IN THE INDUSTRIAL COURT OF MALAYSIA

CASE NO: 4/4-208/24

BETWEEN

CHEN KEN TATT

AND
ASTRO FACILITIES SDN. BHD.

(*Formerly known as ASTRO PRODUCTIONS SDN. BHD.)*

AWARD NO: 1859 OF 2026

BEFORE	:	**Y.A. TUAN AUGUSTINE ANTHONY CHAIRMAN**
VENUE	:	Industrial Court of Malaysia, Kuala Lumpur.
DATE OF REFERENCE	:	05.02.2024.
DATE OF RECEIPT OF REFERENCE	:	08.02.2024.
DATES OF MENTION	:	13.03.2024, 08.05.2024, 05.06.2024, 19.06.2024, 09.07.2024, 30.09.2024, 24.10.2024, 15.01.2025, 06.02.2025, 18.08.2026 & 08.09.2026.
DATES OF HEARING	:	10.09.2025, 11.09.2025, 24.11.2025, 06.04.2026 & 07.04.2026.
REPRESENTATION	:	Mr. Varunnath Viswanathan and Miss Tan Jing Yi of Messrs. KP LU & Tan – Counsel for the Claimant
	:	Miss Adrienne Sena of Messrs. Steven Thiru - Counsel for the Company.

THE REFERENCE:

This is a reference dated 05.02.2024 by the Director General of the Department of Industrial Relations, Ministry of Human Resources pursuant to section 20(3) of the Industrial Relations Act 1967 ("The Act") arising out of the dismissal of **CHEN KEN TATT** (Claimant) by **ASTRO FACILITIES SDN. BHD.** [formerly known as ASTRO PRODUCTIONS SDN. BHD.] (Company) on the 24.07.2023.

AWARD

[1] Pursuant to the directions of this Court, the parties in this matter filed their respective submissions dated 18.08.2026 (Claimant's written submissions), 18.08.2026 (Company's written submissions), 08.09.2026 (Claimant's written submissions in reply) and 07.09.2026 (Company's written submissions in reply)

[2] This Court considered all the notes of proceedings in this matter, documents and cause papers in handing down this Award namely:

i. The Claimant's Amended Statement of Case dated 10.07.2024;

ii. The Company's Amended Statement in Reply dated 10.09.2025;

iii. The Claimant's Rejoinder dated 04.06.2024;

iv. The Claimant's Bundles of Documents – CLB1, CLB2, CLB3, CLB4 & CLB5 ;

v. The Company's Bundles of Documents – COB1, COB2, COB3, CO4, COB5 & COB 6 ;

vi. The Claimant's Witness Statement – CLW1-WS - (Madam Hoon Shat Mei);

vii. The Claimant's Witness Statement – CLW2-WS - (Mr. Chen Yee Aun);

viii. The Claimant's Witness Statement – CLW3-WS - (Mr. Chen Ken Tatt);

ix. The Company's Witness Statement – COW1-WS- (Mr. Melvin Lee Aik Pueh)

x. The Company's Witness Statement – COW2-WS (Encik Zamir Hamdy Bin Hamdan)

xi. The Company's Witness Statement – COW3-WS (Mr. Brendan Lopez Michael)

xii. The Company's Witness Statement – COW4-WS (Encik Saiful Afzel Bin Mohd Hakimi)

INTRODUCTION

[3] The dispute before this Court relates to the claim by Chen Ken Tatt ("Claimant") that he was dismissed from his employment without just cause or excuse by Astro Facilities Sdn. Bhd. ("Company") on the 24.07.2023.

[4] The Company is involved in the business of producing and distributing television drama programmes including providing a service called ‘Astrogo’, a streaming service where customers can consume amongst other Astro TV Channels, live events and other services. The Claimant commenced employment with the Company and affiliate company on 02.05.1997 without any break in his service. The Claimant had no known disciplinary issues or record throughout his years of service with the Company.

[5] On the 31.03.2023, the Company’s Anti-Piracy Technology team detected the Company’s Astro content namely Astro Ceria content being played on an illegal streaming application known as HotTV wherein the Claimant’s AstroGo account registered using the Claimant’s work email address was identified as the account for this illegal streaming. After the Company conducted the investigation into the illegal streaming and having determined that the illegal streaming was carried out using the Claimant’s account, the Company directed the Claimant to offer his explanation on this illegal streaming.

[6] The Claimant denied any involvement and even raised the possibility that the illegal streaming may have been done by person’s known or

unknown wherein his username and account may likely be hacked. Dissatisfied with the Claimant's explanation the Company proceeded to hold a domestic inquiry (DI) where the Claimant was alleged to have intentionally and/or negligently caused the illegal streaming of the Company's Astro Ceria channel programme into the illegal streaming application namely HotTV thereby abusing his AstroGo employee account. Upon the conclusion of the DI, the DI Panel found the Claimant guilty of the charges of misconduct and the Company in view of this alleged serious misconduct dismissed the Claimant from his employment on the 24.07.2023.

