

INDUSTRIAL COURT OF MALAYSIA

CASE NO.: 6(15)/4-485/20

BETWEEN

HASMADI BIN HAMZAH

AND

PETROLIAM NASIONAL BERHAD (PETRONAS)

AWARD NO : 2574 OF 2022

Before : Y.A. REIHANA BTE ABD. RAZAK – Chairman

Venue : Industrial Court Malaysia, Kuala Lumpur

Date of Reference : 21.02.2020.

Dates of Mention : 13.07.2020; 26.08.2020; 17.09.2020; 17.12.2020;
18.02.2021; 18.03.2021; 16.03.2021; 10.05.2022;

Dates of Hearing : 20.04.2021; 21.04.2021; 04.05.2021; 28.09.2021;
29.09.2021; 12.10.2021; 20.10.2021; 08.12.2021;
16.12.2021; 15.02.2022.

Representation : Mr. Simrenjeet Singh together with Mr. Ng Tat Sum
From Messrs Simrenjeet, Tay & Co.
Counsel for the Claimant

Claimant present in person

Ms. Wong Keat Ching together with Ms. Wong Yen Ni
From Zul Rafique & Partners
Counsel for the Company

Company's Representative:
Mr. Mohd Norazami Muhammad – IR Manager

REFERENCE

This was a reference by the Minister of Human Resources pursuant to section 20(3) of the Industrial Relations Act, 1967 arising out of the dismissal of **HASMADI BIN HAMZAH** (“the Claimant”) by **PETROLIAM NASIONAL BHD** (the Company).

AWARD

CLAIMANT’S CASE

[1] The Claimant commenced his employment with the Company with effect from 19.10.2009, as a contractual employee in the position of Executive (Rig Planner and Analyst), Drilling Department of PETRONAS Carigali Sdn Bhd.

[2] The Claimant was made a permanent employee and was appointed to the position as Manager (Rig Planning), Drilling Management System of PETRONAS Carigali Sdn Bhd with effect from 3.5.2012.

[3] The Claimant then was promoted as the Head of Rig Planning in the Wells Department of PETRONAS Carigali Sdn Bhd with effect from 26.8.2015.

[4] With effect from 1.9.2016, the Claimant was appointed as the Manager (Wells Equipment and Rig Move) in the Wells Department of PETRONAS Carigali Sdn Bhd. The Claimant was then seconded to PETRONAS Iraq Garraf Ltd as Manager (Wells Engineering Contract), Wells Department with effect from 1.9.2018.

[5] At the time of dismissal on 5.12.2019, the Claimant was serving as Head (Wells Projects – Development), Wells Department of PETRONAS Carigali Sdn Bhd and his last drawn basic salary was RM28,672.00.

[6] The Claimant was given a show cause notice and a suspension letter dated 21.8.2019 where the Company alleged that he had committed misconduct by placing himself in a potential conflict of interest and/or conflict of interest position for the reasons that the Claimant: -

- a) went to Jakarta between 16.9.2018 to 18.9.2018 for a golf trip at Suvarna Jakarta Golf Club with one Badrul Hisham Ismail who was a director in MKN Odyssey Ventures Sdn Bhd- a registered contractor of the Company without prior approval from the Company;
- (b) had received gift and/or entertainment in the form of return ticket from Kuala Lumpur International Airport (“KLIA”) to Soekarno Hatta International paid by MKN Odyssey; and
- (c) had received gift and/or entertainment from Badrul in the form of refreshments at KLIA, lunch and dinner during the golf trip at Suvarna Jakarta Golf Club, golf fees at Suvarna Jakarta Golf Club, accommodation at Hotel Santika Hayam Wuruk Jakarta during the golf trip and massage room with refreshment at Fortune Hotel Spa & Lounge.

[7] The Claimant vide a letter dated 3.9.2019, replied to the show cause notice and denied all the allegations.

[8] The Claimant avers that Badrul who was his friend and his neighbor invited him to go on a holiday golf trip to Jakarta.

[9] The Claimant contended that he accepted the invitation of the said Badrul who was his friend as it was during his annual leave prior to him being mobilized to Iraq and that the trip was on friendship basis.

[10] The Claimant contended that he had paid for all his portion of expenses for the trip to Badrul and had provided the receipts to the investigating officer.

[11] The Claimant also asserts that at the time he went with Badrul on the Jakarta golf trip, his role in the Company did not involve any contractual scope related to MKN Odyssey and his scope of work did not involve any business with MKN Odyssey or Badrul.

[12] The Claimant asserts that Badrul volunteered to make all necessary arrangements for the golf trip as he has been a a regular golf player and being familiar with making arrangements in Jakarta.

[13] The Claimant contended that on 8.10.2019, he was informed that the Company had decided to hold a domestic inquiry (DI) in respect of the misconduct allegations against him.

[14] The Claimant contended that the DI conducted was in contravention of the rules natural justice and in a prejudicial manner.

[15] The Claimant avers that the decision of the DI panel finding him guilty on the 5 charges alleged against him was an unfair decision and that his dismissal was without just cause and excuse.

COMPANY'S CASE

[16] The Company contended that in February 2018, it was made aware that the Claimant had put himself in a conflict of interests situation when he had gone for a golf trip to Jakarta with one Badrul Hisham Bin Ismail (Badrul) and the expenses of which was paid by MKN Odyssey Ventures Sdn Bhd., a registered contractor of the Company.

[17] The Company avers that after carrying out investigation, vide a Notice to Show Cause dated 19.8.2019 the Claimant was required to provide his written explanation in respect of the 6 allegations of misconduct as specified in the notice to show cause.

