Court."

[Emphasis is This Court's]

[41] The Court is also guided by the principles laid in the case of ***Hong Leong Equipment Sdn Bhd v. Liew Fook Chuan & Other Appeals*** [1996] 1 MELR 142; [1996] 1 MELR 216; [1996] 2 MLRA 212; [1996] 2 MLRA 286; [1996] 1 MLJ 481; [1997] 1 CLJ 665; [1996] 3 AMR 3181; The Court held that the findings of a DI are not binding upon the Industrial Court which in fact rehears the matter afresh." Gopal Sri Ram further 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 a domestic inquiry are not binding upon the Industrial Court which rehears the matter afresh. However, it may take into account the fact that a domestic inquiry had been

held when determining whether the particular workman was justly dismissed."

[Emphasis is This Court's]

[42] In light of the circumstances, this Court will proceed to assess the evidence presented and render the necessary conclusions based on the available evidence. Additionally, the hearing conducted before the Industrial Court, which indeed offers a more impartial and suitable forum for the Claimant, should be regarded as a sufficient opportunity for the Claimant to present their case, thereby fulfilling the principles of natural justice and allowing for a fresh analysis of the matter.

[43] The Court has examined COW-3's testimony. It is satisfied that the previous conviction has been proven through the evidence presented, wherein COW-3 confirmed that the Claimant was charged and convicted under Section 381 of the Penal Code and sentenced to a fine of RM5,000.00, or five months' imprisonment in default of payment. COW-3's evidence is reproduced as follows:

Pihak Syarikat: Tuan dalam kes ini Tuan pihak menuntut Dines Kumar A/L Manikam telah menafikan bahawa beliau tidak pernah dituduh di mahkamah atau di sabit kesalahan bagi apa-apa kesalahan Jenayah boleh tuan dapat sahkan sama ada si pihak menuntut Dinesh Kumar ini pernah dituduh atau disabit kesalahan bagi kesalahan Jenayah.

COW(SP): Yang Arif semua orang yang dituduh di Mahkamah dan yang dituduh di bawah kesalahan berdaftar akan dirakam cap jarinya di dalam boring RG 2 dan dibelakang boring tersebut akan ditulis hukuman jika orang tersebut didapati bersalah. Saya rujuk nombor kad pengenalan 740911-14-5045 di mana saya telah membuat perbandingan cap jari dari Jabatan Pendaftaran Negara di mana Saya mengaksesnya dengan rekod di sabit salah danm saya dapati cap jarinya adalah serupa dan rekod Jenayah Dines Kumar A/L Manikam mempunyai nombor Jenayah 1650592 dia telah dihukum di mahkamah 6 Kuala Lumpur bertarikh 2.07.2024 di bawah Seksyen 381 KK iaitu mencuri oleh orang gaji dengan hukuman denda RM5,000.00 tidak bayar 5 bulan penjara

denda dibayar, nombor kes A83-1739-03 dengan nombor repotnya adalah Jalan Dang Wangi repot2217403 Yang Arif. Saya ada sediakan laporan tersebut di mana saya ada tandatangan.

[44] Based on the testimony of COW-3 and Form RG 2, the Court finds the Claimant's statement—that he did not understand whether he had ever been charged and convicted in any court to be irrefutable. RG 2 Form of the Claimant is reproduced as follows:

COB 6

SALINAN
MAHKAMAH

PUSAT PENDAFTARAN PENJENAYAH

(Polis R.J. 2B)
(Pm. 5/86)

Rekod ini mestilah dikembalikan bersama-sama dengan Pertanyaan Polis kepada Pendaftaran Jenayah Pusat sebaik-baik sahaja kes telah dibicarakan. Jika orang yang dituduh telah dijatuhkan hukuman penjara suratan-suratan tersebut hendaklah dikembalikan melalui Penjara.

Catatan-catatan tidak boleh dibuat ke atas rekod ini kecuali di Pusat Pendaftaran Jenayah.

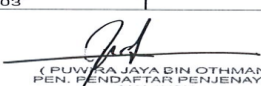
No. R.J. 1650592

Nama & No. KPPK. DINESH KUMAR A/L MANICKAM 740911145045

No. O.J.T.D. _____ No. O.P.P. _____

Kesabitan kesalahan berikut adalah direkodkan terhadap orang ini di Pendaftaran Jenayah Pusat :

Tempat	Tarikh	Kesalahan Dan Ordinan	Hukuman	No. Kes Dan Penjara	Tanda Tangan
MAHKAMAH 6 KUALA LUMPUR	02/07/2004	SEK. 381 KK - MENCURI OLEH ORANG GAJI ATAU KERANI	DENDA RM 5,000 JIKA TIDAK BAYAR 5 BULAN PENJARA (BAYAR)	NO KES: A83-1739- 03, JALAN DANG WANGI RPT. 22174/03	PUWIRA JAYA BIN OTHMAN


 (PUWIRA JAYA BIN OTHMAN)
 PEN. PENDAFTAR PENJENAYAH
 MALAYSIA

DW/355/RS/07731/03

[45] Malaysian Industrial Court decisions recognize that misrepresentation of material facts can constitute serious misconduct justifying dismissal. The Court in many cases treated the misrepresentation as potentially serious misconduct, although the dismissal was problematic because of procedural issues. The Court is convinced that the Company's termination of the Claimant was a legitimate exercise of the authority granted by the employment contract. Consequently, the Company is justified in dismissing the Claimant.