[7] The Claimant deny the charges of misconduct levelled against him and states that the Company had dismissed him from his employment in haste and without just cause or excuse and prays that he be reinstated to his former position in the Company without any loss of wages and other benefits. The Company however maintains that the Claimant was accorded due process and was dismissed after careful deliberation of the matter and contends that the dismissal was with just cause or excuse. The Company now prays that the Claimant's case be dismissed.

[8] The Claimant gave evidence on his behalf and his evidence was further supported by the testimony of CLW1 (Hoon Shat Mei, the wife of the Claimant who testified that the Claimant was at home on the 31.03.2023 being the alleged day when the illegal streaming of Astro Ceria content had taken place starting at about 8.28 am and that day was the off day for the Claimant. This witness testified that the Claimant spent the day waking up late at about 10.00 am and spent the rest of the morning repairing and servicing his motorcycle) and CLW2 (Chen Yee Aun, the son of the Claimant who testified that on that day he was in his office most of the day and the office is located at KL Eco City in Kuala Lumpur. This witness gave evidence that his desktop and laptop was seized by the police for investigation into the illegal streaming and the investigation found nothing incriminating him or the Claimant).

[9] Four witnesses gave evidence on behalf of the Company and they are COW1 (Melvin Lee Aik Pueh, the Vice President and the Head of Enterprise Architecture & Business Support of Measat Broadcast Network Systems Sdn. Bhd. which is the affiliated to the Company. This witness was the chairman of the domestic inquiry [DI] that found the Claimant guilty after having considered all the evidence during the DI), COW2 (Zamir Hamdy Bin Hamdan, the Astro Group former Senior Vice President of Industrial

Relations, Freelance Unit and Special Projects and who gave evidence that he was notified by COW3 that the Claimant's work email address was used to illegally stream Astro Ceria content into a pirate application known as HotTV. This witness further testified that a meeting was held with the Claimant wherein the Claimant was shown evidence of the Claimant's alleged misconduct. A meeting was also held by this witness with the Claimant's son to determine the illegal streaming. As the answers from the Claimant and his son were not satisfactory, the Claimant was issued a letter seeking explanation. The Company was not satisfied with the explanation of the Claimant leading to the DI), COW3 (Brendan Lopez Michael, the former head of the Company's Intellectual Property Protection Unit and had also served as the Head of Investigations and Digital Governance who gave evidence that he together with the Anti-Piracy Technology Team discovered that the Claimant became a subject of investigation due to illicit streaming of Astro Ceria content into HotTV, an illicit streaming applications using the Claimant's Astro Go Account) and COW4 (Saiful Afzel Bin Mohd Hakimi the former Head of Anti-Piracy & Intellectual Property Protection, Regulatory & Corporate Affairs Division of the affiliate Company who testified on the investigation leading to the illegal streaming of the Astro Ceria content into a pirated application through a leakage of AstroGo ID which was eventually identified as the Claimant's Account).

THE CLAIMANT'S CASE

[10] The Claimant's case can be summarised as follows: -

(i) The Claimant commenced employment with the Company and member company on the 02.05.1997 with his service treated as continuous without any break until his dismissal on the 24.07.2023;

(ii) The Claimant served the Company as a cameraman and camera operator with his job scope inter alia involving filming programs produced by the Company;

(iii) The Claimant's last drawn basic salary was RM9,640.00 with other fixed allowance totalling RM240.00 per month;

(iv) Throughout his 26 years of service with the Company the Claimant had served the Company with dedication and with no known disciplinary issues or problems;

(v) In June 2023, the Claimant received an email from the HR Department of the Company requesting the Claimant to assist in

a certain investigation pertaining to acts of piracy or in the improper use of the Company's property;

(vi) The Claimant attended the meeting with the presence of other senior officers of the Company including COW2, COW3 and COW4;

(vii) The Claimant was informed that his email ID used for utilising AstroGo services had been used to download content from Astro Ceria channel and was thereafter uploaded into an illegal streaming website known as HotTV (the alleged misconduct);

(viii) The illegal downloading and uploading (misconduct) had been done between 8.30 -14.30 on the 31.03.2023 using Time Internet broadband service;

(ix) The Company had therefore concluded that the Claimant was responsible for carrying out the illegal downloading and thereafter uploading the content onto the illegal streaming website HotTV (the misconduct);

(x) The Claimant denied the allegations levelled against him and offered valid explanation but the Company insisted that it was the Claimant who had committed the misconduct as alleged;

(xi) On the 23.06.2023 the Company sent a letter captioned “Letter of Explanation” alleging that the Claimant had intentionally and/or negligently committed the misconduct by abusing his AstroGo employee account to commit the alleged misconduct;

(xii) The Company then directed the Claimant to provide his explanation to his alleged misconduct which had purportedly breached the Code of Business Ethics (CoBE) on the Company’s intellectual property and violated Section 43AA(2) of the Copyright Act1987;

(xiii) The Claimant provide his explanation on the 30.06.2023 including requesting the Company to investigate whether his account had been hacked or misused by third party;

(xiv) The Company dissatisfied with the Claimant’s explanation proceeded with the DI on the Claimant’s alleged misconduct on the 11.07.2023;

(xv) After the conclusion of the DI, the Claimant was dismissed from his employment on the 24.07.2023 despite the Claimant's plea that he did not commit the said misconduct as alleged by the Company;

