

IN THE INDUSTRIAL COURT OF MALAYSIA

CASE NO. : 21/4-324/20

BETWEEN

ADIBAH HANI BINTI AZIT

AND

PETROLIAM NASIONAL BERHAD (PETRONAS)

AWARD NO.: 2403 OF 2023

Before : **SYED NOH BIN SAID NAZIR @ SYED NADZIR
CHAIRMAN**

Venue : Industrial Court Malaysia, Kuala Lumpur

Date Of Reference : 06.01.2020.

Dates Of Mention : 08.07.2020; 29.09.2020; 19.05.2022; 30.05.2022;
18.07.2023.

Dates Of Hearing : 08.03.2021; 31.03.2021; 30.03.2022; 31.03.2022;
12.04.2022; 09.05.2022; 11.05.2023; 22.05.2023.

Representation : Khairul Shahrizan bin Tarmizi
of Messrs Shahrizan & Co.
Counsel for the Claimant

Wong Keat Ching
(together with her, Wong Yen Ni)
of Messrs Zul Rafique & Partners
Counsel for the Company

REFERENCE:

- [1] The dispute is a reference by the Honourable Minister of Human Resources dated 06.01.2020 pursuant to Section 20(3) of the Industrial Relations Act 1967 arising out of the dismissal of **ADIBAH HANI BINTI AZIT** (hereinafter referred to as “the Claimant”) by **PETROLIAM NASIONAL BERHAD (PETRONAS)** (hereinafter referred to as “the Company”) on 03.09.2019.

INTRODUCTION OF PARTIES

The Company

- [2] According to its official website, the company is a global Malaysian energy group with a presence in over 100 countries. Established in 1974, it is a legal entity incorporated under the Malaysian Companies Act and reports to the company's Board of Directors. The corporation is vested with all oil and gas resources in Malaysia and is entrusted with the responsibility of developing and adding value to these resources. The group is engaged in a broad spectrum of petroleum activities, including upstream exploration and production of oil and gas to downstream oil refining; marketing and distribution of petroleum products; trading; gas processing and liquefaction; gas transmission pipeline network operations; marketing of liquefied natural gas; petrochemical manufacturing and marketing; shipping; automotive engineering; and property

investment. Petronas provides a substantial source of income for the Malaysian government, accounting for more than 15% of the government's revenue from 2015 to 2020. The company is headquartered at the Petronas Twin Towers, located in Kuala Lumpur, Malaysia.

The Claimant

[3] The Claimant commenced her employment with the Company with effect from 1.7.2013 in the position of Executive (Planning and Scheduling), PETRONAS Carigali Sdn Bhd. On 25.8.2017, [please see letter dated 25.8.2017 at COB-1, pages 30 – 31], the Claimant was officially assigned as Executive (Project Management) under the division of Plant Change Delivery (“PCD”) in PETRONAS Technical Services Sdn Bhd (“PTSSB”), a wholly owned subsidiary of the Company. The Claimant was assigned to ALEXIS Gas Processing Santong Project (“ALEXIS GPS Project”) which is structured under PTSSB, specifically under Project Delivery and Technology (“PD&T”), where the Claimant held the position of Project Engineer for the ALEXIS GPS Project.

FACTUAL MATRIX

Events leading to the the Claimant being issued with Notice of Domestic Inquiry

- [4] Thereafter, by an email dated 27.3.2018, Encik Zaimi Salleh, Head (Project Management) of PCD – Petronas Gas Berhad (“PGB”) in PTSSB had informed the Claimant that she was officially assigned to the third phase of the ALEXIS GPS Project (“ALEXIS GPS Project (Stage 3)”) [COB-2, pages 4 – 5].
- [5] On or around June 2018, the Claimant stopped coming to the ALEXIS GPS Project (Stage 3) project office at Santong and/or stopped contributing to the ALEXIS GPS Project (Stage 3).
- [6] As such, by an email dated 22.7.2018, the Project Manager for the ALEXIS GPS Project (Stage 3), Encik M Razif Mustafa (“Encik Razif” / COW-2) sent a reminder to the Claimant for her to continue to carry out her responsibilities as Project Engineer for the ALEXIS GPS Project (Stage 3) [COB-2, pages 3].
- [7] By an email dated 24.7.2018 from Encik Zaimi Salleh (COW-1) to the Claimant, the Claimant was required to comply with instructions given by her superiors to fulfil her obligations as Project Engineer for the ALEXIS GPS Project (Stage 3) [COB-2, page 2].