[18] By a letter dated 3.9.2019, the Claimant replied to the Company's notice to show cause [CLB-1, pages 87 – 91].

[19] The Company not being satisfied with the Claimant's explanations, decided to hold a domestic inquiry (DI) to enable the Claimant to answer to the allegations of misconducts to an independent panel.

[20] The DI against the Claimant proceeded as scheduled wherein the Company dropped the 1st sub-charge to Charge no. 3 and the Claimant pleaded not guilty to all the other charges of misconduct preferred against him.

[21] The Company avers that the DI was conducted in accordance with the principles of natural justice where the Claimant was given full opportunity to advance his defense, cross-examine the Company's witnesses, and produce his witnesses and evidence.

[22] The Company contended that after having considered all the evidence and testimonies of the witnesses produced during the DI, the DI panel found the Claimant guilty of Charges No. 1, 2, 3, 4 and 6 and not guilty of Charge No. 5.

[23] By letter dated 5.12.2019, the Claimant was informed of the findings of the DI panels, and due to the seriousness of the proven misconducts, the Company made a decision to dismiss the Claimant from his employment with immediate effect as it no longer could place the necessary trust and confidence in the Claimant.

[24] By a letter dated 23.12.2019, the Claimant appealed against the Company's decision of dismissing him with immediate effect.

[25] The Company rejected the Claimant's appeal as it found that there was no cogent reason to overturn the dismissal decision imposed against the Claimant.

LAW

[26] The function of the Industrial Court in a reference under Section 20 of the Industrial Relations Act 1967 been spelt out clearly by the Federal Court in the case of **GOON KWEE PHOY V J&P COATS (M) BHD [1981] 2 MLJ 129** where his Lordship Raja Azlan Shah, CJ (Malaya) stated:

“... where representation is 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.”

[27] It is trite law that the Company bears the burden to prove that the employee had committed the alleged misconduct and that the misconduct warrants the employee's dismissal.

[28] In this case, as the fact of dismissal is not disputed. As such, the only issue, which is left to be deliberated before this court, is whether the dismissal of the Claimant by the Company was with just cause or excuse.

[29] In the case of ***TELEKOM MALAYSIA KAWASAN UTARA V. KRISHNAN KUTTY SANGUNI NAIR & ANOR*** [2002] 3 CLJ 314 the Court made it clear that the standard of proof that is required for dismissal cases is one that is on the balance of probabilities.

EVALUATION AND FINDINGS

[30] The Claimant was dismissed by the Company after the DI panels found him guilty on the 5 out of 6 charges of misconducts leveled against him.

[31] The five charges of misconducts that the Claimant were found guilty relates to the Claimant's failure to comply with the Company's Conduct of

Business Ethics (“COBE”). The Claimant was alleged to had gone on a golf trip to Jakarta between 16 to 18 September 2018 funded by MKN Odyssey Ventures Sdn. Bhd. (MKN), a registered contractor of the Company, without the Company’s approval or permission.

[32] It is the duty of this Court to determine whether the Company on a balance of probabilities had proven the allegations of misconduct preferred against the Claimant and whether the proven acts of misconduct warrants a dismissal.

[33] In the present case, the Company had conducted a domestic inquiry (DI). The Court is mindful that when a DI has been conducted by the Company prior to the employee's dismissal, the duty of the Court is to consider whether the DI was valid and whether the inquiry notes are accurate.

[34] At the outset, the Claimant contended that the DI conducted by the Company was in violation of the principles of natural justice on the ground that the charges are defective and ought to be held void because lack of material particulars about his position in the Company and also on Badrul’s relationship with MKN in the charges.

[35] The Company avers that the Claimant attended the DI where during the DI proceeding, he had the opportunity to explain himself or raise any confusion if any on the charges leveled against him.

[36] The Company also asserts that the Claimant was provided the opportunity to examine the documents, adduced evidence and cross-

examines and challenge the Company's witness's testimonies of the during the DI.

[37] Upon perusing the DI notes, it is the considered view of this Court that the DI was properly and regularly constituted. The DI proceeding was conducted in a fair and proper manner with no procedural impropriety. There is also no evidence of any breach of the fundamental rules of natural justice

[38] The Court finds that the allegations as in the notice to show cause were the exact charges before the DI panels and the Claimant all along understood the charges, as he was able to provide his defense.

[39] There is no evidence to show that the Claimant during the DI raised any issue about the charges being defective or that he was confused about the charges leveled by the Company on him.

[40] The Claimant knew what the substance of the charges was and was able to prepare a proper defense for it when he replied to the show cause letter and at the DI without raising any confusion.

[41] The Court is also of the view that the Claimant's position or title did not prejudice him at the DI or the hearing before this Court. To render the charges defective or void now would be inconsistent with the spirit and intent of the Industrial Relations Act 1967 as well as the principles of equity.

[42] There is also no evidence before the Court that the Claimant at the material time had challenged the authenticity and accuracy of the DI notes.

As such, the DI notes were accurate and the findings of the DI in respect of the charges preferred against the Claimant were valid and not perverse.

[43] Nonetheless having said that, the findings of the DI is not binding upon the Industrial Court as the Court rehears the matter afresh in a *de novo* hearing. In **HONG LEONG EQUIPMENT SDN BHD V. LIEW FOOK CHUAN & OTHER APPEALS [1997] 1 CLJ 665**, it was stated as follows:

The fact that an employer has conducted a domestic inquiry against his workmen 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 has been held when determining whether the particular workman was justly dismissed.

