

**INDUSTRIAL COURT OF MALAYSIA**

**CASE NO: 16/4-2750/18**

**BETWEEN**

**KRISHNAN A/L SUBRAMANIAM**

**AND**

**TENAGA NASIONAL BERHAD**

**AWARD NO: 387 OF YEAR 2020**

**Before** : **Y. A. PUAN SUMATHI MURUGIAH**  
- **CHAIRMAN (sitting alone)**

**Venue** : Industrial Court of Malaysia  
Johor Branch

**Date of Reference** : 25.09.2018.

**Dates of Mention** : 08.11.2018; 0601.2019; 25.03.2019;  
0611.2019.

**Dates of Hearing** : 07.05.2019; 08.05.2019; 29.07.2019;  
30.07.2019; 11.09.2019; 24.09.2019.

**Representation** : Mr. A. Sivananthan  
From Malaysian Trades Union Congress (MTUC)  
Johor Division  
Representative for the Claimant

Ms. Nur Elissa binti Baharudin and  
Ms. Syazwani binti Suhaimy  
From Messrs Zul Rafique & Partners  
Counsels for the Respondent

### **Reference:**

The reference under Section 20(3) of the Industrial Relations Act 1967 by the Honourable Minister of Human Resources Malaysia, is regarding the dismissal of **Krishnan a/l Subramaniam** (“the Claimant”) by **Tenaga Nasional Berhad** (“the Company”) on 05.06.2018.

### **AWARD**

#### **Brief Facts**

1. The Claimant was initially employed by the Company (previously known as “*Lembaga Letrik Negara*”) as a General Worker with effect from 01.01.1981.
2. The Claimant’s last held position was “*Penolong Juruteknik Tingkatan Kanan “A”*” at the Company’s Meter Unit.
3. By a Charge Letter dated 31.10.2016, the Company required the Claimant to attend an inquiry on 23.11.2016 and 24.11.2016 to answer the charges of misconduct as specified therein. The Charge Letter is as shown below:

## Memorandum

Ruj. Kami : TNB/JPU/P.10045004(P)  
Tarikh : 31 Oktober 2016  
Kepada : Encik Krishnan a/l Subramaniam  
No. Pekerja: 10045004  
Penolong Juruteknik Tingkatan Khas "A" (TT06)  
Pejabat Pengurus Kawasan (Johor Bahru)  
Bahagian Pembahagian, TNB  
  
Melalui : Pengurus Kawasan (Johor Bahru)  
Bahagian Pembahagian, TNB

Tuan,

**SURAT PERTUDUHAN**

Laporan telah diterima yang menyatakan bahawa tuan, Krishnan a/l Subramaniam, No. Pekerja: 10045004, seorang Penolong Juruteknik Tingkatan Khas "A" (TT06) di Pejabat Pengurus Kawasan (Johor Bahru), Bahagian Pembahagian, TNB telah didapati melakukan salahlaku – salahlaku berikut:-

**SALAHLAKU PERTAMA.**

Pada 17 April 2016, lebih kurang jam 6.30 petang, di Warong Minuman Cina, No. 2, Jalan Kebun Teh Lama, 80250 Johor Bahru, tuan telah menerima wang sebanyak RM650.00 tanpa kebenaran Syarikat daripada Encik Primal a/l Murugesu, No. Kad Pengenalan: 580531-01-5687 bagi tujuan untuk menguruskan permohonan bekalan elektrik untuk premis yang beralamat No. 55A, Jalan Kebun Teh Lama, 80250 Johor Bahru.

Perbuatan tuan ini adalah merupakan satu Salahlaku Berat. Mengikut Prosedur Tatatertib TNB Edisi Keenam, 2013, tuan telah melanggar:-

**Perkara 21, Senarai Salahlaku Berat, Lampiran "J", di muka surat 43.**

"Melakukan sesuatu kerja atau tugas di luar bidang kuasa atau tanggungjawabnya tanpa kebenaran" dan/atau

**Perkara 22, Senarai Salahlaku Berat, Lampiran "J" di muka surat 43**

"Menyalahgunakan kuasa yang diberi oleh Majikan atau Syarikat atau menggunakan kedudukan jawatan atau pangkatnya untuk faedah dirinya atau keluarga terdekat atau orang lain", dan/atau

**Perkara 24, Senarai Salahlaku Berat, Lampiran "J" di muka surat 43**

"Membelakangkan kewajipan dan/atau berkelakuan dengan sedemikian cara yang boleh menyebabkan kepentingan persendirianya bercanggah dengan kewajibannya terhadap Syarikat", dan/atau

LITINS

**Perkara 25, Senarai Salahlaku Berat, Lampiran "J", di muka surat 43,**

"Berkelakuan dengan sedemikian cara hingga menjatuhkan reputasi perkhidmatan atau menghilangkan kepercayaan terhadap perkhidmatan Syarikat dan/atau jawatannya sendiri" dan/atau

**Perkara 73, Senarai Salahlaku Berat, Lampiran "J", di muka surat 47,**

"Melanggar atau tidak mematuhi atau gagal mematuhi mana-mana terma dan/atau syarat perkhidmatan (tersurat dan/atau tersirat), Peraturan atau Arahan atau Pekeliling Syarikat atau sebahagian daripada Peraturan atau Arahan atau Pekeliling berkenaan".

**SAL AHLAKU KEDUA**

Pada 25 April 2016, lebih kurang jam 5.30 petang, di Warong Minuman Cina, No. 2, Jalan Kebun Teh Lama, 80250 Johor Bahru, tuan telah menerima wang sebanyak RM350.00 tanpa kebenaran Syarikat daripada Encik Primal a/ Murugesu, No. Kad Pengenalan: 580531-01-5687 bagi tujuan untuk menguruskan permohonan bekalan elektrik untuk premis yang beralamat No. 55A, Jalan Kebun Teh Lama, 80250 Johor Bahru.