- [8]** By another email dated 29.7.2018 from Encik Razif/COW-2 to the Claimant, the Claimant was again reminded to continue her responsibilities [COB-2, page 2].
- [9]** By an email dated 14.8.2018, Encik Razif/COW-2 sent another reminder to the Claimant. However, the Claimant did not respond to nor acknowledge the email. The Claimant also did not show up at the ALEXIS GPS Project (Stage 3) Office in Santong [COB-2, pages 1 – 2].
- [10]** Thereafter around late August 2018, Encik Razif/COW-2 lodged a report to Human Resources Management Department (“HRM”) PD&T that the Claimant had failed to report to the ALEXIS GPS Project (Stage 3) Office or to her superior since June 2018.
- [11]** As such, by the Notice to Show Cause dated 4.10.2018, the Company required the Claimant to provide her written explanation in relation to four (4) allegations of misconduct as specified therein [COB-1, pages 1 – 3]. 2.13 By a letter dated 30.10.2018, the Claimant replied to the Notice to Show Cause issued by the Company. By a letter dated 29.11.2018, the Company had requested the Claimant to go for “Fit To Work” assessment at Kuantan Medical Centre [COB-1, pages 35 – 36].
- [12]** Due to delay and refusal on the Claimant’s part, the “Fit To Work” assessment was only carried out on 2.3.2019. On 27.3.2018, the Company was informed

vide the Fitness to Work Certificate and Medical Report by Dr Asma' Nur Kamarul Azman that the Claimant was fit to work [COB-1, see pages 43 – 45]. Consequently, by a Notice of Inquiry dated 24.4.2019, the Claimant was required to attend a Domestic Inquiry on 7.5.2019 and 8.5.2019 to answer the charges of misconduct as specified therein [COB-1, pages 4 – 8].

The Domestic Inquiry

[13] Consequently, by a Notice of Inquiry dated 24.4.2019, the Claimant was required to attend a Domestic Inquiry on 7.5.2019 and 8.5.2019 to answer the charges of misconduct as specified therein [COB-1, pages 4 – 8].

[14] After having deliberated on the facts and evidence adduced at the Domestic Inquiry, including the testimonies of all the witnesses and all material documentary evidence, the Domestic Inquiry Panel unanimously found the Claimant guilty on Charges Number 1, 2, 3, 4, 5 and 6, and not guilty of the Charge Number 7 preferred against her.

Decision arrived at by Panel of Domestic Inquiry

[15] After considering all documentary evidence that had been produced during the Domestic Inquiry and all the witnesses' testimonies, the Domestic Inquiry

Panel! found the Claimant guilty of 6 out of 7 charges of misconduct. Consequently, by a letter dated 29.8.2019, the Claimant was informed of the findings of the Domestic Inquiry Panel. Due to the seriousness of her proven misconduct, the Company had no alternative but to dismiss the Claimant from service [COB-1, pages 9 – 14]. By a letter dated 13.9.2019, the Claimant appealed against the Company's decision to dismiss her and urged the Company to reconsider its decision.

[16] By a letter dated 8.10.2019, the Claimant was informed that having carefully considered the Claimant's appeal, and making reference to the PETRONAS Code of Conduct and Business Ethics (CoBE), the Company had decided to dismiss the Claimant's appeal and the disciplinary action imposed against the Claimant as per the Company's letter dated 13.09.2019 was final [COB-1, pages 15].

COMPANY'S PLEADED CASE

[17] The Claimant had never raised the issue of not having enough time to prepare for the Domestic Inquiry. Further, the Claimant had raised questions on the charges preferred against her via an email and letter dated 05.05.2019, but she did not voice her concerns about not having sufficient time to prepare for the Domestic Inquiry at any point. The Claimant was given a time period of approximately two (2) weeks to prepare for the Domestic Inquiry, from the date that the Notice of Inquiry was issued to her (i.e on 25.04.2019) to the date of

the Domestic Inquiry on 7.5.2019. In any event, the Company pleads that any defects in the disciplinary process are curable by the inquiry held by the Industrial Court.

[18] During the course of investigation, the Company was informed that the Claimant was diagnosed with depression and the Company had requested the Claimant to go for a “Fit To Work” assessment. By a letter dated 29.11.2018, the Company had informed the Claimant to carry out the “Fit To Work” assessment at Kuantan Medical Centre. However, the “Fit To Work” assessment was only carried out on 02.03.2019 due to delay and refusal on the Claimant's part. On 27.03.2019, the Company was informed that the Claimant was fit to work. Thereafter, the Company continued to carry out the disciplinary procedure and process against the Claimant.

[19] The Company had carried out thorough investigation on the specific charges of misconduct preferred against the Claimant. The Domestic Inquiry was also carried out in accordance with established principles of industrial relations practice and the Disciplinary Procedures of the Company. Charges 5, 6 and 7 were contained in the Notice of Inquiry dated 24.04.2018, notwithstanding that Charges 5, 6 and 7 were not part of the Notice to Show Cause dated 04.10.2018 that was issued to the Claimant. At all material times during the Domestic Inquiry, the Claimant was given reasonable time and every opportunity to explain, defend and/or exculpate herself from the charges of the misconduct specified in the Notice of Inquiry dated 24.4.2019. In any event, the Company

pleads that any defects in the disciplinary process are curable by the de novo hearing and the Company reserves its rights to adduce evidence and/or respond and challenge any evidence adduced and/or any allegation raised by the Claimant at the de novo trial.