[44] As such, the hearing before the Industrial Court itself provides a better and impartial forum for the Claimant to put forth his case before the Industrial Court for a just decision to be made.

[45] The charges on which the Claimant were found guilty relates to the Claimant's actions of putting himself in a conflict of interest situation when he went on a golf trip and received gifts or entertainment during the trip from one Badrul from MKN that was a registered contractor of Petronas (Company) without prior approval of the Company.

[46] Charge 1 [COB-1, page 1] against the Claimant reads as follows

Charge No.1

“That you, Hasmadi bin Hamzah (StaffNo:136499), during your tenure as Manager (Wells Engineering Contract), PETRONAS Carigali Sdn Bhd, Thi Qar, Iraq had committed a serious misconduct in between 16September 2018 and 18 September 2018, when you placed yourself in a

potential conflict of interest situation when you went to Jakarta for a Golf Trip at Suvarna Jakarta Golf Club with Badrul Hisham Ismail (BHI) the Director of MKN Odyssey Ventures Sdn.Bhd,a registered PETRONAS Contractor without prior approval from PETRONAS.

Your action as depicted above amounts to misconduct and in violation to: -

i. PETRONAS Code of Conduct and Business Ethics (CoBE), Part I: Core Values and Culture, Section 2. 2 and Section 2.3: Corporate Values and Cultures; and/or

ii. PETRONAS Code of Conduct and Business Ethics (CoBE), Part II A: Conflict of Interest, Section 1: Duty Regarding Avoidance of Conflict of Interest, Section 1.3; and/or

iii. The generality of PETRONAS Code of Conduct and Business Ethics (CoBE), Part IV: Discipline, Disciplinary Process and Sanctions, Section1: Importance of Good Conduct and Discipline; Section1.3;(xix) engaging in any illegal or unethical practices such as taking or giving bribes or receiving any illegal gratification whether in monetary terms or otherwise; and/or

iv. Other express and/or implied terms of your employment.”

[47] The Claimant submits that there was no conflict of interest situation because it was an invitation to go on a golf excursion from his friend, one Badrul whom he had known for almost 9 years.

[48] The Claimant also contended that he was of the view that he don't have to obtain any approval from the Company or of his superior to attend the Jakarta golf trip with Badrul because he was on his annual leave before departing for his deployment to Iraq.

[49] The Claimant claimed that the conflict of interest situation does not arise because Badrul was neither an employee nor a director of MKN and that he was never made aware of the involvement MKN a registered contractor of the Company in that trip.

[50] The Claimant also contended that the Company failed to establish that he took advantage of his position in the Company which give rise to any conflict of interest situation with the Company as the purpose of the golf trip was a personal holiday for him with friends with his own expenses.

[51] The misconduct in Charge 1 is premised on the Claimant who is a Manager (Wells Engineering Contract), Petronas Carigali Sdn Bhd that had gone on a golf trip to Jakarta with one Badrul Hisham bin Ismail (Badrul) alleged to be related with MKN Odyssey Ventures Sdn.Bhd (MKN) a registered Petronas (Company) contractor which had given rise to a conflict of interest situation.

[52] The Claimant never disputes the fact that he did go on the golf trip to Jakarta between 16 to 18 September 2018 with one Badrul.

[53] It was also undisputed fact that MKN is a registered contractor of Petronas (Company). As such, the element of the Charge 1 that remains to be proven is whether the Claimant's action of going on the golf trip to Jakarta between 16 to 18 September 2018 with the said Badrul of MKN gives rise to any conflict of interest situation of the Claimant's position.

[54] The Claimant confirmed that he had been an employee of the Company since 2009 and that he is familiar with the terms in COBE about the "*Corporate Values and Culture*" of the Company, and to be bound by

Clause 1.1 of Part II: *Duties of Good Faith, Fidelity, Diligence and Integrity, Part IIA: Conflict of Interest of COBE.*

[55] From the Claimant's testimony, the Court opined that the Claimant has full knowledge of all the integral parts of COBE and he is well aware that the Company placed a strong emphasis on its COBE provisions.

[56] With such admission, it is clear that the Claimant understood clearly that he was required to take necessary steps to inform or check with the Company if he was faced with a conflict of interest situation.

[57] The Claimant never disputed that MKN was a registered contractor of the Company and that he all along knew very well the said Badrul and Badrul's position with MKN.

[58] The Claimant knew that Badrul was not a stranger to MKN. As such, the Claimant's contention that Badrul is not a director or employee of MKN but was merely a consultant for MKN does not change the fact that Badrul is affiliated with MKN, a registered contractor of the Company.

[59] The Claimant's contention that he did not have to disclose or obtain clearance from the Company's HR department or his superior because the Jakarta golf trip with Badrul was a holiday trip with friends not a trip intended for business networking purposes in this case is not accepted.

[60] Badrul (the Claimant's witness) in his testimony during the DI confirmed that his purpose of inviting the Claimant was for networking because the Claimant had "*knowledge of rig and also the contract for wells*". The Claimant did not challenge nor dispute Badrul's testimony in the

DI that Badrul in his capacity as the Business Development Director of MKN invited him on the Jakarta trip and that the purpose of the trip was related to MKN business.

[61] The Claimant in fact admitted during cross-examination that the information reflected in Badrul's Voluntary Statement and testimony during the DI was accurate.

[62] From the unchallenged and undisputed Badrul's testimony, it clearly shows that the Claimant always knew Badrul's role in MKN was to do networking and build relationships with clients, including Petronas (Company).