(xvi) The Claimant states that the Company dismissed him from his employment without thoroughly investigating the matter including the veracity of the alleged misconduct and the circumstances surrounding the alleged misconducts;

(xvii) The Claimant states that sometime on or about 25.07.2023, the Claimant discovered whilst going through his emails that he had on the 16.03.2023 had sought the assistance of the Company's IT department to resolve issues relating to his access to the Company's network;

(xviii) In seeking assistance, the Claimant had given his ID, password and one time password OTP to an employee of the Company in order for this employee to access the Company's network through the Claimant's password;

(xix) The Claimant then immediately lodged a police report on this issue;

(xx) The Claimant states that had the Company investigated this matter thoroughly, the Company would have learnt that the Claimant had given his password and other details to the IT department of the Company for a proper purpose;

(xxi) The Claimant states that the Company had ulterior motives to dismiss the Claimant from his employment as just four days after his dismissal, the Company had entered into Voluntary Separation Scheme (VSS) with a number of senior employees;

(xxii) The Claimant's dismissal from employment meant that the Claimant was not able to participate in the Company's VSS depriving him the benefit of his years of service;

(xxiii) The Claimant now denies that he had committed the alleged misconduct stated against him by the Company and despite all his reasons and explanation, the Company hastily dismissed him from his employment with the Company;

(xxiv) The Claimant now states that he was dismissed from his employment without just cause or excuse and prays that he be reinstated to his former position in the Company without any loss of wages and other benefits.

THE COMPANY'S CASE

[11] The Company's case can be summarised as follows: -

(i) The Company does not dispute the Claimant's employment status, his last drawn salary and his years of service with the Company;

(ii) The Company states that as an employee of the Company, in addition to the express and implied terms of employment, the Claimant was also bound by the Company's Code of Business Ethics (CoBE) and Information Technology Security Policy;

(iii) On the 31.03.2023, the Company's Anti-Piracy Technology team in the course of monitoring and analysing illicit streaming application in the market, detected Astro content namely Astro

Ceria was being played on an illicit streaming application known as HotTV;

(iv) The Company discovered that the illicit streaming of the Astro Ceria content was streamed from the Claimant's AstroGo account registered using the Claimant's email address namely *benneth_chen@astro.com.my* .

(v) In light of the discovery, the Company scheduled a meeting with the Claimant on the 12.06.2023 to discuss the matter and to obtain the Claimant's input;

(vi) Subsequently a meeting was held on the 13.06.2023 attended by the Claimant, COW2, COW3, COW4 and another officer of the Company wherein the Claimant was informed that his AstroGo account was used to illegally stream/play Astro Ceria content into the illicit streaming application HotTV;

(vii) Thereafter the Company issued the Claimant a "Letter of Explanation" dated 20.06.2023 requiring the Claimant to provide feedback and clarification as to whether the Claimant was

involved in the alleged illicit/illegal streaming act either intentionally or negligently;

(viii) On the 30.06.2023, the Claimant responded to the allegations contained in the Company's letter dated 20.06.2023 and further denied any involvement by providing his reasons for the same;

(ix) The Company however was unable to accept the Claimant's explanation and convened a DI on the 11.07.2023 to give the Claimant an opportunity to be heard in person;

(x) The DI Panel upon hearing all the witnesses found the Claimant guilty of the charges of misconduct levelled against him;

(xi) In view of the DI panel's finding, the Company was compelled to dismiss the Claimant from his employment on the 24.07.2023 due to the severity of the misconduct committed by the Claimant;

(xii) The Company states that the Claimant was dismissed after carefully considering all the Claimant's explanation and all other investigations carried out by the Company;

(xiii) The Company states that the Claimant's contention that his password being stolen or misused or that his account was hacked by other employee of the Company was considered and concluded that it was not possible;

(xiv) The Company also concluded that the available evidence clearly showed that the Claimant's AstroGo account was used to illegally stream or play Astro Ceria content in an illegal streaming application namely HotTV;

(xv) On the issue of ulterior motive to dismiss the Claimant, the Company denies the same and state that the issue of VSS raised by the Claimant was a mere afterthought;

(xvi) The Company states that the Claimant was dismissed after giving him all the opportunity to offer valid explanations and the action of the Company was not motivated by any bad faith or unfair labour practices;

(xvii) The Company states that the Claimant was dismissed with just cause or excuse and prays that the Claimant's case be dismissed.