[20] By the email dated 27.03.2018, the Claimant was officially assigned and/or seconded to the ALEXIS GPS (Stage 3) Project. Several reminder emails dated 22.07.2018, 24.07.2018, 29.07.2018 and 14.08.2018 were sent to the Claimant requesting her to report to ALEXIS GPS (Stage 3) Project. However, despite the fact that the Claimant had been given multiple reminders, the Claimant failed to fulfil her responsibilities without informing her superiors. The Company contends that the Claimant had stopped contributing to the ALEXIS GPS (Stage 3) Project since June 2018. During the Domestic Inquiry, there were several witnesses' testimonies stating that the Claimant did not show up to work even after the multiple email reminders to do so. The Company avers that an employee of the Claimant's seniority and rank should have been aware of her responsibilities within the ALEXIS GPS (Stage 3) Project, particularly at the Third Phase.

[21] The Company pleads that the allegations of misconduct preferred against the Claimant were a result of the Company's investigation, and the allegations were sufficiently serious to warrant that an immediate dismissal of the Claimant's contract of service would be reasonable. The Company avers that the

punishment of immediate dismissal was proportionate in all circumstances of the case.

CLAIMANT'S SUBMISSION

[22] The Claimant submits the Claimant did not commit any act of insubordination, throughout the employment between the Claimant and the Company.

[23] The Claimant, in her letter dated 30.10.2018, to the Company's Industrial Relation Manager, En. Jumsuri bin Basri, had replied to each and every charge essentially proving that the Claimant did not in any way committed any act of insubordination. As to Charge 1, the Claimant was never officially assigned to this project by PD&T Resource Control or PD&T HRM. In any assignment, any mobility or secondment to other assignment outside from Employee's Division and Department shall be subject to official Mobility letter from HRM. This issue was made aware to M Razif b Mustafa and Zaimi b Salleh (Employee's official superior) on email dated 22nd January 2018 and 26th March 2018 respectively as per ATTACHMENT1. However, there is no mobility letter issuance from HRM since then (10 months). Only Show Cause Letter received from PD&T HRM on 12 October 2018, 3 week after Release Email received from M Razif Mustafa. Despite there is no mobility letter from HRM, the Claimant step up and fulfil her overall obligation as Project Engineer since 1 May 2017 (before the project being handed over to GPO) until 17 September 2018. The Claimant was then

sent an email from her superior to be released from being involved in Projek Alexis.

[24] As to Charge 2, the Claimant was never officially assigned to this project by PD&T Resource Control or PD&T HRM. As per mentioned before, any mobility or secondment to other assignment outside from the Claimant's Division and Department shall be subject to official Mobility letter from HRM. This issue was made aware to M Razif b Mustafa and Zaimi b Salleh (Employee's official superior) on email dated 22nd January 2018 and 26th March 2018 respectively. However, there is no mobility letter issuance from HRM since then (10 months). Only Show Cause Letter received from PD&T HRM on 12 October 2018, 3 week after Release Email received from M Razif Mustafa. 2. Despite there is no mobility letter from HRM, Employee step up and fulfil her overall obligation as Project Engineer since 1 May 2017 (before the project being handed over to GPD) until 17 September 2018. The Claimant was then sent an email from her superior to be released from being involved in Projek Alexis

[25] As to Charge 3, the Claimant was never officially assigned to this project by PD&T Resource Control or PD&T HRM. As per mentioned before, any mobility or secondment to other assignment outside from Employee's Division and Department shall be subject to official Mobility Letter from HRM. This issue was made aware to M Razif b Mustafa and Zaimi b Salleh (Employee's official superior) on email dated 22nd January 2018 and 26th March 2018 respectively as per ATTACHMENT1. Despite there is no mobility letter from HRM, Employee

step up and fulfil her overall obligation as Project Engineer since 1 May 2017 (before the project being handed over to GPD) until 17 September 2018. The Claimant was then sent an email from her superior to be released from being involved in Projek Alexis.

[26] As to Charge 4, the Claimant was never officially assigned to this project by PD&T Resource Control or PD&T HRM. As per mentioned before, any mobility or secondment to other assignment outside from Employee's 9 Division and Department shall be subject to official Mobility Letter from HRM. This issue was made aware to M Razif b Mustafa and Zaimi b Salleh (Employee's official superior) on email dated 22nd January 2018 and 26th March 2018 respectively as per ATTACHMENT1. Despite there is no mobility letter from HRM, Employee step up and fulfil her overall obligation as Project Engineer since 1 May 2017 (before the project being handed over to GPD) until 17 September 2018. The Claimant was then sent an email from her superior to be released from being involved in Projek Alexis. [the brief and detailed reply to the Charge 1, 2 and 4 can be referred in Tab AH-5 of the Claimant's Bundle of Document