[63] Without any evidence to the contrary from the Claimant, the Court finds that the Claimant could not deny not knowing the purpose of the Jakarta golf trip must be for networking purposes and not a holiday trip with close friends.

[64] The Claimant knew the purpose of the golf trip with Badrul was for business networking or business development purpose and not for holiday fun with friends.

[65] The Court opined that as the Claimant was well aware of Badrul's role in MKN, he must have known that the golf trip with Badrul is for a business networking purpose for MKN and could not be a leisure holiday trip as there were no spouses, family members or other friends invited in the trip.

[66] All the evidence adduced only goes to show that Badrul whom the Claimant always knew was affiliated with MKN that was also known to be a registered contractor of the Company invited the Claimant.

[67] The Claimant's stand that he don't have to disclose or obtain clearance from the HR department because he was of the view that the golf trip to Jakarta with Badrul is his personal activity and holiday with his friends is clearly an afterthought.

[68] It was also undisputed evidence before the Court that Badrul handled all the arrangements and paid the Claimant's expenses first.

[69] The Court is of the view that knowing Badrul taking charge of handling all the arrangements and paying for the expenses first, it should had immediately raise an alarm in the mind of the Claimant as to why Badrul offered to handle all the logistics and pay first for his expenses if it was a personal holiday with friends or neighbors.

[70] It is obvious that the Claimant knew that Badrul invited him on the golf trip not for a personal holiday with friends but for MKN's business networking purpose because Badrul and MKN took care of all the arrangements prior to the departure. The Claimant is only to join the trip without having to do or pay anything at all.

[71] The Court also finds it strange as to why the Claimant claimed that this Jakarta golf trip with MKN is his holiday trip with friend as this is not the first time he was invited by MKN and Badrul to participate in golf trips.

[72] The Claimant in his reply to the show cause letter [CLB-1page 87–91] states that he had declined participation in a golf tournament in 2017 because the tournament was organized by Badrul of MKN, a local agent for PetroVietnam Drilling which provided offshore rigs in Malaysia including to Petronas.

[73] The Court is of the view that if in 2017 the Claimant did not participate in the golf trip invited by Badrul of MKN on the ground that the trip puts him in a conflict of interest situation, why didn't he find that the Jakarta golf trip in 2018 also organized by Badrul of MKN would give rise to a conflict of interest situation too.

[74] The Court is of the opinion that if the Claimant in 2017 finds that the invitation to go on a golf trip from Badrul of MKN a registered contractor of the Company puts him in a conflict of interest situation, then the same nature of invitation by the same Badrul of MKN still a registered contractor of the Company in 2018 will put the Claimant in a conflict of interest situation too.

[75] If in 2017 the Claimant could straight away make a decision of not to participate in the golf trip invited by Badrul of MKN on the ground that the trip puts him in a conflict of interest situation, why didn't he make the same decision too in 2018 for the Jakarta golf trip as the invitation came from the same Badrul of MKN.

[76] The Court is of the view that the least the Claimant could have done was to seek clarification or check with his superior or anyone from the HR

department whether the Jakarta golf trip would give rise to a conflict of interest situation with his position in the Company.

[77] Had the Claimant tried or attempted to check with either his superior or anyone from the HR department of the Company, he would have cleared doubts and justifies his action. Unfortunately, the Claimant failed or refused to do so for reasons best known to him.

[78] There was no evidence at all to show that the Claimant had or attempted to check with his superior or anyone from HR department on the status of the Jakarta golf trip before participating with Badrul of MKN in the trip.

[79] There was no evidence adduced by the Claimant to show that his job responsibilities, knowledge, or expertise in 2018 does not relate to any of MKN's nature of business. Neither did the Claimant adduce any evidence to show that Badrul has got nothing to do with MKN or MKN's business.

[80] The Claimant contended that MKN deals with rigs required for the drilling of wells and that MKN's activities or nature of business has no connection with his job or position in the Company is unaccepted.

[81] The Court perused the Claimant's Staff CV found in COB-2, page 180-181 to see what were the Claimant's job responsibilities, knowledge and expertise as Manager (Wells Equipment and Rig Move) and his last held position as Manager (Wells Engineering Contract).

[82] From the Claimant's CV, it shows that the Claimant had been in the rig planning industry from 2010 to 2016, and he later moved into area of

wells equipment, rig move, and wells engineering contract from 01.09.2016 to 31.8.2018.

[83] The Claimant's CV shows that his key responsibilities as a Manager (Wells Equipment and Rig Move) is reflected in COB-2, page 256 – 257], while his job scope as Manager (Wells Engineering Contract) is reflected in COB-4 page 2.

[84] It is clear that the Claimant's experience from his position with the Company as Manager (Wells Equipment and Rig Move) is very relevant and related with his position as Manager (Wells Engineering Contract) and related with MKN's activities or nature of business.

[85] The Claimant too agreed that as Manager (Wells Equipment and Rig Move), he was responsible for ensuring smooth drilling operations done by registered contractors of the Company.

[86] The Claimant also agreed that in his last held position as Manager (Wells Engineering Contract), he was to *"drive performance management KPIs with major service contractors and providers"* [page 2, COB-4].

[87] The Court is of the view that having such KPIs, the Claimant obviously have close contact with MKN's activities or nature of business. As such, the Claimant should have had an awareness to take greater care in his actions so as not to find himself in a position of conflict of interest with the contractors of the Company connected with rig and wells nature of business work in the oil and gas industry.