Perbuatan tuan ini adalah merupakan satu Salahlaku Berat. Mengikut Prosedur Tatatertib TNB Edisi Keenam, 2013, tuan telah melanggar:-

**Perkara 21, Senarai Salahlaku Berat, Lampiran "J", di muka surat 43,**

"Melakukan sesuatu kerja atau tugas di luar bidang kuasa atau tanggungjawabnya tanpa kebenaran" dan/atau

**Perkara 22, Senarai Salahlaku Berat, Lampiran "J" di muka surat 43**

"Menyalahgunakan kuasa yang diberi oleh Majikan atau Syarikat atau menggunakan kedudukan jawatan atau pangkatnya untuk faedah dirinya atau keluarga terdekat atau orang lain", dan/atau

**Perkara 24, Senarai Salahlaku Berat, Lampiran "J" di muka surat 43**

"Membelakangkan kewajipan dan/atau berkelakuan dengan sedemikian cara yang boleh menyebabkan kepentingan persendirianya bercanggah dengan kewajipannya terhadap Syarikat", dan/atau

**Perkara 25, Senarai Salahlaku Berat, Lampiran "J", di muka surat 43,**

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**Perkara 73, Senarai Salahlaku Berat, Lampiran "J", di muka surat 47,**

"Melanggar atau tidak mematuhi atau gagal mematuhi mana-mana terma dan/atau syarat perkhidmatan (tersurat dan/atau tersirat), Peraturan atau Arahan atau Pekeliling Syarikat atau sebahagian daripada Peraturan atau Arahan atau Pekeliling berkenaan".

### SAL AHLAKU KETIGA

Pada 18 Mei 2016, lebih kurang jam 8.00 malam, di hadapan Tokong Cina, No. 5, Jalan Kebun Teh Lama, 80250 Johor Bahru, tuan telah menerima wang sebanyak RM3,000.00 tanpa kebenaran Syarikat daripada Encik Primal a/l Murugesu, No. Kad Pengenalan: 580531-01-5687 bagi tujuan untuk menguruskan permohonan bekalan elektrik untuk premis Encik Jamain Bin Tosin, Warga Indonesia yang merupakan Rumah Setinggal, Jalan Kebun Teh Lama, 80250 Johor Bahru.

Perbuatan tuan ini adalah merupakan satu Salahlaku Berat. Mengikut Prosedur Tata tertib TNB Edisi Keenam, 2013, tuan telah melanggar:-

**Perkara 21, Senarai Salahlaku Berat, Lampiran "J", di muka surat 43,**

"Melakukan sesuatu kerja atau tugas di luar bidang kuasa atau tanggungjawabnya tanpa kebenaran" dan/atau

**Perkara 22, Senarai Salahlaku Berat, Lampiran "J" di muka surat 43**

"Menyalahgunakan kuasa yang diberi oleh Majikan atau Syarikat atau menggunakan kedudukan jawatan atau pangkatnya untuk faedah dirinya atau keluarga terdekat atau orang lain", dan/atau

**Perkara 24, Senarai Salahlaku Berat, Lampiran "J" di muka surat 43**

"Membelakangkan kewajipan dan/atau berkelakuan dengan sedemikian cara yang boleh menyebabkan kepentingan persendirianya bercanggah dengan kewajibannya terhadap Syarikat", dan/atau

**Perkara 25, Senarai Salahlaku Berat, Lampiran "J", di muka surat 43,**

"Berkelakuan dengan sedemikian cara hingga menjatuhkan reputasi perkhidmatan atau menghilangkan kepercayaan terhadap perkhidmatan Syarikat dan/atau jawatannya sendiri" dan/atau

**Perkara 73, Senarai Salahlaku Berat, Lampiran "J", di muka surat 47,**

"Melanggar atau tidak mematuhi atau gagal mematuhi mana-mana terma dan/atau syarat perkhidmatan (tersurat dan/atau tersirat), Peraturan atau Arahan atau Pekeliling Syarikat atau sebahagian daripada Peraturan atau Arahan atau Pekeliling berkenaan".

### SAL AHLAKU KEEMPAT

Pada 20 Mei 2016, lebih kurang jam 7.30 malam, di tepi Jalan Kebun Teh Lama, 80250 Johor Bahru, tuan telah menerima wang sebanyak RM2,000.00 tanpa kebenaran Syarikat daripada Encik Asmat Bin Busra, No. Kad Pengenalan: 610501-71-5193 bagi tujuan untuk menguruskan permohonan bekalan elektrik untuk premis yang merupakan Rumah Setinggal, Jalan Kebun Teh Lama, 80250 Johor Bahru.

Perbuatan tuan ini adalah merupakan satu Salahlaku Berat. Mengikut Prosedur Tata tertib TNB Edisi Keenam, 2013, tuan telah melanggar:-

Perkara 21, Senarai Salahlaku Berat, Lampiran "J", di muka surat 43,

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Perkara 73, Senarai Salahlaku Berat, Lampiran "J", di muka surat 47,

"Melanggar atau tidak mematuhi atau gagal mematuhi mana-mana terma dan/atau syarat perkhidmatan (tersurat dan/atau tersirat), Peraturan atau Arahan atau Pekeliling Syarikat atau sebahagian daripada Peraturan atau Arahan atau Pekeliling berkenaan".

Dengan ini, tuan adalah dikehendaki supaya menghadirkan diri ke satu Sesi Siasatan Dalamam yang akan diadakan pada:-

Tarikh : 23 & 24 November 2016

Masa : 9.00 pagi

Tempat : Bilik Mesyuarat,  
Pejabat Pengurus Kawasan (Johor Bahru)  
Bahagian Pembahagian, TNB.