THE LAW

Role and function of the Industrial Court

[12] The role of the Industrial Court under section 20 of the Industrial Relations Act 1967 is succinctly explained in the case ***Milan Auto Sdn. Bhd. v. Wong Seh Yen [1995] 4 CLJ 449***. His lordship Justice Mohd Azmi bin Kamaruddin FCJ delivering the judgment of the Federal Court had the occasion to state the following:-

> *"As pointed out by this Court recently in* ***Wong Yuen Hock v. Syarikat Hong Leong Assurance Sdn. Bhd. & Another Appeal [1995] 3 CLJ 344;*** *[1995] 2 MLJ 753, the function of the Industrial Court in dismissal cases on a reference under s. 20 is two-fold firstly, to determine whether the misconduct complained of by the employer has been established, and secondly whether the proven misconduct constitutes just cause or excuse for the dismissal. Failure to determine these issues on the merits would be a jurisdictional error ..."*

[13] The above principle was further reiterated by the Court of Appeal in the case *of* ***K A Sanduran Nehru Ratnam v. I-Berhad [2007] 1 CLJ 347*** where his lordship Justice Mohd Ghazali Yusoff, JCA outlined the function of the Industrial Court:-

*"**[21]** The learned judge of the High Court held that the Industrial Court had adopted and applied a wrong standard of proof in holding that the respondent has failed to prove dishonest intention and further stating that the respondent has not been able to discharge their evidential burden in failing to prove every element of the charge. He went on to say that the function of the Industrial Court is best described by the Federal Court in Wong Yuen Hock v. Syarikat Hong Leong Assurance Sdn Bhdand Another Appeal [1995] 3 CLJ 344 where in delivering the judgment of the court Mohd Azmi FCJ said (at p. 352):*

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

[14] It will not be complete this far if this Court fails to make reference to the decision of the Federal Court in the case of ***Goon Kwee Phoy v. J & P Coats (M) Bhd [1981] 1 LNS 30*** where His Lordship Raja Azlan Shah, CJ (Malaya) (as HRH 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 a reason for the action taken by him the duty of the Industrial Court will be***

to enquire whether that excuse or reason has or has not been made out. *If it finds as a fact that it has not been proved, then the inevitable conclusion must be that the termination or dismissal was without just cause or excuse. The proper enquiry of the Court is the reason advanced by it and that Court or the High Court cannot go into another reason not relied on by the employer or find one for it."*

Burden Of Proof

[15] Whenever a Company has caused the dismissal of the workman, it is then incumbent on part of the Company to discharge the burden of proof that the dismissal was with just cause or excuse. This Court will now refer to the case of ***Ireka Construction Berhad v. Chantiravathan a/l Subramaniam James [1995] 2 ILR 11*** in which case it was stated 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.*

Standard Of Proof

[16] In the case of ***Telekom Malaysia Kawasan Utara v. Krishnan Kutty Sanguni Nair & Anor [2002] 3 CLJ 314*** the Court of Appeal had laid down the principle that the standard of proof that is required to prove a case in the Industrial Court is one that is on the balance of probabilities wherein his lordship Justice 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 H.W.R. Wade & C.F. Forsyth offers the clearest statement on the standard of proof required, that is the civil standard based on the balance of probabilities,*** *which is flexible, so that the degree of probability required is proportionate to the nature of 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."*

The Law Relating To Misconduct

[17] In the case of ***Jye Tai Precision Industrial (M) Sdn Bhd v. Victoria Arulsamy [2008] 1 CLJ 760*** his lordship Justice James Foong, JCA, (as he then was) delivering the judgment of the Court of Appeal had the occasion to state the following:-

> *[13]..... As the issue before the Industrial Court concerned an allegation of an employee in breach of a term and condition in her contract of employment due to misconduct it is, in our view, pertinent that the Industrial Court must first determine the meaning of misconduct. To ascertain this, the learned Chairman of the Industrial Court referred to certain decided cases as well as Halsbury's Laws of Malaysia, vol. 7, at pp. 120.090 - 120.0921 which says:*
>
> > *'misconduct' connotes to conduct that is inconsistent with the fulfilment of the express or implied conditions of service. Some examples of types of misconduct are..., wilfully disobeying lawful and reasonable orders or precedents, unprofessional conduct and breach of company policy..., using violence on superior or co-employee.*
>
> *[18] Having ascertained that misconduct includes an act of non disciplinary behaviour or an action inconsistent with an express or implied condition of an employee's service, the Industrial Court found that the respondent had indeed breached category III of the appellant's Rules and Regulations which prohibits "fighting or striking another employee within the Companies premises", and if any employee is in breach of this condition, he or she would be "liable to disciplinary*

action including suspension without pay and termination of employment with or without notice". Here, the respondent was indeed involved in a fight with another employee of the appellant. It does not really matter who started the fight or whether she was provoked into it but the fact remains that she had breached the appellant's Rules and Regulations by fighting with another employee in the company's car park. Though the respondent had appealed to the appellant's management to be given another chance in view of her long service record, this was turned down when it was discovered that she had been previously warned by her supervisor not to repeat a similar sort of incident. Another reason why her appeal was rejected was because the appellant has a workforce of over 400 where discipline among the workers in the factory must be maintained."

[18] Thus, based on the above case this Court must determine whether the Claimant in the discharge of his duties as an employee of the Company has breached any of the express or implied conditions of service with the Company. If the Company is able to prove that the Claimant has indeed breached the terms and conditions of his employment by committing the alleged misconducts as complained of by the Company, then the next question for this Court to determine is whether that proven misconducts or breaches were serious enough to warrant the dismissal of the Claimant from his employment with the Company.