[27] the Claimant submits that there is no wilful disobedience act done by the Claimant as explained. In proving whether there is wilful disobedience, there must be a COMPLETE DISREGARD of a condition essential to the contract of service (or in our case today, the superior's instruction). The Claimant has proven in her reply to the show cause letter (refer Tab AH-5 of the Claimant's Bundle of Documents) that essentially, she was not officially assigned to the

projects where the Company claimed the Claimant was supposed to be assigned to (refer Tab AH-5, Attachment II of the Claimant's Bundle of Documents). Despite not being officially assigned, the Claimant still upholds her duty as an employee to further exercise her responsibility as an employee of the Company. The Claimant further submits that there is NO COMPLETE DISREGARD of her responsibility as an employee of the Company, when it has been proven that the Claimant did in fact inquire with her superior/Company regarding her assignment to the projects stated by the Company in the charges (refer Tab AH-5, Attachment I of the Claimant's Bundle of Documents). The Claimant, however, did contribute to the project that was not assigned officially to her, despite inquiring on whether she was responsible to be part of the project. To add, her superior did inform her through email that she would be released from the project. As devastating as it sounds, the next course of communications received by the Claimant was the show cause letter sent to her through her superior containing all the charges/allegations. Even if the Court was of the opinion that the Company's charges against the Claimant (Charge 1, 2 & 4) were proven and the act of the Claimant constitutes a misconduct, the Claimant submits that the Court shall take into consideration the Claimant's 11 standings in the Company as a full-fledged, committed and a good employee. Besides, the Claimant in her 6 years and 2 months of service to the Company, has an unblemished employment record and has proven to contribute and brought the Company to its level today. The punishment of dismissal is harsh and not proportionate with the level of charges against the Claimant, where there are proven receipts of rebuttals against all charges against the Claimant.

PLEADINGS, DOCUMENTS AND WITNESSES' STATEMENTS

[28] This Court had considered the following documents that had been filed by the parties with respect to the hearing of this case as such:

- i) Statement of Case dated 18.08.2020 ("SOC")
- ii) Statement in Reply dated 13.11.2020 ("SIR")
- iii) Claimant's Bundles of Documents are marked as CLB-1
- iv) Company's Bundle of Documents are marked as COB-1, COB-2, and COB-3
- v) The Claimant's Witness Statement marked as CLWS-1
- vi) **Company's Witnesses' Statements:**
 - a) COWS-1: Witness Statement of Zaimi bin Salleh ("COW-1")
 - b) COWS-2A: Witness Statement of Mohamed Razif bin Mustafa @ Mustapha ("COW-2A")
 - c) COWS-2B: Additional Witness Statement of Mohamed Razif bin Mustafa @ Mustapha ("COW-2B")
 - d) COWS-3: Witness Statement of Mariam binti Md Said ("COW-3")
 - e) COWS-4: Witness Statement of Farah Tasya binti Nordin ("COW-4")
 - f) COWS-5: Witness Statement of Mohd Aizat bin Azmi ("COW-5")
 - g) COWS-6: Witness Statement of Srithar A/L Sriramulu ("COW-6")

[29] It is also pertinent to note that the claimant did not file any Rejoinder in order to rebut the company's Statement in Reply. As for the submissions, whilst the company had filed its Written Submission in Reply, no such Written Submission in Reply was filed by the claimant.

THE APPLICABLE LAW, BURDEN AND STANDARD OF PROOF

[30] The role of the Industrial Court was lucidly explained by His Lordship Raja Azlan Shah CJ (Malaya) (as His Royal Highness then was) in **Goon Kwee Phoy v. J & P Coats (M) Bhd [1981] 1 LNS 30; [1981] 1 MLJ 129 (Federal Court)** as follows:

“Where representations are made and are referred to the Industrial Court for enquiry, it is the duty of the Court to determine whether the termination or dismissal is with or without just cause or excuse. If the employer chooses to give a reason or excuse for the action taken by him, the duty of the Industrial Court will be to enquire whether that reason or excuse has or has not been made out. If it finds as a fact that it has not been proven, 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 the employer, and that Court or the High Court cannot go into another reason not relied on by the employer, or find one for it”.

Law on Insubordination

[31] The law on insubordination is well settled by the Federal Court in the case of **Ngeow Voon Yean v. Sungei Wang Plaza Sdn Bhd/Landmarks Holding Bhd [2006] 3 CLJ 837** where the apex Court states that:-

[28] In Malaysia, the general rule governing the doctrine of superior orders is nothing more than the duty of obedience that is expected of an employee. The most fundamental implied duty of an employee is to obey his employer's orders. The classic modern statement of that duty is

found in the judgment of Lord Eversherd M.R. in Laws v. London Chronicle (Indicator Newspapers) Ltd [1959] 2 All ER 285 to be as follows. It is, no doubt, therefore, generally true that wilful disobedience of an order will justify summary dismissal, since wilful disobedience of a lawful and reasonable order shows a disregard - a complete disregard - of a condition essential to the contract of service namely the condition that the servant must obey the proper orders of the master and that, unless he does so, the relationship is, so to speak, struck at fundamentally.