Tuan adalah dibenarkan membawa apa-apa bukti, saksi, seorang rakan sekerja (sekiranya tuan tidak menjadi ahli kesatuan sekerja) atau seorang wakil kesatuan (sekiranya tuan adalah ahli kesatuan sekerja) untuk membantu tuan di dalam sesi ini.

Ingin ditegaskan di sini bahawa perbuatan salahlaku di atas adalah merupakan suatu salahlaku berat, dan jika disabitkan kesalahan tuan boleh dikenakan hukuman sehingga buang kerja. Oleh itu, tuan adalah dinasihatkan supaya hadir ke sesi Siasatan Dalamam pada tarikh, masa dan tempat yang ditetapkan di atas.

Sekiranya tuan gagal menghadiri sesi Siasatan Dalamam yang telah ditetapkan di atas tanpa sebab dan/atau alasan yang munasabah, sesi Siasatan Dalamam tersebut akan diteruskan tanpa kehadiran tuan dan keputusan akan dibuat berdasarkan maklumat-maklumat dan/atau fakta yang akan dikemukakan oleh pihak Pegawai Pendakwa Tatatertib sahaja.

Kos kehadiran saksi tuan akan ditanggung oleh Syarikat manakala kos kehadiran Pembela/wakil tuan tidak akan ditanggung oleh syarikat.

Sekian,



(Shaharuddin bin Hanapi)  
PEGAWAI PENDAKWA TATATERTIB  
JABATAN PERKHIDMATAN UNDANG - UNDANG  
TENAGA NASIONAL BERHAD

AKUAN PENERIMAAN

Saya, \_\_\_\_\_, No. Pekerja: \_\_\_\_\_,

mengaku telah menerima Surat Pertuduhan ini.

Tarikh \_\_\_\_\_ Tandatangan \_\_\_\_\_

4. The inquiry (DI) against the Claimant commenced as scheduled on 23.11.2016 wherein the Claimant pleaded not guilty to all the four (4) charges of misconduct preferred against him. The inquiry proceeded on 24.11.2016, 10.01.2017, 11.01.2017, 12.01.2017, 13.09.2017, 10.04.2018, 14.05.2018 and was completed on 15.05.2018.


6. The “*Jawatankuasa Tata tertib Bagi Kumpulan Bukan Eksekutif, TNB*” (Disciplinary Committee for Non-Executive Staff) (hereinafter referred to as “**the Disciplinary Committee**”) unanimously found the Claimant guilty of Charges 1, 2 and 4 and not guilty of Charge 3.

7. Thereafter on 05.06.2018, having considered the mitigating factors submitted by the Claimant, the aggravating factors submitted by the “*Pegawai Pendakwa Tata tertib*” and all other matters, including the nature and seriousness of the Claimant’s misconduct, the Disciplinary Committee informed the Claimant of the punishment of dismissal imposed upon him.

8. By a letter dated 05.06.2018 as shown below, the Company confirmed in writing the outcome of the inquiry and the punishment of dismissal that was imposed upon the Claimant with immediate effect.




By the same letter, the Claimant was also informed of his right to appeal to the “*Jawatankuasa Rayuan Tatatertib Bagi Kumpulan Bukan Eksekutif TNB*” (Disciplinary Appeals Committee for Non-Executive Staff) (hereinafter referred to as “**the Disciplinary Appeals Committee**”) against the punishment imposed on him within fifteen (15) days from the date of receipt of the letter.



**Tenaga Nasional Berhad** (200566-W)  
Tingkat 3, Wisma TNB, Jalan Yahya Awal,  
80100 Johor Bahru, Johor Darul Ta'zim.

Tel : 07-219 2200  
Fax : 07-219 2237  
www.tnb.com.my

317 627



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**Memorandum**

Ruj. Kami : TNB/JI 15/11/7 (Bhg 3) (P.10045004)

Tarikh : 05 Jun 2018

Kepada : **Encik Krishnan a/l Subramaniam**  
(No. Pekerja: 10045004)  
Penolong Juruteknik Tingkatan Khas "A" (TT06)  
Pejabat Pengurus Kawasan (Johor Bahru)  
Bahagian Pembahagian, TNB

Melalui : **Jurutera Utama - Device Operation (Selatan)**  
Unit Metering, Jabatan Distribution Network  
Bahagian Pembahagian, TNB

*P. Subram*

**SURAT KEPUTUSAN/HUKUMAN TINDAKAN TATATERTIB**


Kami merujuk kepada Surat Pertuduhan bertarikh 31 Oktober 2016 yang telah dikemukakan kepada tuan dan berlanjutan dari itu, sesi Siasatan Dalaman yang telah diadakan bermula 24 November 2016 sehingga 05 Jun 2018, di Bilik Mesyuarat Tanjung Puteri Tingkat 3, Wisma TNB Jalan Yahya Awal, Johor Bahru.

Setelah mendengar keterangan saksi-saksi, meneliti Nota Prosiding tatatertib dan dokumen-dokumen yang dikemukakan semasa sesi Siasatan Dalaman, Jawatankuasa Tatatertib Bagi Kumpulan Bukan Eksekutif TNB telah memutuskan pada 15 Mei 2018 dan berpuas hati bahawa Pertuduhan yang dikenakan terhadap tuan telah dapat dibuktikan.