Domestic Inquiry (DI)

[19] This Court will now deal with the charges of misconduct levelled against the Claimant in the Letter of Explanation dated 20.06.2023 and the DI Notice dated 04.07.023. The charges of misconduct levelled against the Claimant in the Letter of Explanation followed by Notice of DI dated 04.07.2023 and the DI held on the 11.07.2023 in verbatim states the following: -

> *"That you on 31 March 2023 between 8.28am to 2.15pm, had intentionally and/or negligently abused your AstroGo employee account (Acc No.: 80069093) to illegally stream Astro Ceria from your ID registered AstroGo application to a third-party pirate application i.e., HotTV.*
>
> *By doing so, you have acted in breach of Section 2(3) of the Code of Business Ethics (COBE) on Astro's Intellectual Property Rights. You may also have acted in breach of and/or abused your position of trust and authority in the Company; and/or conducted yourself in a manner that is incompatible with the proper discharge of your duties to the Company; and/or been derelict in your duties or had failed or neglected to discharge your duties and/or acted against the interests of the Company and/or failed to exercise due care and diligence to safeguard the interests of the Company and have thereby committed a serious act of misconduct.*
>
> *Additionally, you have also acted in breach of* ***Section 43AA (2) of the Copyright Act 1987*** *where you could be liable to a fine of not less than ten thousand ringgit and not more than two hundred thousand ringgit or to imprisonment for a term not exceeding twenty years or to both."*

[20] In must be stated here that the Claimant responded to the Letter of Explanation dated 20.06.2023 by his letter of explanation dated 30.06.2023.

The Company found the Claimant's explanation to the Letter of Explanation to be unsatisfactory hence the DI notice dated 04.07.2023 and the DI that was held on the 11.07.2023 determine the guilt of the Claimant.

[21] On the charges of misconduct levelled against the Claimant, it is the Company's stance that after the conclusion of the DI, the DI panel found the Claimant guilty of the charges of misconduct levelled against the Claimant in the DI notice. Upon the finding of guilt of the Claimant, the Company states that in view of the seriousness of the charges of misconduct proven against the Claimant, the Company was compelled to dismiss Claimant from his employment with the Company effective 24.07.2023.

Law On Domestic Inquiry (DI)

[22] Now this Court will deal with the law relating to the DI proceedings and the findings of the DI Panel.

[23] It is this Court's view that whenever a DI is conducted by the Company, the Company must adhere to certain duties imposed upon it to follow the correct procedure and to reach the correct conclusion. The case ***Metroplex Administration Sdn Bhd v. Mohamed Elias [1998] 3***

MELR 184; [1998] 2 MLRH 858; [1998] 5 CLJ 467 is a guide that one must constantly have in contemplation where his lordship Justice Low Hop Bing J opined:

> *"Where a domestic inquiry is held and the rules of natural justice have been applied, the Industrial Court should first consider the adequacy or otherwise of the procedure adopted in the proceedings for the domestic inquiry in order to determine whether the domestic inquiry has applied the correct procedure and reached the correct conclusion having regard to all the evidence, documentary and oral, adduced at the domestic inquiry. If at the domestic inquiry, the rules of natural justice were properly applied; the employee being given the opportunity to be heard and to present his case; and should a finding be made against the employee based on the evidence which was presented to the domestic inquiry, the Industrial Court ought to consider the finding of the domestic inquiry in order to conclude whether the employee has been dismissed without just cause or excuse".*

[24] However, this Court is also mindful of the decision of the Court of Appeal stated herein below that this Court is not bound by the findings of the DI Panel whenever this Court is called upon to decide whether the Claimant was dismissed from his employment with just cause or excuse. This Court finds support from the decision of the Court of Appeal in ***Hong Leong Equipment Sdn Bhd v. Liew Fook Chuan & Other Appeals [1996] 1***

MELR 142; [1996] 1 MELR 216; [1996] 2 MLRA 286; [1996] 2 MLRA 212; [1996] 1 MLJ 481; [1997] 1 CLJ 665; [1996] 3 AMR 31816 where his lordship Justice Gopal Sri Ram JCA had the occasion to state the following:-

> *"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"*

[25] Now this Court is guided by the principles stated in the cases above namely in the case ***Milan Auto Sdn Bhd v. Wong Seh Yen (supra)*** **and** ***Hong Leong Equipment Sdn Bhd v. Liew Fook Chuan & Other (supra)*** and will proceed to analyze and scrutinize all the facts of this case and make the appropriate findings based on all the evidence produced in this Court. In doing so this Court had taken cognizance of the fact that the DI Panel was empanelled to hear the charges of misconduct levelled against the Claimant so as to give the Claimant all the opportunity to defend himself against the charges of misconduct levelled against him. The Company did so in order to comply with the principles of natural justice and good industrial practice.

[26] However it must be stated here that regardless of the DI held by the Company and the decision of the Company to dismiss the Claimant from his employment, this Court will now hear this case afresh by analyzing all the evidence presented before this Court and make the appropriate findings as to whether the dismissal of the Claimant from his employment with the Company was with or without just cause or excuse.