[88] COW-2 in his Voluntary Statement, [COB-1, page 40] describes MKN Odyssey as a “*licensed service company for providing rig for Petronas*”, while Badrul in his Voluntary Statement in COB-1page 43 described the relationship between MKN Odyssey and Petronas as “*PETRONAS is one of many MKN Odyssey clients which have potential to acquire the rig services.*”

[89] The Court finds that although the Claimant may not have been involved directly deal in any MKN business, work with MKN or with Badrul, the Claimant was aware that his position and scope of work was inter related to MKN’s nature of business with the Company.

[90] Given this facts, the Claimant obviously would be in conflict of interest when he went on the Jakarta golf trip with a registered contractor of the Company without his employer (Company) or his superior in the know about the trip. The Claimant’s failure to declare or obtain approval from the HR department or from his immediate superior was a clear breach of COBE.

[91] From the Claimant’s own testimony, Badrul is a long-time friend of his since year 2009, which stemmed from a business connection and had grown into a close friendship. It is obvious that over the years, having grown a close relationship with Badrul, the Claimant surely knew Badrul’s employment history, including the fact that Badrul is still with MKN and a few other companies.

[92] The Claimant attempted to put up a defense that Badrul (CLW-3) was not a contractor or director of MKN, therefore attending the said

Jakarta golf trip with Badrul who is just the Claimant's long-time friend could not create a conflict of interest situation for the Claimant with the Company. It is very difficult to believe that the Claimant never knew about Badrul's employment history who is his longtime friend since year 2009.

[93] Nurhidayat (COW-2) in his evidence confirmed that Badrul's relationship with MKN as a Business Development Director is responsible for developing MKN Odyssey's business. This evidence however was never challenged by the Claimant or Badrul.

[94] Badrul in his evidence states that the nature of his position in MKN was to assist MKN in their business development and he represented MKN to obtain information and contracts.

[95] Badrul further testify that he was representing MKN in inviting the Claimant to the Jakarta golf trip for networking purposes and confirmed during cross-examination that he had invited the Claimant on the Jakarta trip for business networking reasons. The Claimant never challenged the evidence about Badrul's nature of position in MKN and the purpose of the trip either with the Company's witnesses nor with Badrul.

[96] Neither did the Claimant challenged Badrul's evidence when Badrul confirmed that MKN had paid for the Claimant's expenses on the Jakarta trip, and that the Jakarta trip was approved by MKN to be undertaken by Badrul together with the Claimant.

[97] The Court is of the view that being fully aware of Badrul's position either as a Consultant or Business Development Director with MKN a

registered contractor of the Company, there was a high degree of conflict of interest for the Claimant to be involved with Badrul together with MKN.

[98] The Claimant should have been aware that his close relationship with Badrul and the nexus between the nature of his work with Badrul's role in MKN a registered contractor of the company, would surely create a conflict of interest situation. In such a situation, the Claimant owed a duty to check with the HR department or at least seek clarification with superior before hopping along with Badrul on the trip.

[99] The Court is satisfied that the Claimant had breached Clauses 1.1 and 1.2 of COBE as the Claimant had failed to avoid a conflict of interest situation and also failed to take the necessary steps to check whether his going on the Jakarta golf trip with Badrul of MKN, a registered contractor of the Company would be in breach of the Company's strict rules in COBE.

[100] The Claimant's action of going on the said Jakarta golf trip with Badrul who was affiliated with MKN a registered contractor of the Company, compounded with the Claimant's position in Petronas having knowledge in wells and rig services, thereby giving rise to the conflict of interest situation.

[101] The Court is satisfied that the Claimant had abused his position for personal gain and compromised his integrity by going on the golf trip to Jakarta with Badrul, when he knew that Badrul represents MKN a registered contractor of the Company that was in the business of providing rig services and drilling wells for the Company.

[102] The Claimant at all material time knew that MKN is in the nature of business which is related to his knowledge and expertise in wells equipment, drilling and rig services given his role in the Company.

[103] It is obvious that by not informing the Company about the Jakarta trip and went on the trip with Badrul of MKN, the Claimant has placed himself in a position where he is in a position to take advantage of his role in the Company and where his personal interest conflicted with the interest of his employer.

[104] Charge 2, 3, 4 and 6 are related to the to allegations of the Claimant receiving gifts or entertainment in in the form of expenses paid for during the Jakarta golf trip.

[105] Charge 2 is in relation to the flight tickets for the trip allegedly paid by MKN, a registered contractor of the Company. Charge 2 is as follow: -

Charge No. 2

“That you, Hasmadi bin Hamzah (StaffNo:136499), during your tenure as Manager (Wells Engineering Contract), PETRONAS Carigali SdnBhd, Thi Qar, Iraq had committed a serious misconduct in between 16 September 2018 and 18 September 2018, by placing yourself in a conflict of interest situation when you received gift and/ or entertainment in the form of return flight ticket from Kuala Lumpur International Airport (KUL) to Soekarno Hatta International (CGK) paid by MKN Odyssey Ventures Sdn Bhd who is a registered PETRONAS Contractor with booking confirmation number– N7F5UC.