[29] Working as instructed is the employee's basic consideration under a contract of employment just as providing remuneration is the basic consideration of his employer. However the employee's duty to comply is confined to all the lawful and reasonable orders of his employer in respect 10 of the performance of such functions that falls within the scope of his contract of employment. Whether the employer's orders are lawful and reasonable would depend very much on the terms and conditions of the contract and the character of employment. The term "lawful and reasonable order" is often used to describe the order given and in this context it means primarily an order which is reasonably within the ambit of the employment in question so that, in any given dispute much or all will depend on the terms of the individual contract of employment. The employer thus cannot give an order outside the proper scope of the employment.

ISSUES

[32] The issues for determination in this case are as follows:

- a) to determine whether the charges of misconduct complained of by the employer has been established; and

b) if so, whether the said charges of misconduct constitute just cause or excuse for the dismissal.

COURT'S EVALUATION OF EVIDENCE AND FINDINGS

Whether The Charges Of Misconduct Are Proven

Charge 1

[33] Charge No. 1 against the Claimant in the Notice of Domestic Inquiry reads as follows:

That you, Adibah Hani binti Azit (S/N: 1006462) Executive (Project Management), Plant Change Delivery - East Coast, PETRONAS Technical Services Sdn. Bhd. and in your capacity as the Project Engineer for ALEXIS GPS (Stage 3) project had committed an act of misconduct when you, between 23rd July 2018 to 29th July 2018 had neglected and/or failed to obey official instruction from your superior and/or project manager for ALEXIS GPS (Stage 3) project, M Razif bin Mustafa requesting you to report for duty and/or resume your work as Project Engineer for ALEXIS GPS (Stage 3) project via an email dated 22nd July 2018. By the above, you had committed a wilful act of insubordination in violation to:

- (i) *The generality of Section 1.3 of Part IV: Discipline, Disciplinary Process and Sanctions, PETRONAS Code of Conduct and Business Ethics ("CoBE"); and/or*

- (ii) *Section 1.3 (i) of Part IV: Discipline, Disciplinary Process and Sanctions, PETRONAS Code of Conduct and Business Ethics (“CoBE”); and/or*
- (iii) *Section 2 of Part I: Corporate Values and Culture, CoBE; and/or*
- (iv) *Other express and/or implied terms of your employment.*

If found guilty for the above misconduct, you may be liable for punishment under Section 2 of Part IV: Disciplinary Process and Sanctions, Country Supplement: Malaysia, CoBE.

[34] It is not disputed by the Claimant that she did receive the email dated 22.7.2018 from Encik Razif Bin Mustapha (“COW-2”). The documentary evidence directly relevant to proving Charge 1 is the email dated 22.7.2018 at COB-2, page 3 which was adduced through COW-1 and COW-2. The oral evidence relevant to proving Charge 1 are as below:

- a) **Encik Zaimi bin Salleh (“COW-1”), Head of PCD-PGB in PTSSB at the material time, testified during examination-in-chief on the contents of the email dated 22.7.2018 sent to the Claimant as follows:**

Examination in Chief of COW-1, [COWS-1, Q&A No. 9]

“Q: Please refer to page 3 of COB (Volume 2). What are the contents of the email dated 22.7.2018?”

A: In this email dated 22.7.2018, which I was copied in, Encik Mohamed Razif had informed the Claimant that based on his discussion with Encik Hudal Firdaus Bin Dimiyati, Encik Anuar Bin Sahat and myself, the management had no objections to her request for mobility from ALEXIS GPS (Stage 3) project. However, due to the current phase of the ALEXIS GPS (Stage 3)

project, the Claimant's mobility can only take effect after the replacement staff is on board and the Claimant will remain at ALEXIS GPS (Stage 3) project until end of September 2018. In the same email, Encik Razif informed her the immediate tasks to be completed. Encik Razif had stated in his email that the Claimant's presence at the ALEXIS GPS (Stage 3) project office is expected with effect from 23.7.2018."

b) **COW-2 also testified during examination-in-chief that the Claimant did not comply with his instructions:**

Examination-in-Chief of COW-2 [COWS-2A, Q&A No. 12]

"Q: Did the Claimant comply with your instructions as per your email dated 22.7.2018 at page 3 of COB (Volume 2)?

A: No, she did not and I sent her another email dated 29.7.2018 to remind her to comply with the instructions given."

[35] Hence, the Claimant was informed by COW-2 that she was to remain at the ALEXIS GPS (Stage 3) Project until the end of September 2018, the immediate tasks she had to complete and that she had to be present at the office from 23.7.2018. However, the Claimant clearly failed to obey such official instructions from COW-2 as her superior and Project Manager of the ALEXIS GPS (Stage 3) Project via the email dated 22.7.2018, by not showing up at the office on the prescribed date, and by not completing the tasks assigned to her.