Seterusnya Jawatankuasa Tatatertib Bagi Kumpulan Bukan Eksekutif TNB setelah mendengar dan menimbang faktor-faktor mitigasi yang dikemukakan oleh tuan serta faktor-faktor aggravasi oleh Pegawai Pendakwa Tatatertib, sebulat suara memutuskan tuan tidak bersalah terhadap pertuduhan Salahlaku Ketiga dan bersalah terhadap pertuduhan Salahlaku Pertama Kedua dan Keempat serta dikenakan hukuman **Buang Kerja berkuat kuasa mulai 05 Jun 2018**.

Sekiranya tuan tidak berpuas hati dengan hukuman yang dikenakan, tuan bolehlah membuat rayuan kepada Pengerusi Jawatankuasa Rayuan Tatatertib Bagi Kumpulan Bukan Eksekutif di alamat Ketua Pegawai Pembangunan Integriti, Jabatan Integriti, Tenaga Nasional Berhad, Aras 3A, Lobi 2, Bangunan Crystal Plaza, Jalan 51A/223, 46100 Petaling Jaya di dalam tempoh lima belas (15) hari bekerja dari tarikh penerimaan surat keputusan /hukuman ini.

Sekian: ..



(MOHD RIZAL BIN RAMLIAN)  
PENGURUSI  
JAWATANKUASA TATATERTIB BAGI KUMPULAN BUKAN EKSEKUTIF  
TENAGA NASIONAL BERHAD

*Uji Postam*  
4/6  
6/6/18

*Ramon*  
sala far  
3/6/18

TITMS

Surat Keputusan/Hukuman Tindakan Tatatertib  
Encik Krishnan a/l Subramaniam  
(No. Pekerja: 10045004)  
...sambungan

**AKUAN PENERIMAAN**

Saya KRISHNAN A/L SUBRAMANIAM No. Pekerja 10045004 mengaku telah menerima surat diatas dan faham isi kandungannya.

Tarikh: 5 JUN 18

Tandatangan: 

- s.k. Pengurus Besar  
(HR Shared Service Centre)  
Bahagian Sumber Manusia Kumpulan, TNB
- s.k. Pengurus Besar Kanan (Distribution Network)  
Bahagian Pembahagian, TNB
- s.k. Kesatuan/Persatuan yang terlibat (KPPPTNB)
- s.k. Pengurus Besar Kanan  
Jabatan Perkhidmatan Undang-Undang
- s.k. Ketua Pegawai Pembangunan Integriti  
Tenaga Nasional Berhad

9. By a letter dated 12.06.2018, the Claimant appealed to the Disciplinary Appeals Committee against the punishment of dismissal imposed on him by the Disciplinary Committee.

10. By a letter dated 16.08.2018, the Claimant was informed that his appeal was rejected and that the punishment of dismissal from service was maintained.

### **The Company's case**

11. Sometime in June 2016, the Company received a complaint from a consumer, Perimal a/l Murugesu (COW-1) that had paid cash amounting to RM1,000 to the Claimant on two separate dates for electricity supply application for COW-1's premise at the address of No. 55A, Jalan Kebun Teh Lama, 80250 Johor Bahru without the Company's permission.

12. The Company conducted an investigation based on COW-1's complaint and discovered that the Claimant had also received cash payments for electricity supply application from COW-1's neighbours, Jamain bin Tosin and Asmat bin Bursa without the Company's permission.

13. As the Claimant was found to have breached the Company's Code of Ethics Procedure, 6<sup>th</sup> Edition 2013 i.e Articles 21, 22, 24 ,25 and 73 for Charges 1, 2 & 4, the Company decided to impose a

punishment of dismissal against the Claimant as his actions amount to serious misconduct.

14. The Company called seven (7) witnesses to testify on its behalf at the hearing. They are:

- i. Perimal M a/l Murugesu (COW-1) – Retired
- ii. Parameswara a/l Perimal M (COW-2)- Enforcer at SWCorp
- iii. Mohd Rizal bin Ramlan (COW-3)- “Ketua Jurutera  
(Pembangunan Aset)” with  
the Company
- iv. Mas Hadi bin Masri (COW-4) – “Juruteknik” with the Company
- v. Amran bin Haji Jantan (COW-5)- Customer Service Officer with  
the Company
- vi. Mohamed Nasser bin Ariffin (COW-6) – “Juruteknik Tingkatan  
Kanan” with the  
Company
- vii. Nuur ‘Aisyah binti Khairuddin (COW-7)- “Pengurus Unit  
Pengurusan Displin,  
Jabatan Integriti”  
with the Company

15. COW-1 had testified in his evidence-in-chief that he had paid to the Claimant a total sum of RM1,000 on two different occasions. His evidence is that he had made the first payment of RM650 to the Claimant on 17.04.2016 at about 6.30 pm at Warong Minuman Cina, No. 2, Jalan Kebun Teh Lama, 80250 Johor Bahru and another RM350 on 25.04.2016 at about 5.30pm also at Warong Minuman Cina, No. 2, Jalan Kebun Teh Lama, 80250 Johor Bahru. These transactions were said to have been witnessed by Janaky a/p Narayan Muthu, being the COW-1's wife and was within the knowledge of COW-2 being COW-1's son who had given the total sum of RM1,000 to COW-1 for the purpose of giving the same to the Claimant.

16. In his statement, COW-1 had also stated that the sum of RM1,000 was requested by the Claimant as payment towards the cost involving works relating to the electric wire connection.

17. COW-2 had in his statement said that he had given COW-1 RM1,000 for the purpose of paying towards the cost involving works relating to the electricity connection as insisted by COW-1, being his father.

18. COW-3 had given evidence as the Chairman of the Disciplinary Committee who had chaired the inquiry conducted against the Claimant.

Cow-3's evidence is that the Claimant was represented by " Kesatuan Percantuman Pekerja-Pekerja (KPPP)" at the inquiry. It is also COW-3's evidence that the inquiry had been held and conducted in accordance to the rules of natural justice. On conclusion of the inquiry, the Claimant was found guilty of Charges 1, 2 and 4 based on the reasons stated in at pages 75 to 77 of the Company's Bundle of Documents [Volume 2] (marked as "COB-2").