Your action as depicted above amounts to misconduct and in violation to: -

- i. PETRONAS Code of Conduct and Business Ethics***

(CoBE), Part I: Core Values and Culture, Section 2.2 and Section 2.3: Corporate Values and Cultures; and/or

- ii. PETRONAS Code of Conduct and Business Ethics (CoBE), Part IIA: Conflict of Interest, Section 1: Duty Regarding Avoidance of Conflict of Interest, Section 1.3; and/or***
- iii. The generality of PETRONAS Code of Conduct and Business Ethics (CoBE), Part IV: Discipline, Disciplinary Process and Sanctions, Section 1: Importance of Good Conduct and Discipline; Section 1.3; (xix) engaging in any illegal or unethical practices such as taking or giving bribes or receiving any illegal gratification whether in monetary terms or otherwise; and/or***
- iv. PETRONAS Anti-Bribery and Corruption (ABC) Manual, Part 2B(ii) Receiving Entertainment; and/or***
- v. Other express and/or implied terms of your employment.***

[106] The Claimant contends that the flight cost is not gift or entertainment from MKN to him because he had paid Badrul 6 million Rupiah as his own portion of the expenses spent for the Jakarta golf which covers the flights cost as declared by Badrul in his Statutory Declaration [page 195, COB-2].

[107] It is not disputed that the Claimant's flight tickets to Jakarta was arranged, handled and paid by MKN before the departure.

[108] COW-2 the Finance Director of MKN in his evidence states that Badrul had provided him with screen shots of both the Claimant's and his passport information for MKN to purchase the flight tickets to Jakarta for the Claimant and him. This evidence was never disputed by the Claimant.

[109] It was also unchallenged evidence of COW-2 that vide an email dated 12.9.2018 [COB-1page 38], COW-2 instructed a staff one Firdaus, to purchase 2 return tickets from Kuala Lumpur to Jakarta for 2 persons as in the email with passport attached of the Claimant's and of Badrul's.

[110] COW-2's evidence about MKN purchasing the flight tickets to Jakarta for the Claimant and Badrul is also reflected in COB-1 page 26-29 which consist of Maybank statement of credit card account for purchase of flight tickets for the Claimant and Badrul by MKN in the amount of RM1,708.00, online booking confirmation from Malaysian Airlines with details of the Claimant's and Badrul's flight and payment voucher by MKN for the payment of 2 flight tickets for the "business trip" to and from Jakarta amounting to RM1,708.00.

[111] These documentary evidence only goes to show that MKN had paid Claimant's flight tickets and it is therefore clear that MKN paid for the Claimant's flight tickets in respect of Charge 2.

[112] COW-2 too in his evidence states that the flight booking was for MKN networking and business development purposes. The Claimant never challenged this evidence.

[113] Badrul too in cross examination agreed that the Claimant gave him a copy of his passport for the purpose of purchasing the tickets to Jakarta and that MKN had bought and paid for the Claimant's flight tickets.

[114] As it is not disputed that the Claimant had given him a copy of his passport to Badrul for purchasing the tickets to Jakarta, the Claimant's

contention that that he did not know that MKN paid for his flight tickets is unaccepted and is clearly an afterthought.

[115] The documentary evidence of the receipts, payment vouchers and payment of flight tickets submitted by Badrul in his Claim Form to MKN were validated by Nurhidayat (COW-2) to be legitimate was also not denied by the Claimant.

[116] It was also not disputed that the Claimant did not tell Badrul not to give his passport details to any one in MKN to purchase the flight tickets to Jakarta. As such, the Claimant knew all along that his flight tickets is to be purchased by MKN.

[117] The Court finds it immaterial whether the Claimant had reimbursed MKN for the flight ticket as there is no good basis for the Claimant to get Badrul to purchase flights ticket for a holiday trip and paid through MKN knowing very well that MKN is a registered contractor of the Company.

[118] If indeed the Claimant had intended to pay for his own expenses, the Claimant ought to have paid for his own flight tickets in Ringgit Malaysia straight to Badrul when he gave him a copy of his passport without having to involve MKN to purchase the tickets and advanced the payments as reflected in the payment vouchers.

[119] The Claimant could have made all the flight arrangement himself without involving Badrul or MKN's finance department. The fact that Badrul got MKN to handle the flights arrangements for both him and the Claimant's, it only goes to show that the trip is not a holiday trip with friends but more to a business networking for MKN with the Claimant.

[120] There was also no explanation as to why the Maybank credit card account statement for purchase of flight tickets for the Claimant and Badrul, online booking confirmation from Malaysian Airlines with details of the Claimant's and Badrul's flight and payment voucher amounting to RM1,708.00 is all under MKN's name not on Badrul or the Claimant's name.

[121] Charge 3 is as follow: -

Charge No.3

“That you, Hasmadi bin Hamzah (StaffNo:136499), during your tenure as Manager (Wells Engineering Contract), PETRONAS Carigali Sdn Bhd, Thi Qar, Iraq had committed a serious misconduct in between 16September 2018 and 18 September 2018, by placing yourself in a conflict of interest situation when you received gift and/or entertainment at occasions and/or any of the occasions as follows: -

Lunch and Dinner from Badrul Hisham Ismail (BHI) the Director of MKN Odyssey Ventures Sdn Bhd during Golf Trip at Suvarna Jakarta Golf Club.

[122] Charge 3 is concerning the following alleged entertainments received by the Claimant that consist of: -

- a) Refreshments at Hotel Santika amounting to Rp302,500 on 16 September 2018;
- b) Lunch and refreshments at Royale Jakarta Golf Club amounting to Rp 2,872,640 on 17 September 2018;
- c) Dinner expenses amounting to Rp 640,750 on 17 September 2018;

- d) Refreshment at Ikan Bakap Kalimantan amounting to Rp 39,600 on 18 September 2018; and
- e) Refreshment at SKS T3 Bandar Soekarno-Hatta Tangerang for Rp 211,200.