[36] The fact that she had not been at the Project office as required was not refuted in the claimant's email dated 14.8.2018 to COW2. In fact, the Claimant also agreed during cross-examination that she was not present at the Project office

as she wanted all staff to be present. The Claimant's explanation is unacceptable given her role in the ALEXIS Project.

[37] The Claimant's contention is that she had not been officially mobilised to the ALEXIS Project, which will also be addressed in paragraphs 5.21 to 5.28 below.

Charge 2

[38] Charge 2 of the Notice of Domestic Inquiry reads as follows:

“That you, Adibah Hani binti Azit (S/N: 1006462). Executive (Project Management), Plant Change Delivery - East Coast, PETRONAS Technical Services Sdn. Bhd. and in your capacity as the Project Engineer for ALEXIS GPS (Stage 3) project had committed an act of misconduct when you, between 30th July 2018 to 14th August 2018 had neglected and/or failed to obey official instruction from your superior and/or project manager for ALEXIS GPS (Stage 3) project, M Razif bin Mustafa requesting you to report for duty and/or resume your work as Project Engineer for ALEXIS GPS (Stage 3) project via an email dated 29th July 2018.”

[39] The oral and documentary evidence relevant to proving the charge are as below:

- a) COW-1 and COW-2 testified during examination-in-chief on the contents of COW-2's email dated 29.7.2018 to the Claimant:

Examination-in-Chief of COW-2 [COWS-2A, Q&A No. 13]

“Q: Please refer to page 2 of COB (Volume 2). What are the contents of the email to the Claimant dated 29.7.2018?”

A: In the said email dated 29.7.2018, I have reminded the Claimant to resume her duties as Project Engineer for ALEXIS GPS (Stage 3) project at the ALEXIS GPS (Stage 3) project office on 30.7.2018, failing which serious actions with potential repercussion will be taken against the Claimant.”

- b) COW-2 also testified during examination-in-chief that the Claimant did not abide by the instructions in his email dated 29.7.2018:

Examination-in-Chief of COW-2 [COWS-2A, Q&A No. 14]

Q : Did the Claimant comply with your instructions as per your email dated 29.7.2018 at page 2 of COB (Volume 2)?

A : No, she did not. I was informed by Encik Hashim Mohd and Encik Rafendie Bin Che Mat Yaman that the Claimant was not present at the ALEXIS GPS (Stage 3) project office from 23.7.2018 to 29.7.2018.”

- [40]** As such, clearly the Claimant had failed to obey official instructions from COW-2 as her superior and Project Manager of ALEXIS GPS (Stage 3) Project via the email dated 29.7.2018, by failing to show up at the Project office on 30.7.2018 onwards. This too was not refuted in the Claimant’s email dated 14.8.2018 to COW-2. In fact, the Claimant also agreed during cross-examination that she was not present at the Project office as she wanted all

staff to be present. The Claimant's explanation is unacceptable given her role in the ALEXIS Project.

[41] The Claimant's contention is that she had not been officially mobilised to the ALEXIS Project, which will also be addressed here in below.

Charge 3

[42] Charge 3 of the Notice of Domestic Inquiry reads as follows:

“That you, Adibah Hani binti Azit (S/N: 1006462), Executive (Project Management), Plant Change Delivery - East Coast, PETRONAS Technical Services Sdn. Bhd. and in your capacity as the Project Engineer for ALEXIS GPS (Stage 3) project had committed an act of misconduct when you, between 15th August 2018 to 13th September 2018 had neglected and/or failed to obey official instruction from your superior and/or project manager for ALEXIS GPS (Stage 3) project, M Razif bin Mustafa requesting you to report for duty and/or resume your work as Project Engineer for ALEXIS GPS (Stage 3) project via an email dated 14th August 2018.”

[43] The oral and documentary evidence relevant to proving the charge is as follows:

- a) The relevant email dated 14.8.2018 at pages 1 – 2 of COB-2 from COW-2 to the Claimant;
- b) COW-2 testified during examination-in-chief on the contents of the email dated 14.8.2018 as follows:

Examination-in-Chief of COW-2 [COWS-2A, Q&A 16]

“Q: Please refer to pages 1 to 2 of COB (Volume 2). What are the contents of your email to the Claimant dated 14.8.2019?”

A: In the said email dated 14.8.2018, I have informed her that the said email served as the second reminder for her to resume her duties at the ALEXIS GPS (Stage 3) project office on 15.8.2018.”

c) COW-2 testified during examination-in-chief that the Claimant did not abide by his instructions as per his email dated 14.8.2019:

Examination-in-Chief of COW-2 [COWS-2A, Q&A 17]

“Q: Did the Claimant comply with your instructions as per your email dated 14.8.2018 at pages 1 to 2 of COB (Volume 2)?

A: No, she did not. In her email dated 14.8.2018, she informed me that there is no point for her to be at the ALEXIS GPS (Stage 3) project office as the whole team is not in the office.”

[44] In light of the above, it is established that the Claimant had failed to obey official instructions from COW-2 as her superior and Project Manager of ALEXIS Project via the email dated 14.8.2018, although there were multiple reminders for her to resume her duties at the Project office.