EVALUATION OF EVIDENCE AND THE FINDINGS OF THIS COURT

[27] Before this Court proceeds with the analysis of the charges of misconduct levelled against the Claimant it will be useful to repeat here the reason given by the Company for the dismissal of the Claimant. The charges of misconduct against the Claimant reads as follows:-

> *"That you on 31 March 2023 between 8.28am to 2.15pm, had intentionally and/or negligently abused your AstroGo employee account (Acc No.: 80069093) to illegally stream Astro Ceria from your ID registered AstroGo application to a third-party pirate application i.e., HotTV.*

[28] It must be stated here that only upon this Court making a positive finding that the Claimant had either intentionally abused or negligently caused to be abused his AstroGo employee account to illegally stream the Astro Ceria content from his account to a third party pirated application namely the HotTV, will this Court go further to determine whether the Claimant had breached the implied or express duties owed to the Company

based on the Company's policy particularly the Company's CoBE and Information Technology Security Policy.

[29] As the Company bears the burden of proving the Claimant's alleged misconducts, this Court must now determine whether the alleged misconducts had been proven against the Claimant. Failure to prove the ingredients of the charges of misconduct levelled against the Claimant will render the allegations of breach of implied or express duties of the Claimant towards the Company also fail automatically including the breach of Item 2(3) of the CoBE on Astro's Intellectual Property Rights and Section 15.1.2 of the Company's Information Technology Security Policy

[30] There are certain salient facts of this case that is not seriously disputed by the Claimant. It is not in dispute that the Claimant's AstroGo account was involved in the streaming of the Astro Ceria content into the illegal streaming application known as HotTV and the Company's internal investigation including the unique watermarking system associated that illegal activity to the Claimant's AstroGo account.

[31] What is seriously disputed here is that such internal investigation by the Company and in particular the Anti-Piracy Technology team's approach was inconclusive to determine that it was the Claimant who had intentional carried out the alleged illegal act forming the misconduct in this case or that the Claimant was negligent in allowing his account to be abused for the purposes of the illegal streaming into HotTV.

[32] This Court will now analyse the evidence of the Company's witnesses to determine whether the Company is able to prove that the Claimant himself had intentionally used his AstroGO account to carry out the illegal streaming of the Astro Ceria content into the illegal streaming application HotTV or at the very least negligent enough to allow his AstroGo account to be abused for that purpose.

[33] COW1, the DI panel Chairman gave evidence that the panel took into account the evidence of COW3 to form an opinion on the guilt of the Claimant. The DI Panel came to the conclusion that the Claimant was guilty of the charges of misconduct on the basis that the Claimant's AstroGo Account was used for the illegal streaming based on the Claimant's email account and handphone number on the AstroGo account and relied extensively on the factual and expert opinion of COW3 who went on to

explain that there could be no unauthorised access because logging into AstroGO requires one time password (OTP) sent exclusively to the Claimant's registered mobile number.

[34] COW3 also suggested the likely involvement of the Claimant's son and wife in the illegal streaming as they had access to his AstroGo account credentials provided the Claimant gave them the OTP to gain access wherein after gaining access either the Claimant, his son or his wife can illegally share/restream the feed from Astro Ceria channel accessed via the Claimant's AstroGo account into the HotTV using cloud server streaming technology.

[35] What is unusual about COW3's evidence is that, this witness and by extension the DI panel which relied on this witness had somewhat shifted the burden of proof to the Claimant to prove that he was not the person illegally streaming the AstroGo Ceria content into the illegal streaming application HotTV despite the Company having accused the Claimant of doing the illegal or negligent act and as such bears the responsibility and the burden of proving the allegation levelled against the Claimant *(See COW3's witness statement at QA 12 [4]).* The DI Panel heavily relied on COW3's testimony during the DI and placed the Claimant in an unenviable and

helpless state by shifting the burden onto him to prove that he was not the 'culprit'. Having accused the Claimant as the person who had committed the illegal streaming simply because the Claimant was purportedly unable to prove that he was not the one who did it *(which is not the Claimant's burden to carry)*, this witness contradicted himself at QA12 [3] when he dabbled into conjectures by alleging various different ways in which the illegal streaming could have taken place by alleging that it could have been done by the Claimant's wife or son who had access to the Claimant's AstroGo account provided the Claimant gave his mobile OTP to them to gain access. Unfortunately for the Company, this sequence of evidence which dabbled into the realm of conjectures not only unfairly accused the Claimant and his family but was devoid of any cogent evidence to prove the trail of actions or activities by the Claimant, his wife or son as envisaged by COW3.

[36] In order for the Company to prove that it was the Claimant who had intentionally committed the illegal act of streaming the programme or content into the illegal streaming application HotTV or that the Claimant had negligently caused the same, more is needed than merely showing that the Claimant's AstroGo account was used for that purpose.

[37] Upon this Court analysing the evidence of COW2, COW3 and COW4, this Court finds that all they could show is that the Claimant's AstroGo account was the account through which the illegal streaming had taken place and due to this finding by these witnesses, a conclusion was drawn that the Claimant was responsible for the illegal streaming either intentionally or negligently. This method used by the Company to alleged that it was the Claimant who was responsible for the illegal streaming does not show intention or negligent on part of the Claimant but imposes on the Claimant an unfair and unjust strict liability without the Company bearing the burden of proving the intention or the condition giving rise to negligent on part of the Claimant including one of the all-important criteria for negligence in that there was a breach of duty of care on part of the Claimant that caused his AstroGo account to be used for the illegal streaming into the HotTV application. No convincing evidence was led by the Company in this regard to convince this Court that the Claimant failed in his duty of care that will enable the Company to successfully prove negligence.