[123] The Claimant admitted in his Voluntary Statement that he had participated in dinner and lunches with Badrul while in Jakarta.

[124] The Claimant contends that the meals and refreshments during the trip were paid by Badrul and that he had reimbursed Badrul for his portion of the expenses.

[125] Nurhidayat (COW-2), testified that MKN paid for all the items stated in the Badrul's Claim Form, including the lunch and dinner.

[126] Badrul (CLW-3) to in his examination-in-chief states that the claims he made on the claim form includes the Claimant's share of lunch and dinner expenses in the Jakarta golf trip.

[127] As it was not challenged, it is clear that MKN had paid for the Claimant's lunch and dinner expenses in the Jakarta golf trip as claimed by Badrul with MKN.

[128] The Court is of the view that there is no reason as to why must Badrul be the one to be responsible to pay or advanced the expenses first for others who had gone with him on the trip if it was a holiday trip.

[129] The Claimant could have paid for his portion of expenses on the same day after each meal to ease the burden of Badrul if it was a personal holiday trip.

[130] Since Badrul of MKN took the responsibility to pay for all the expenses first, Badrul's conduct can be construed or implies that the golf trip is not a holiday trip but for MKN's benefit. That is why Badroll and MKN have to take charge of everything who were invited on to trip. The Claimant's contention that he had reimbursed Badrul is clearly an afterthought because could not jive with Bandrul's conduct.

[131] Charge 4 is related to the golf fees at Suvarna Jakarta Golf Club amounting to Rp3,460,600 also paid by Badrul on 16 September. The charge is as follows: -

Charge no 4

“That you, Hasmadi bin Hamzah (StaffNo:136499), during your tenure as Manager (Wells Engineering Contract), PETRONAS Carigali Sdn Bhd, Thi Qar, Iraq had committed a serious misconduct in between 16September 2018 and 18 September 2018,by placing yourself in a conflict of interest situation when you received gift and/or entertainment in the form of golf fees at Suvarna Jakarta Golf Club from Badrul Hisham Ismail(BHI) the Director of MKN Odyssey Ventures Sdn Bhd who is a registered PETRONAS Contractor.

[132] It was admitted by the Claimant in his Voluntary Statement, reply in the Notice to Show Cause and in the DI proceeding that he had gone to Jakarta and played golf at Suvarna Jakarta Golf Club.

[133] The Claimant however contended during the DI that his name does not appear in the Suvarna Jakarta Golf Club's receipts.

[134] Badrul on the other hand, in his testimony confirmed that he had made arrangement for the Claimant to play golf in Suvarna Jakarta Golf Club and that the Claimant was present at the golf course even though his name does not appear in the bill.

[135] The Claimant attempted to deny playing golf at the Suvarna Jakarta Golf Club because his name does not appear in the bill. However, the Claimant admitted in his Voluntary Statement, reply in the Notice to Show Cause and testimony in the DI proceeding that he had gone to Jakarta on 16 to 18 September 2018. With Badrul's unchallenged testimony confirming that he had made arrangement for the Claimant to play golf, both these evidence only goes to show that the Claimant was present at the golf course and surely had played golf too there as arranged by Badrul. No other evidence to the contrary adduced to show that the Claimant did not played golf at all at the Suvarna Jakarta Golf Club.

[136] The fact that the Claimant was present at the golf course is not disputed and Badrul's testimony confirming that he had made arrangement for the Claimant to play golf never challenged, it is only obvious that Badrul is to make the payment too for MKN's business purpose and not a holiday trip to be handle by individual golfer. The bill will not be under the Claimant's name because he did not make any payment of the golf fees. The Company had proven Charge 4 against the Claimant.

[137] The Court finds the Claimant's contention that he did not receive any gifts or entertainment in as in Charge 4 because he had paid back Badrul 6 million rupiah which cover for his portion of the golf fees is an afterthought because no evidence to support the Claimant's contention.

[138] Charge 6 is about the massage expenses and refreshment at Fortune Hotel Spa & Lounge Jakarta on 17 September 2018. Charge 6 is as follows: -

Charge No 6

"That you, Hasmadi bin Hamzah (Staff No: 136499), during your tenure as Manager (Wells Engineering Contract), PETRONAS Carigali Sdn Bhd, ThiQar, Iraq had committed a serious misconduct in between 16 September 2018 and 18 September 2018, by placing yourself in a conflict of interest situation when you received gift and/ or entertainment in the form of Massage Room and / or refreshment at Fortune Hotel Spa & Lounge, Jakarta from Badrul Hisham Ismail HI) the Director of MKN Odyssey Ventures Sdn Bhd who is registered PETRONAS Contractor.

[139] The Claimant admitted in his Reply to Show Cause Letter [CLB-1, pages 87–91] and also during the DI [COB-2, page 99], that he had the spa massage with Badrul on the Jakarta trip and that he had reimbursed the expense accordingly.

[140] The Court is of the view that the massage is in its nature a very personal activity and the Claimant should have paid for his own massage services at the spa itself immediately after the massage rather than getting Badrul to pay for him first and later to reimburse Badrul on individual

portion calculated by Badrul for the massage and the refreshments at the spa.

[141] It is therefore obvious that in the absence of any evidence to the contrary adduce by the Claimant, the massage and the refreshments at the Fortune Hotel Spa & Lounge is a gift or entertainment received by the Claimant and that he had placed himself in a conflict of interest situation receiving it.

[142] The Claimant's contention that the massage and the refreshments at the Fortune Hotel Spa & Lounge is not a gift or entertainment received by him because he had reimbursed back this expenses to Badrul when he paid 6 million rupiahs is an afterthought and cannot be accepted by this Court.