19. COW-4, being the immediate superior of the Claimant had given evidence that the Claimant's job scope does not involve handling applications for electricity supply by consumers. He also does not have the authority to collect any payment from the consumers and that the payment for the installation of electricity wires would be charged to the consumers via their electricity bill.

20. COW-5 had given evidence as the Claimant's colleague whom the Claimant had admitted to have receipt a sum of RM1,000 from an Indian consumer who had called over to lodge a complaint against the Claimant. The Indian consumer whom COW-5 had referred to was COW-1. In accordance to COW-5's evidence in his witness statement (COWS-5), the Claimant had told him that COW-1 had forced the Claimant to take the sum of RM1,000 as a token of appreciation.

COW-5 had also testified that the conversation between himself and the Claimant was when COW-5 had been instructed by Mohd Azhan to speak to the Claimant regarding the complaint made by COW-1.

4. S: Sila jelaskan kepada Mahkamah apakah yang anda tahu berkenaan kes ini yang melibatkan Yang Menuntut?

J: Pada mulanya, saya diarahkan oleh Encik Mohd Azhan untuk bertanya lebih lanjut kepada Yang Menuntut berkenaan dengan aduan seorang pengguna berbangsa India pada 7.6.2016. Aduan tersebut adalah mengenai pembayaran wang tunai yang dibuat oleh pengguna berbangsa India tersebut kepada Yang Menuntut.

Selepas itu, saya menelefon Yang Menuntut dan memaklumkan kepadanya untuk berjumpa. Pada hari yang sama pada sebelah petang, Yang Menuntut ada berjumpa dengan saya dan bercerita panjang berkenaan aduan pengguna berbangsa India tersebut. Yang Menuntut sendiri memberitahu saya beliau menerima pembayaran RM1000.00 dari pengguna berbangsa India tersebut kerana dipaksa oleh pengguna berbangsa India tersebut sebagai tanda terima kasih.

21. COW-6 gave evidence as the witness to the statement given by Asmat bin Busra, COW-1's neighbour in relation to Charge 4 framed against the Claimant.

22. COW-7 had given evidence in her capacity as the Secretary of the Appeal Committee. In her statement, she had said that the Appeal Committee had rejected the appeal made by the Claimant and maintained the decision of the Company to dismiss the Claimant based on two (2) reasons i.e the misconduct by the Claimant was a grave misconduct and because the Claimant had record of previous disciplinary issues.

### **The Claimant's Case**

23. The Claimant had denied all the charges framed against him and had testified that COW-1 was his friend who had lived at the squatter houses at Jalan Kebun Teh Lama, 80250 Johor Bahru. The Claimant had also testified that he had met COW-1 at the entrance of Wisma TNB, Jalan Yahya Awal, Johor Bahru when COW-1 had requested for the Claimant's assistance to apply or reapply for electricity supply to his house had been effected due to a fire incident.

24. It is the Claimant's evidence that he had merely introduced COW-1 to Hj. Mohamad Azman bin Ismail for the purpose of applying or reapplying for the electricity supply. He also claims that after the introduction, he had not met COW-1 ever since.



25. The Claimant also denies meeting and or receiving any monies from En. Asmat bin Bursa as per stated in Charge 4. His evidence with regard to Charge 4 is as per stated in his witness statement (CLWS-1) as shown below:

12. Apakah penjelasan anda terhadap tuduhan keempat daripada Syarikat?
- J) Saya tidak kenal dengan Encik Asmat Bin Busra dan tidak pernah berjumpa dengan Encik Asmat Bin Busra. Saya menafikan menerima wang berjumlah RM2,000.00 daripada Encik Asmat Bin Busra pada 20.5.2018 sepertimana tuduhan keempat terhadap saya. Pada 25.5.2016 saya hanya menjalankan tugas memasang meter melalui satu lagi arahan yang telah dikeluarkan oleh Tuan Haji Mohamad Azman bagi pemasangan semula bekalan elektrik berpandukan nombor akaun yang masih aktif dan laporan polis oleh Encik Asmat Bin Busra. Encik Mas Hadi telah mengeluarkan arahan tugas kerja berpandukan no akaun tersebut oleh Tuan Haji Mohamad Azman Bin Ismail. Kerja-kerja dilakukan oleh pasukan servis yang diketuai oleh Mohd Ramdzan bin Abu Talib serta ahli pasukan pemandu Encik Amran Bin Nong, Encik Harun Bin Manan, dan juga Encik Kamil bin Siraj yang diminta memandu arah pasukan ke rumah Encik Asmat Bin Busra bagi pemasangan semula /baru bekalan elektrik dan juga meter 1 fasa di pasang. Meter tersebut telah dibeli oleh Encik Asmat daripada Encik Roslan Bin Pilus yang mana rumah beliau telah dirobuhkan oleh pihak pengurusan keretapi (KTM) dengan harga RM450.00 dan memasang meter dilakukan oleh pasukan saya di rumahnya di Jalan Kebun Teh, 80250 Johor Bahru yang telah terlibat sama dengan kebakaran dengan rumah Encik Primal A/L Murugesu pada 8.1.2016.

### **The Inquiry (DI)**

26. The Company had conducted a DI against the Claimant on 23.11.2016, 24.11.2016, 10.01.2017, 11.01.2017, 12.01.2017, 13.09.2017, 10.04.2018, 14.05.2018 and 15.05.2018. The DI notes had been filed in COB-2 at pages 1 to 74.