[38] This Court has taken into account the evidence of the Company's witnesses during cross examination and the overall facts of the case. What is clear is that in the course of the investigation the Company failed to establish the critical chain of evidence needed to prove the Claimant's guilt

whether by intentionally doing the illegal act or by negligently allowing the illegal act to be carried out on the required proof on the balance of probabilities.

[39] The Company's evidence of searches in the dark web relating to the Claimant's credential not being leaked thereby drawing an inference that no evidence of the involvement of other third party in the illegal streaming is to this Court's mind inconclusive evidence to prove the guilt of the Claimant what more when COW1 or COW3 were unable to produce any evidence on how the search was carried out in the dark web.

[40] Apart from the above shoddy conclusion and unsupported inferences drawn by the Company, the Company also did not go any further to check or conduct forensic investigation on all the Claimant's or his family's devices to establish any link between the illegal streaming and the Claimant. There is no evidence before this Court that the Claimant was unwilling to cooperate with the Company in this regard.

[41] It must be noted here that the subsequent police investigation involving the Claimant for a criminal offence under ***Section 43AA (2) of the Copyright Act 1987*** also found no evidence of any of the Claimant's device or his family's devices were used for the illegal streaming. Needless to say, that the Claimant was acquitted and discharge for the offence under ***Section 43AA (2) of the Copyright Act 1987*** without the need for calling his defence. The Session Court's verdict was upheld and affirmed by the High Court which dismissed the prosecution's appeal against the acquittal and discharge of the Claimant.

[42] It is regrettable that the Company even included the criminal charge of ***Section 43AA (2) of the Copyright Act 1987*** in the notice of Domestic Inquiry which is the exclusive domain of the Public Prosecutor to determine and which was not the Company's business. The Company's confident conclusion in the DI notice that the Claimant had violated ***Section 43AA (2) of the Copyright Act 1987*** even before the Sessions Court dealing with this criminal matter could make its finding speaks volume of the haste in which the Company was in to find the Claimant guilty of the alleged misconducts. This Court cannot think of another reason for the inclusion in the DI notice of a violation under ***Section 43AA (2) of the Copyright Act 1987***, other than the Company's attempt to force the Claimant to admit to the illegal

streaming by intimidation despite the Company's investigations revealing many gaps that remained unanswered.

[43] This Court has also considered the Claimant's evidence that he was on leave on the day of the illegal streaming and was asleep until 10.00 am, long after the illegal streaming had taken place and spent the rest of the morning repairing and servicing his motorcycle. CLW1, the Claimant's wife also further gave evidence that the Claimant woke up from sleep at about 10.00 am and spent his whole morning repairing and servicing his motorcycle. The corroborated evidence of the Claimant was unrebutted convincingly by the Company. In as far as the Claimant's son (CLW2) was concerned, his evidence which was supported by his work attendance log which was also unchallenged revealed that he was away working in Kuala Lumpur at that time and was highly unlikely to have been interacting with his father to engage in the illegal streaming. These witnesses' evidence showed that the likelihood of anyone of them having committed the illegal act which was aided by the Claimant or having negligently caused the illegal streaming remains very doubtful and the benefit, if any such serious doubt exist ought to lean in favour of the Claimant given the circumstances of this case.

[44] One important aspect of this case is the deliberation of the DI panel. The DI panel also engaged in the enquiry on any technical evidence linking the alleged illegal streaming of the Astro Ceria programme into the illegal streaming application HotTV connected to any of the Claimant or his family's devices which went unexplained by the Company's witness. The DI panel's observation found at page 16 of the COB2 is as follows :-

> *"CM…… They are 2 completely different system. 2nd thing what we also find challenging is that the misuse of the account.* ***We are not able to see any facts or defense to say that this is done by you…..***
>
> *"CM: I think that's why we find it a bit challenging on the facts and evidence to defend the case based on the system and footprints. This is what we are seeing so far.* ***But there are also questions where I asked Brendan just now, are we able to match ID with the devices of the laptop of your son or such. But I think Brendan also doesn't have an answer for that because it's the police who investigate that. We might need to check with the police also to see the outcome…"***
>
> *(emphasis is this Court's)*

[45] Despite the DI panel itself expressing doubt and stating that the outcome of the police investigation is the credible source to prove the important link between the Claimant's or his family's devices and the illegal streaming, the DI panel nevertheless subsequently made a conclusion on

the guilt of the Claimant notwithstanding their opinion and recommendation that the police investigation and finding was absolutely necessary to finalise and strengthen the case of the Company. Thereupon the Company in its haste to find the Claimant guilty of the misconducts, nevertheless proceeded with the finding of guilt of the Claimant on the charges of misconduct as can be seen from the letter of dismissal dated 24.07.2024 despite no credible evidence to do so wherein the Company continued to accuse the Claimant in the dismissal letter of intentionally and/or negligently abusing his AstroGo Account to illegally stream Astro Ceria content/programme into the illegal HotTV application which was never proven at all.