Whether there was mutual termination by both parties and that termination was with just cause and excuse

[46] The Company contends that upon disclosure of the Claimant's antecedent conviction, both parties mutually consented to terminate the employment agreement pursuant to the contractual provisions designed to safeguard their respective interests. However, the Claimant denies agreeing to the agreement, despite letters dated 21 January 2022 and 7 February 2022 clarifying the parties' true intentions.

[47] Given that the Claimant did not agree to the Mutual Termination Agreement dated 21 January 2022 and 7 February 2022, it was also decided in many cases that dishonesty and misrepresentation are considered serious misconduct and are good grounds for dismissal. The Court refers to the case **of Sitt Tatt Bhd v. Ong Chee Meng** [2004] 2 MELR 13; [2004] 2 ILR 388 at p 393 where the learned chairman held that:

"In my view the company was fully entitled to terminate the claimant's service if upon their evaluation, the claimant was found to have been unable to perform his job functions satisfactorily. How he is to be assessed and the yardstick to be used to gauge his performance is best left to the company's prerogative and judgment so long as it is not tainted by mala fide intentions. It could well be based on performance per se or upon a combination of other variables and values such as suitability, aptitude, conduct, behavior, mannerism and so forth. Its categories are never exhaustive. After all it is well settled that the company is entitled to organize its business in the manner it considers best".

[48] Under s.14 of the Employment Act 1955, an employer may, after due inquiry, dismiss without notice where an employee is guilty of misconduct inconsistent with the fulfilment of the express or implied conditions of service. In this case, the employer needs to establish that the conviction provides just cause or excuse for dismissal under Malaysian Employment Law. The circumstances, nature of the offence, relevance to the job, and impact on trust/confidence can matter.

[49] The Company's witnesses, Ms. Cindy (**COW-1**) and Mr. Gatot (**COW-2**), testified that, although the Claimant was found to have committed misconduct by failing to disclose his previous conviction, the Company did not unilaterally terminate him but offered other options.

[50] The Company's counsel submits that the Claimant mutually decided to terminate his employment without stating any grounds for the dismissal. The Claimant requested the Company to issue the alleged termination letter dated 21.01.2022 stating that it was the Company that terminated him to be eligible for the EIS insurance benefits. No evidence was presented to the

court indicating that the Company had forced the Claimant to choose the mutual termination option during the meeting on 21.01.2022.

[51] The Claimant failed to ensure that action was taken in accordance with JKPPJ's directions. He merely blamed the Management without providing any evidence that the department's directives had been brought to the management's attention for rectification. Consequently, the Company was fined for failing to ensure that the machines under the Department's purview had obtained approval for safe use.

[52] COW-1 and COW-2 testified that the meeting held on 21.01.2022 between the Management and the Claimant was to enquire about his criminal antecedents, in which he admitted and eventually agreed to mutual termination.

[53] Under Malaysian employment law, mutual termination means both employer and employee agree to end a working relationship. There is no dismissal or resignation, just a consensual parting of ways.

[54] Rather, mutual termination was reflected when the Claimant subsequently signed a letter dated 7.02.2022 confirming the same and agreeing that both parties shall have no further claim against each other, with the Company paying him 7 days' goodwill compensation. Since it was the Claimant's choice, the Company and the Claimant eventually terminated their contractual relationship by mutual agreement. Therefore, the issue of termination without inquiry and forced resignation did not arise.

[55] In *Timber Master Trading (M) Sdn Bhd v. Jane Wang Sing Fang* [1994] 1 MELR 693; [1994] 2 ILR 1293, the learned Chairman in the aforesaid case held as follows:

"In the present case, the Court is not dealing with a case founded upon constructive dismissal or "forced resignation". The Claimant alleges that she had been dismissed. The Company on the other hand contends that there had been a mutual termination of the contract of employment. The Court has found that there was an understanding between the Claimant and the Company that the relationship of employer-employee existing between them is to come to an end. The issue before the Court is whether the contending parties had indeed come to mutual agreement to terminate the Claimant's contract of

employment which the Court should give effect to.

It is the Court's considered opinion that the correct approach in dealing with the case of an alleged mutual termination of a contract of service should be the same as the approach adopted by the Court in dealing with the analogous case of a "forced resignation" by an employee.

The duty of the Court is to determine whether there had been a termination which had been mutually and freely agreed upon between the parties. The Court cannot in equity and good conscience give effect to a purported mutual agreement which had not been genuinely consensual. It cannot be seriously argued that there was a mutual termination where there is no genuine consensus between the parties; and in particular where the employee's volitional capacity had been impaired at the time he was purported to have agreed to the mutual termination".