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27. The Industrial Court is required at the onset to examine the notes of the DI and verify whether the DI was valid, whether the notes were accurate and whether a *prima facie* case has been made out against the Claimant (**Bumiputra Commerce Bank Bhd v. Mahkamah Perusahaan Malaysia & Anor [2004] 7 CLJ 77**).

*“ The Industrial Court's jurisdiction, in instances where a domestic inquiry has been held, was limited to considering whether there was a prima facie case against an employee. Thus, in the present case, the Industrial Court should have first considered whether or not the domestic inquiry was valid and the notes accurate. In the absence of such considerations, the Industrial Court's action in proceeding to decide the matter without any regard to the notes of inquiry could not be described as anything more than an error of law.”*

28. The Claimant had contended that the DI was conducted in breach of the rules of Natural Justice. This court refers to the case of **Kahan Singh v. Air Asia Berhad [2015] 2 LNS 1303 (Award No. 1303 of 2015)** where the followings were stated:

*“ In evaluating the process of the DI, I am minded that the decision making process must comply with the basic principle of Natural Justice. The principle of Natural Justice*

composed 2 pillars which has been explained by the Privy Council in **B Surinder Singh Kanda v. Government of Federation of Malaya [1962] MLJ 169** as:

- 1) *The rule of hearing or **principle of audi alteram partem** meaning that no one is to be condemned unheard.*
- 2) *The **rule against bias**; or *nemo iudex in causa sua* meaning no one should be a judge in his own cause...”*

29. The concept stated in the case of **Skypak International (M) Sdn Bhd v. Foong Kah Tin [1987] 1 ILR 495 (Award No. 161 of 1987)** is also being referred to by this court, where the followings were stated;

*“The principles of natural justice in the context of an industrial disciplinary inquiry may be stated to be as follows:*

*(a) That the workman whose conduct or misconduct is being inquired into must have a reasonable notice of the case he has to meet.*

*(b) That he must have reasonable opportunity of being heard in his own defence according to the maxim 'audi partem alteram', and this includes, inter alia, the opportunity to face and challenge his*

*accusers, witnesses, and whatever evidence there is against him.*

*(c) That the hearing must be by an impartial tribunal, i.e. a person who is neither directly nor indirectly the party to the case: 'nemo debet esse iudex in propria causa', that is to say, no man shall sit in judgment in his own cause or that in which he has an interest."*

30. Although a DI had been conducted and a verdict of guilty had been imposed on the Claimant, in accordance to the case of **Hong Leong Equipment Sdn. Bhd. v. Liew Fook Chuan & Other Appeals [1997] 1 CLJ 665**; where Gopal Sri Ram JCA as he then was said 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. "*

31. As such, the court heard the case afresh and evaluation was made based on the evidence adduced at the hearing of this case in court.

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## **The Issues**

32. Based on both the parties' case as stated above, it is apparent that the two questions which the court has to ask itself are:

- (i) was there a dismissal; and
- (ii) if the answer to (i) is in the affirmative, was the dismissal with or without just cause or excuse.

33. As stated in the case of **Wong Chee Hong v. Cathay Organisation (M) Sdn. Bhd. [1988] 1 CLJ 45; [1988] 1 CLJ (Rep) 298** by the then Supreme Court as follows:

*“ When the Industrial Court is dealing with a reference under S 20 , the first thing that the court will have to do is to ask itself a question whether there was a dismissal, and if so, whether it was with or without just cause or excuse.”*

34. In this case, the fact of dismissal is not disputed. Therefore, the only issue which is left to be deliberated before this court is whether the dismissal of the Claimant by the Respondent was with just cause or excuse.

35. Having established that there is a dismissal, the principals in the Federal Court case of **Wong Yuen Hock v Syarikat Hong Leong Assurance Sdn. Bhd. & Anor [1995] CLJ 344** is now being referred.

In this case it was held that :-

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

36. Based on the foregoing paragraphs 32 to 35 herein above, this court has a duty to consider the followings:-

- i. Whether the Claimant is guilty of the allegations of misconduct levelled against him by the Company;  
and
- ii. If the allegations of misconduct had been proven by the Company against the Claimant, whether that misconduct is serious enough to warrant a dismissal of the Claimant by the Company.

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## The Law

37. In the case of **Shell Malaysia Trading Co. Sdn Bhd v. National Union of Petroleum & Chemical Industry Workers [1986] 1 ILR 677**, the Industrial Court stated that:

*"The company cited various authorities from Soonavala's The Supreme Court on Industrial Law (1979 Edition).... But one authority relied on by the company goes on to add: It is for the management to determine whether the act of the workman constitutes misconduct and whether it merits an order of dismissal. However, in determining whether there has been such misconduct, it must have facts upon which to base its conclusions and it must act in good faith without caprice or discrimination and without motive of victimization or intimidation or resorting to unfair labour practice and there must be no infraction of the accepted rules of natural justice. When management does have facts from, which it can conclude misconduct, its judgement cannot be questioned provided the above mentioned principles are not violated."*

38. In the case of **Ireka Construction Berhad v. Chantiravathan Subramaniam James [1995] 2 ILR 11 (Award No. 245 of 1995)** the following was stated:

*"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.”*

39. Having the burden of proving, the standard in which the employer has to prove that the act of terminating the employee was carried out with just cause or excuse is on a balance of probabilities as established in the case of **Telekom Malaysia Kawasan Utara v. Krishnan Kutty Sanguni Nair & Anor [2002] 3 CLJ 314**, wherein it was stated as follows:-

*“... it is quite clear to us that the Industrial Court should not be burdened with the technicalities regarding the standard of proof, the rules of evidence and procedure that are applied in a court of law. The Industrial Court should be allowed to conduct its proceedings as a "court of arbitration", and be more flexible in arriving at its decision, so long as it gives special regard to substantial merits and decide a case in accordance with equity and good conscience.*