[46] Having considered all the evidence before this Court, this Court makes a finding that the Company failed to prove that the Claimant was guilty of the charges of misconduct levelled against him as reflected in the charges of misconduct. This Court also makes a finding that the Company failed to demonstrate how the Claimant had breached the implied and/or express terms of his employment contract particularly the Company's CoBE and Information Technology Security Policy.

[47] Pursuant to Section 30(5) of "The Act" and guided by the principles of equity, good conscience and substantial merits of the case without regard to

technicalities and legal forms and after having considered the totality of the facts of the case, the evidence adduced and by reasons of the established principles of industrial relations and disputes as stated above, this Court finds that the Company has failed to prove on the balance of probabilities that the dismissal of the Claimant from his employment with the Company was with just cause or excuse.

REMEDY

[48] This Court having ruled that the Claimant was dismissed from his employment without just cause or excuse, will now consider the appropriate remedy for the Claimant.

[49] The Claimant commenced employment with the Company with his continuous service recognized from previous affiliate company thus his employment date was effective 02.05.1997. The Claimant was dismissed from his employment with the Company on the 24.07.2023. Thus, the Claimant has served the Company for a period of 26 full years. There is no dispute on the Claimant's status as a confirmed employee of the Company. The Claimant's last drawn wages together with his fixed allowances was RM9,880.00 per month.

[50] The Claimant in stating that his dismissal from employment with the Company was without just cause or excuse, prays to this Court for reinstatement to his former position without any loss of wages and other benefits.

[51] Given the factual matrix of this case and the type of allegations levelled against the Claimant it is clear the working relationship between the Claimant and the Company has broken down with no chance of reconciliation and it is this Court's view that reinstatement of the Claimant to his former position in the Company not a relief that this Court will order in the circumstances of this case in order to ensure industrial harmony.

[52] The appropriate remedy in the circumstances of this case must be compensation in lieu of reinstatement. The Claimant is also entitled to back wages in line with Section 30(6A) of "The Act" and the factors specified in the Second Schedule therein which states:-

> *"1. In the event that backwages are to be given, such backwages shall not exceed twenty-four months' backwages from the date of dismissal based on the last-drawn salary of the person who has been dismissed without just cause or excuse;"*

[53] Equity, good conscience and substantial merits of the case without regard to technicalities and legal forms remains the central feature and focal point of this Court in arriving at its decision and these principles will be adhered to by this Court at all times leading to the final order of this Court.

[54] This Court is further bound by the principle laid down in the case of ***Dr James Alfred (Sabah) v. Koperasi Serbaguna Sanya Bhd (Sabah) & Anor [2001] 3 CLJ 541*** where his lordship Justice Steve Shim CJ (Sabah & Sarawak) in delivering the judgment of the Federal Court opined:-

> *"In our view, it is in line with equity and good conscience that the Industrial Court, in assessing quantum of backwages, should take into account the fact, if established by evidence or admitted, that the workman has been gainfully employed elsewhere after his dismissal. Failure to do so constitutes a jurisdictional error of law. Certiorari will therefore lie to rectify it.* ***Of course, taking into account of such employment after dismissal does not necessarily mean that the Industrial Court has to conduct a mathematical exercise in deduction.*** *What is important is that the Industrial Court, in the exercise of its discretion in assessing the quantum of backwages, should take into account all relevant matters including the fact, where it exists, that the workman has been gainfully employed elsewhere after his dismissal. This discretion is in the nature of a decision- making process".*
>
> ***(emphasis is this Court's)***

[55] This Court must take into account the post dismissal earnings of the Claimant in order to make an appropriate deduction from the back wages to be awarded. The Claimant has given evidence that after his dismissal he was unable to find any new fixed employment and this is understandable given the Claimant's age nearing retirement and he was forced to take up some free-lance work and other work as a part time grab driver. From these uncertain jobs the Claimant was able earn a sum of RM2,000.00 per month on average. This evidence will be taken into account when ordering the appropriate backwages for the Claimant.

[56] Having considered all the facts of the case on the appropriate sum to be awarded and after taking into account the Claimant's post dismissal income or earnings, this Court hereby orders that the Claimant is to be paid backwages of his last drawn wages of RM9,880.00 per month for 22 months. The Claimant is also entitled to compensation in lieu of reinstatement for the 26 years of service completed calculated at one-month wages of RM9,880.00 for every year of service completed. This will amount to:-

(i) Backwages ordered:-

RM9,880.00 x 22 months = RM217,360.00.

(ii) Compensation in lieu of reinstatement ordered :-

RM9,880.00 x 26 months = RM256,880.00

[57] Thus, the total sum ordered by this Court amounts to RM474,240.00.

FINAL ORDER OF THIS COURT

[58] It is this Court's order that the Company pays the Claimant a sum of **Ringgit Malaysia Four Hundred Seventy-Four Thousand Two Hundred Forty (RM474,240.00)** only less statutory deduction (if any) within 30 days from the date of this Award.

HANDED DOWN AND DATED THIS 27th DAY OF OCTOBER 2026

-Signed-

(AUGUSTINE ANTHONY)
CHAIRMAN
INDUSTRIAL COURT OF MALAYSIA
KUALA LUMPUR