[143] It is the Court's finding that for Charges 2, 3, 4 and 6, there is no cogent and convincing evidence to show that the Claimant had repaid Badrul for the total expenses of the Jakarta trip allegedly in the sum of 6 million Rupiah.

[144] It should be noted that Badrul's Statutory Declaration dated 28.8.2019 stating that the Claimant had paid 6 million Rupiah as expenses for the Jakarta golf trip was only issued 1 year after the trip and there were no records of such payment of the 6 million Rupiah with Badrul.

[145] The Claimant too on the other hand during cross-examination admitted that the Statutory Declaration by Badrul was meant to support his defence at the DI proceeding. With this fact, it is obvious that the content of

Badrul's Statutory Declaration is tailored with the intention to deny the allegations of possible misconducts to be levelled against the Claimant.

[146] Badrul too confirmed that there was no precise calculation done between him and the Claimant for each item of expenses that he paid for the Claimant and though Badrul saved the receipts, he did not use the receipts to do accurate calculations of how much the Claimant owed him.

[147] The Court opined that Badrul's Statutory Declaration does not provide a breakdown with regards to what the 6 million Rupiah consists of. As such the 6 million Rupiah allegedly paid by the Claimant to Badrul is not the accurate account of the total expenses spent by the Claimant on the Jakarta trip.

[148] The Claimant too did not challenge COW-1's evidence that the total expenses would amount to more than 6 million Rupiah per person. In fact, the Claimant eventually agreed during his cross-examination that the 6 million Rupiah did not consist of all the expenses incurred on the trip.

[149] The Court finds that the Statutory Declaration made by Badrul 1 year after the trip stating that the Claimant had reimburse all the expenses spent on the trip to Badrul is an afterthought. The Statutory Declaration in itself does not exculpate the Claimant from the charges of misconduct of conflict of interests.

[150] The Court finds from that the facts and evidence adduced, the Company had sufficiently proven the elements of the charges regarding the Claimant having gone on the Jakarta golf trip with Badrul and having received gifts or entertainment in relation to the said trip.

[151] The Court is satisfied that the Claimant's actions of going on the Jakarta golf trip with expenses paid by MKN, the Company's registered contractor, had amounted to breaches of the Company's policies, in particular conflict of interest.

[152] The Claimant too knew Badrul's in his capacity and role in MKN invited him for the golf trip, made all the arrangements and paid for the expenses solely for business networking activities of MKN with the Claimant not for holiday with friends.

[153] The Court is of the view that the alleged payment by the Claimant which was made at the end of the trip raises doubt on the Claimant's contention that he did not obtain personal benefit and entertainment or gift from MKN through Badrul.

[154] The Court also finds that there is no cogent reason for him to delay the payment if it was personal holiday with friends and there is also no good reason why t Claimant did not pay Badrul the exact amount for the flight expenses incurred.

[155] If the Claimant had intended to pay for his own expenses, he ought to have paid the lump sum of 6 million Rupiah to Badrul at the very beginning of the trip so that at the end of the trip, Badrul could calculate the Claimant's portion of expenses and if any additional expenses exceeding 6 million Rupiah, the Claimant could pay him back for any shortfall.

[156] Having concluded that the Company had proven on a balance of probabilities the misconducts against the Claimant, the next question for this Court to consider is whether the dismissal that was based on the 5

charges of misconduct against the Claimant was justified in circumstances of the case.

[157] The Claimant contended that his dismissal by the Company was without just cause or excuse and that the Company's decision to dismissed him was unduly harsh to the misconducts alleged against him.

[158] It is clear that the Claimant had knowingly placed himself in a position where his personal interest conflicted with the interest of the Company and his conduct destroyed the very basis of the employment relationship between the employer and employee.

[159] In the present case, when the Claimant went on the Jakarta golf trip and received gifts or entertainment in various forms without the knowledge of the Company or his superior, the Claimant placed himself in a position where he was seen taking advantage of his position in the Company and his personal interest conflicted with the interest of the Company.

[160] The Claimant had conducted himself in a way that was inconsistent with the faithful discharge of his duties to the Company and the Claimant's action amounts to serious charges of misconduct related to conflict of interest.

[161] The misconducts for which the Claimant was found guilty of, struck at the very root of the employer-employee relationship as it relates to betrayal of mutual trust and confidence.

[162] The Claimant showed disregard to comply with the lawful policies and instructions of his company and this conduct is a serious misconduct. .

Such misconduct could not be condoned by a punishment lesser than dismissal as it would set a dangerous precedent to other employees of the Company.

[163] In view of the severity of the misconducts, this Court finds that the Company correctly exercised its managerial prerogative to dismiss the Claimant. The Claimant's actions were blatant and also deliberate. The Claimant's misconduct forfeited the confidence, and trust of the Company towards him. The punishment meted against the Claimant was proportionate and warrants no interference by this Court.

[164] Having regards to the evidence in its totality, based on equity, good conscience and the substantial merit of the case without regard to technicality and legal form under section 30 (5) of the Act, the Court finds that the Company has proven the Claimant's misconducts on a balance of probability. The Claimant's dismissal was with just cause and excuse, and carried out in accordance to fair labour practice.

The Claimant's claim is hereby dismissed.

HANDED DOWN AND DATED 8 DECEMBER 2022

-Signed-
(REIHANA BTE ABD. RAZAK)
CHAIRMAN
INDUSTRIAL COURT MALAYSIA
KUALA LUMPUR