[45] For Charge 3, the Claimant had also admitted that she was not present at work at the ALEXIS GPS (Stage 3) project office as instructed:

Cross-Examination of the Claimant on 9.5.2022

“Q : Rujuk m/s 1 & 2, COB-2. Emel bertarikh 14.8.2018. Setuju anda tidak melaporkan diri di Alexis-3 GPS pada 15.8.2018, seperti yang diarahkan dalam emel ini?

A : Setuju.

[46] The Claimant’s contention is that she had not been officially mobilised to the ALEXIS Project, which will be addressed below.

[47] This court is satisfied with the company’s explanation and found it reasonable as to the Claimant’s excuse that there was no point for her to be at the Project office because she required the whole team to be there. The Company’s witness COW-2 explained as follows:

Re-Examination of COW-2 on 31.3.2021

“Q : During cross, you were asked that the claimant’s role is important in the success of the project and you said you agree and you have a further explanation. Can you please explain to court?

A : Yang Arif, for this I have explained in the witness statement COWS-2B, page 9, question 11, why she is important. So usually as a project engineer whenever— again because I’m also managing multiple projects, so whenever I’m not at site then she will have to take up the role and then to do all the coordinations to make sure that things at site are moving and basically she will need to- she just needs to step in and step up as my response in question 11(a). And also referring to the org chart again, she is also a full time member.

“Q : You were asked during cross that as you are not fully stationed at ALEXIS project office or site, you cannot monitor 100% and you disagree. Can you please explain?”

A : Yang Arif in this case again the project will have a few key members, the project engineer is one of them, and if we refer also to the same org chart, we can see also the engineering manager En Rafendi is also a full time team member and he is available at site. So usually if I’m not around- if I’m not at site then either or both the PE and Engineering Manager will be responsible. And then at the later stage, in fact I have brought in another construction manager as well to assist but it’s not reflected in this org chat. But there was at the later stage.

Charge 4

[48] Charge 4 of the Claimant’s Notice of Domestic Inquiry reads as follows:

“That you, Adibah Hani binti Azit (S/N: 1006462), Executive (Project Management), Plant Change Delivery - East Coast, PETRONAS Technical Services Sdn Bhd. and in your capacity as the Project Engineer for ALEXIS GPS (Stage 3) project had committed an act of misconduct when you had neglected and/or abandoned your duty as the Project Engineer for ALEXIS GPS (Stage 3) project between the month of May 2018 to 13th September 2018 despite several official instruction and/or reminders from your superior and/or project manager for ALEXIS GPS (Stage 3) project, M Razif bin Mustafa.”

[49] The evidence that the Claimant had failed to carry out her responsibilities despite reminders from her superior is based on the examination-in-chief of COW-1 and COW-2:

Examination-in-chief of COW-1 [COWS-1, Q&A No. 14 & No. 15]

“Q : Did the Claimant comply with Encik Razif/COW-2’s instructions as per Encik Razif/COW-2 emails at pages 1 to 3 of COB (Volume 2)?”

A : In my observation, what I have noticed from May 2018 onwards, I was quite surprised when I always saw her at the office of Gas Processing Kertih (GPK) and not GPS where the ALEXIS GPS (Stage 3) project office was. I asked the Claimant why she did not go to the ALEXIS GPS (Stage 3) project office, she told me that there was no point to go there as she was always alone in the office. I told her that she was still bound to the ALEXIS GPS (Stage 3) project and she had to report to her superior in that project until September.”

“Q : Did the Claimant carry out her duties as Project Engineer for ALEXIS GPS (Stage 3) project from May 2018 to September 2018?”

A : No, she did not. Based on my observation, the Claimant did not report to work at the ALEXIS GPS (Stage 3) project office. I have also checked with Encik Razif/COW-2 on what had happened because I always saw her at the GPK office and not at the ALEXIS GPS (Stage 3) project office in GPS.”

Examination-in-Chief of COW-2 [COWS-2A, Q&A No. 19]

“Q : Did the Claimant carry out any of your instructions as stated in your emails at pages 1 to 3 of COB (Volume 2)?”

A : No, she did not.”

[50] It is clear, in the aforesaid that the Claimant was issued multiple reminder emails from her superiors to fulfil her duties. The Claimant does not dispute the existence of these emails and that she received them and responded accordingly. However, the Claimant had still failed to abide to the instructions in those reminder emails. The Claimant’s main contentions for being insubordinate towards her superior’s instructions shall be duly addressed in this award and they are:

(a) she was not responsible for completing the tasks assigned to her; and

(b) she had never received an official letter mobilising her to the Project.