*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... 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.*

*As such, there is no question of the employer proving that the employee had committed the offence beyond reasonable doubt. There is ample authority for saying that the test is not whether the employee did it but whether the employer acted reasonably in thinking the employee did it (see: *Ferado Ltd. v. Barnes* [1976] 439 ICR). In order for the employer to establish reasonable grounds, they must show that they had made reasonable enquiries and did not form their belief hastily and that they had given employee a fair opportunity to explain himself (see: *W. Weddel & Co. Ltd. v. Tepper*[1980] IRLR 76)."*

40. As a Court of arbitration, Section 30(5) of the Industrial Relations Act 1967 (Act 1977) requires the Court to decide a case in accordance with equity and good conscience. Gopal Sri Ram JCA's decision in **Harris Solid States (M) Sdn Bhd & Ors v. Bruno Gentil Pereira & Ors (1996) 4 CLJ 747 CA** had stated that it is incumbent upon the court to have regard to substantial merits of the case rather than to technicalities.

## **Evaluation and Findings**

41. Since the court heard the case afresh, whether the Claimant has committed any misconduct has to be proven by the Company by way of evidence produced in court. It is trite that the Claimant is not the one who must prove that he was not guilty of misconduct [see the case of **Stamford Executive Centre v. Dharsini Ganesan [1986] 1 ILR 101 (Award No. 263 of 1985)**]. That burden is cast squarely upon the Company.

43. On all the three (3) charges i.e Charges 1,2 and 4, the first paragraph of all the charges bears the alleged conduct whilst the rest of the paragraphs of the charges are the breaches due to the conduct which tantamount to a misconduct.

44. For purpose of clarity, Charges 1 and 2 will be dealt together as in involves the same complainant and the same facts with only the dates of the alleged event being different. In relation to both this charges, the court is of the view that the issue of electricity installed at the premises of COW-1 is not denied and had been done in accordance to the Company's procedure. The only issue here is the sum of RM1000 (collectively) ("the said sum") being allegedly requested and received by

the Claimant from COW-1 for the purpose of installing electricity. On both these charges, the Claimant had denied requesting and receiving the said sum.

45. However, contradicting the Claimant's claim that he did not receive the said sum, COW-5 had in his evidence stated that the Claimant had admitted to him in receiving the said sum by force from COW-1. This evidence which COW-5 had given had been consistent to the evidence given by him at the DI.

46. In support of the Company's Charges 1 and 2 framed against the Claimant, the Company had called COW-1 and COW-2 to testify in court. The Company had also provided the statement of the wife of COW-1, Janaky a/p Narayan Muthu, being the witness to the said sum being given to the Claimant. COW-1, COW-2 and the wife of COW-1 are related to one another being family members and it seems like it is their version against the Claimant's denial. As such, the evidence given by COW-5 i.e the Claimant's admission as far as receiving the said sum is concern would be more reliable even though the Claimant had denied admitting the same to COW-5. There is no evidence that has been produced to the court to show any animosity between them prior to the complaint being made against the Claimant. In fact, the Claimant had

admitted in his evidence that he was in good relationship with both COW-1 and COW-5 prior to the complaint. In this circumstance, the court adopts the principles established in the case of **Ferodo Ltd v. Barnes (EAT) [1976] ICR 439** where His Lordship Kilner Brown J held at p. 440:

*“The question which falls to be decided in circumstances such as these is not whether or not the alleged offence is proved but whether or not the employers after careful investigation, and after adopting the appropriate procedures enshrined in the Code of Practice, came to a reasonable decision that dismissal must follow.”*

His Lordship went on further to state at p. 441:

*“... the law is quite plain and that what the industrial tribunal ought to do is, not ask itself the question which this tribunal did - "Are we satisfied that the offence was committed?" - but to ask itself the question, "Are we satisfied that the employers had, at the time of the dismissal, reasonable grounds for believing that the offence put against the employee was in fact committed?"*

47. In the Claimant's evidence, although the Claimant had denied requesting and receiving the said sum from COW-1, he could not give any reason as to why COW-1 had made the complaint against him had it not been for the truth of the matter. The evidence that was given by COW-1 from the time he had lodged a complaint against the Claimant till the hearing of this matter at the court has been consistent. COW-5 too had been consistent in his evidence against the Claimant. As such, the court is of the view that the Company has successfully proven the Claimant's misconduct of receiving the said sum from COW-1 on a balance of probabilities in accordance to both Charges 1 and 2.

48. As for Charge 4, the Company had produced evidence via COW-6 being the witness to the statement given by Asmat bin Busra during the Company's investigation pertaining the sum of RM2,000 that was given to the Claimant for the purpose of installing electricity to his squatter house and via COW-1 being the neighbour of Asmat bin Busra who had introduced him to the Claimant for the same purpose.

49. According to the statement given by Asmat bin Busra which had been filed in court in the Company's Bundle of Documents [Volume 3] (COB-3) at pages 87 to 94, he had given the Claimant RM2,000 for the installation of electricity at his squatter house in the presence of COW-1.

Based on the statement by Asmat bin Busra, the said sum of RM2,000 was subsequently returned to him in two (2) payments of RM1,600 and RM400 when the electricity supply to his house was disconnected by the Company upon a complaint made by COW-1 as the electricity connection was from COW-1's house.

50. The Claimant in his evidence denied receiving the sum of RM2,000 from Asmat bin Busra although he admitted that he knew that Asmat bin Busra being COW-1's neighbour wanted electricity supply to his house. Apart from denying the allegation, the Claimant was not able to give any reason as to why such an allegation was made against him involving a completely unknown person.