[56] The Company's version of mutual termination is also corroborated by the evidence of the Claimant's own witness, Miss Elyn (CLW-2), who confirmed that it was mutual termination on 21.01.2022 and the letter dated 7.02.2022 was prepared to reflect that mutual termination on 21.01.2022 and for the payment to the Claimant. The evidence by the Claimant's witness (CLW-2) is reproduced as follows:

“Pihak Syarikat : If he wants to accept the 7 days compensation, it is only logical for him to sign the letter dated 7 of February 2022 agreeing for the termination, right?”

*CLW 2 : **The termination he agreed already on 21st, right?***

Pihak Syarikat : Yes.

CLW 2 : Then when he collects the cheque, together sign the letter.

Pihak Syarikat : Together sign the letter. And just now you said that the termination already agreed in January, right?

CLW 2 : Yes. The termination letter was signed on 21st, right?

Pihak Syarikat : 21st January, right?

CLW 2 : Yes.

Pihak Syarikat : Yes.

CLW 2 : 21st January he signed.

*Pihak Syarikat : So, I put it to you that actually there was mutual termination of both parties on the 21st of January 2022. Do you agree? Both parties? Yes, **on 21st of January 2022 Both parties agreed to terminate?***

*CLW 2 : **Yes. Yes.***

*Pihak Syarikat : And the letter dated February 2022 is to **put that mutual termination terms in writing and for his payment.** Do you agree?*

*CLW 2 : **Yes.***

*Pihak Syarikat : To record the mutual termination terms in writing? Terms in writing. And for his payment. **In fact, he made a choice of his own to agree to sign and accept the payment, right?***

*CLW 2 : **Yes.”***

[57] The Claimant disputed the validity of the agreement dated 21 January 2022 and 7 February 2022; but failed to plead that the letter dated 7 February 2022 was forged. The Claimant also failed to prove that he was forced to sign it due to duress or coercion. On the contrary, the Claimant confirmed that he signed it, although he claimed otherwise (which is denied by the Company). The reasons for the agreement were drafted in such a way were well within the knowledge of the parties and were operating in the minds of both parties at that point in time (7.02.2022), which shows there was mutual termination. Therefore, the prima facie case is that there was a mutual termination agreement as evident in the termination letter dated 21.01.2022

and a letter dated 7.02.2022. The Termination Letter dated 21.01.2022 and Letter dated 7.02.2022 are reproduced as follows:

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JOE GREEN PRECAST SDN BHD (914041-H)
 GM 293, LOT 514 Mukim Senai Industrial Park,
 Taman Desa Idaman 81400, Senai, Johor - Malaysia
 T: +607 5997875 F: +607 5997876
 GST No. : 001958638720
 www.joegreenpanel.com

Mailing Address :
 JOE Green Pte Ltd
 Amazona Building #02-01,
 50 MacPherson Road, Singapore 348471
 T: +65 67455377 F: +65 67451755
 E: sales@joegreenpanel.com

21 January 2022

DINESH KUMAR A/L MANICKAM
87 JALAN PULAI MESRA 15
BANDAR BARU KANGKAR PULAI
81300 SKUDAI JOHOR

Dear Mr Dinesh Kumar A/L Manickam,

TERMINATION OF EMPLOYMENT

We regret to inform you that we would like to terminate your employment contract with effective today and your last working day will be 21 January 2022.

We have calculated your gross salary up to the date of termination of total RM5,536.29 and 7 days notice in lieu of total RM1,750.00. Your final net salary of RM6,011.84 (after statutory deduction) will be credited to your RHB Bank Bhd A/C No. 15113300112911 as per company normal payday practice.

Thank you

Regards


 Charlina Lim


 Dinesh Kumar A/L Manickam





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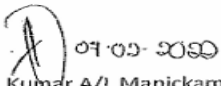
07 February 2022

Dear Mr Dinesh Kumar A/L Manickam,

I Dinesh Kumar A/L Manickam has received the amount of Salary RM 6011.84 after EPF deduction And 7 days terminaton notice, total nett received Cheque RHB 001390 on 07 February 2022 from JOE Green Precast Sdn Bhd and both parties agree that no further dispute or claim against each other in the future

Thank you

Regards


 Dinesh Kumar A/L Manickam


 KUSMUTARI GATOT L.
 9/2/2022



[58] Having perused the evidence, the Court also considered the Claimant's inadequate brief response, which lacked any supporting documentation. Consequently, the Court finds that the Claimant's misconduct was severe and justifies dismissal.

Final Award

[59] Based on the totality of the evidence adduced both through oral and documentary evidence and having perused the submissions and bearing in mind s 30(5) of the Act 1967, to act accordingly in equity and good conscience and the substantial justice of the case, this Court finds that the company had discharged its burden of proof to prove the misconduct on the balance of probabilities and then to justify the dismissal of the claimant and had been exercised in bona fide. The Court finds that the Claimant's termination was with just cause or excuse.

[60] Hence, the Claimant's claim is dismissed.

HANDED DOWN AND DATED THIS 18TH DAY OF SEPTEMBER 2026.

-signed-

**(RUSITA BINTI MD LAZIM)
CHAIRMAN
INDUSTRIAL COURT OF MALAYSIA
PENANG**