51. In applying the principles of the case **Ferodo Ltd v. Barnes (EAT) (Supra)**, the court is of the view that the Company has proven on a balance of probabilities the misconduct of the Claimant in accordance to Charge 4. Now, having established the misconduct, the issue which needs to be determined is whether the misconduct by the Claimant warrants a dismissal.

52. In this case, the Company had not only drafted all three (3) charges against the Claimant describing the alleged conduct of the

Claimant but had also listed down for each charge the breaches committed by such a conduct which tantamount to a misconduct in accordance to the “Prosedur Tatatertib Tenaga Nasional Berhad (Edisi Keenam, 2013) as listed in all the three (3) charges respectively. In the case of **Arkema Pte. Ltd [Formerly Known As Elf Atochem SA Representative Office, Malaysia] & Anor v Tang Swee Nien [2009] 2 LNS 0738**, wherein the Claimant was found guilty of demanding and receiving monies from the Company’s agent, the Industrial Court held that the misconduct was serious and warranted the punishment of dismissal:

*“27. Here, in this case **the Claimant had received money from the agent and had received the said money for his personal interest. The Claimant's contention that Seca Dyme Sdn. Bhd. had given the Claimant interest or a gratuitous payment for taking a loan from the Claimant clearly showed that the Claimant had acted in contravention of his implied term of contract.***

*28. Having evaluated the evidence of the Company’s witnesses and in the Claimant’s evidence, this Court finds that there is a prima facie case of*

*misconduct. In equity, good conscience and based on the substantial merits of the case, this Court finds that the dismissal of the Claimant by the Company was with just cause and excuse.”*

53. As such, the court concurs with the Company’s submission that the Claimant’s action of receiving monies from the Customer when he has no authority to do so are acts of dishonesty towards the Company amounting to gross misconduct which had broken the trust and confidence of the Company towards the Claimant.

54. As stated in B.R. Ghaiye in **Misconduct in Employment Chapter XIX at page 650** states:

*"The relation between an employer and an employee is of a fiduciary character. The word "fiduciary" means belonging to trust or trusteeship. It means that whenever an employer engages a worker he puts trust that the worker will faithfully discharge the service and protect and further the interest of the employer."*

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55. In **Pearce v. Foster [1886] (vol XV11) QBD 536 the Queen's Bench Division** it was held as follows:

*"The rule of law is that where a person has entered into the position of servant, if he does anything incompatible with the due or faithful discharge of his duty to his master, the latter has a right to dismiss him. The relation of master and servant implies necessarily that the servant shall be in a position to perform his duty duly and faithfully, and if by his own act he prevents himself from doing so, the master may dismiss him."*

And Lopes LJ in the same case at page 542 stated as follows:

*"If a servant conducts himself in a way inconsistent with the faithful discharge of his duty in the service, it is misconduct which justifies immediate dismissal."*

56. Therefore, by a careful assessment of the evidence taken as a whole, grounded upon equity, good conscience and the substantial merits of this case pursuant to Section 30(5) of the Industrial Relations Act 1967, it is the finding of the court that the Company has established,

on a balance of probabilities, the appropriateness of the Company's action against the Claimant. In the circumstances of this case, it is the considered view of the court that it is unreasonable to expect the Company to have continued the Claimant's employment.

57. The Claimant's claim is hereby dismissed.

**Cases referred to :**

1. The Disciplinary Appeals Committee.
2. Bumiputra Commerce Bank Bhd v. Mahkamah Perusahaan Malaysia & Anor [2004] 7 CLJ 77.
3. Kahan Singh v. Air Asia Berhad [2015] 2 LNS 1303 (Award No. 1303 of 2015).
4. B Surinder Singh Kanda v. Government of Federation of Malaya [1962] MLJ 169.
5. Skypak International (M) Sdn Bhd v. Foong Kah Tin [1987] 1 ILR 495 (Award No. 161 of 1987).
6. Hong Leong Equipment Sdn. Bhd. v. Liew Fook Chuan & Other Appeals [1997] 1 CLJ 665.
7. Wong Chee Hong v. Cathay Organisation (M) Sdn. Bhd. [1988] 1 CLJ 45; [1988] 1 CLJ (Rep) 298.
8. Wong Yuen Hock v Syarikat Hong Leong Assurance Sdn. Bhd. & Anor [1995] CLJ 344.
9. Shell Malaysia Trading Co. Sdn Bhd v. National Union of Petroleum & Chemical Industry Workers [1986] 1 ILR 677.
10. Ireka Construction Berhad v. Chantiravathan Subramaniam James [1995] 2 ILR 11 (Award No. 245 of 1995).

11. Telekom Malaysia Kawasan Utara v. Krishnan Kutty Sanguni Nair & Anor [2002] 3 CLJ 314.
12. Harris Solid States (M) Sdn Bhd & Ors v. Bruno Gentil Pereira & Ors (1996) 4 CLJ 747 CA .
13. Stamford Executive Centre v. Dharsini Ganesan [1986] 1 ILR 101 (Award No. 263 of 1985).
14. Ferodo Ltd v. Barnes (EAT) [1976] ICR 439.
15. Arkema Pte. Ltd [Formerly Known As Elf Atochem SA Representative Office, Malaysia] & Anor v Tang Swee Nien [2009] 2 LNS 0738.
16. Misconduct in Employment Chapter XIX at page 650.
17. Pearce v. Foster [1886] (vol XV11) QBD 536 the Queen's Bench Division.

**HANDED DOWN AND DATED THIS 13<sup>th</sup> DAY OF FEBRUARY 2020.**

**SIGNED**

**( SUMATHI MURUGIAH )  
CHAIRMAN  
INDUSTRIAL COURT OF MALAYSIA  
JOHOR**