Whether the Claimant was aware that she was assigned to ALEXIS Stage 3 Project

[51] The company has established sufficient evidence that the Claimant was aware that she was at all times assigned to the ALEXIS Stage 3 Project, and that she played a crucial role in the Project as the Project Engineer and right-hand man to the Project Manager. The Project Charter dated 27.2.2018 [page 20, COB-2] governing the Project, prepared by the Claimant listed the Claimant as the responsible individual for Project Management Milestones and Deliverables [page 31, COB-2]. Based on the organisational chart in the same Project

Charter [page 35, COB-2], the Claimant is shown to be second in command as the Project Engineer. The Claimant also agreed that she had signed off on the Project with her initials “AHA”, and issued as final on 27.2.2018 [page 20, COB-2]. Thus, the Claimant was well aware of her role as one of the key individuals driving the Project and the responsibilities that entail.

Cross-examination of the Claimant on 12.4.2022:

S: Mukasurat 20 – 39, COB-2, isi kandungannya adalah berkenaan dengan Projek Alexis GPS betul?

J: Betul.

S: Project Charter ini bertarikh 27.2.2018 di bawah mukasurat 20, COB-2?

J: Betul.

S: Setuju bahawa Project Charter ini disediakan oleh anda iaitu tandatangan anda boleh di lihat di bahagian “prepared by AHA”?

J: Setuju.

S: Projek Charter yang anda sediakan ini adalah sebagai perancangan untuk perkara-perkara yang perlu dilakukan untuk Projek Alexis GPS Fasa 3?

J: Ya.

S: Mukasurat 31, COB-2. Dibawah perkara No. 6, AHA ialah anda?

J: Ya.

[52] By an email dated 27.3.2018 [page 4 – 5, COB-2] COW-1 explained that the email served as an official assignment for the Claimant to the ALEXIS Stage 3 Project; to which, the Claimant replied via email to COW-1 on the same day, stating **“Thank you very much for your prompt reply. Noted on the**

assignment. *InsyaAllah, I will get the job done as per OTOBOS*” [page 4, COB-2]. The Claimant testified in cross-examination on 12.4.2022 that **“*OTOBOS*” meant “*On Time, On Budget, On Scope*”**.

[53] The Claimant’s response to COW-1’s email dated 27.3.2018 showed that she took note of her duties and responsibilities, and effectively serves as an acknowledgement that she had been assigned under the ALEXIS Stage 3 Project. Nevertheless, the Claimant argued that an official mobility letter was not issued to her despite the email dated 27.3.2018 alongside evidence showing that the Claimant was aware of her role in the Project from the beginning by preparing the Project Charter listing herself as the Project Engineer and right-hand person to the Project Manager.

[54] The explanation as to the official mobility letter is found in COW-1’s testimony. He testified that after checking with HR, it was unnecessary for an “official” letter to be issued to the Claimant since she was assigned under the same division, i.e. Project Delivery and Technology (“PD&T”). Re-examination of COW-1 on 8.3.2021:

Q : Hj. Zaimi, during cross-examination, you were asked by my learned friend, that your email at pages 4 to 5 of COB-2 was only an interim measure and there will be a final measure or letter from HR, and you disagree and you also said that you have explanation. Can you please explain to the Court what is your explanation?

A : Okay, the explanation that I have is that for the project to proceed, I just issue an email first so that to ensure the project can start. But after

checking with HR, actually there is no necessity to issue an official letter with regard to assignment of project.

Q : So after checking with HR, it is not necessary to issue a letter?

A : Yes, correct.

Q : Because it was a project assignment?

A : Yes, correct. ...

Q : Basically she is assigned to the same division lah?

A : Yes.

Q : The project is under the same division?

A : Yes, under PD&T

[55] Further to the above testimony, the company's documentary evidence is in support of the company's position in that it had the prerogative to transfer the Claimant as reflected in her employment contract at Clause 12 [page 27, COB-1], and the Claimant had conceded to this clause. Clause 12 reads as follows: ***“PETRONAS shall have the prerogative to transfer, second, or assign you to any position at any location where PETRONAS and PETRONAS group company businesses are being operated, including at any subsidiaries, joint ventures, affiliate companies, associates' companies or any other location based on business requirements from time to time. Such transfer, secondment or assignment may be subjected to the terms and conditions as determined by PETRONAS”***. In the aforesaid, the claimant's contention that an official mobility letter was not issued to her that that purportedly justify her defiance from abiding her superior's instructions to

complete the work or tasks assigned to her under the ALEXIS GPS (Stage 3) Project has no merit whatsoever.

Whether the Claimant neglected and failed to complete the work assigned to her

[56] The Claimant's neglect and/or failure to complete the work or tasks assigned to her under the ALEXIS GPS (Stage 3) Project is categorically proved by documentary evidence in the project items stated in the ***Petronas Project Management System Suite*** ("PPMS Suite"). COW-2 explained that the PPMS Suite is used to manage governance matters of the Project, and it contains a checklist of items that need to be completed for the Project. The Claimant was the assigned focal person for several tasks including the following:

- a) Integrated Gate Review ("IGR") [pages 4 – 6, COB-3],
- b) Risk Mitigation Validation and Assessment ("RMVA") [pages 7 – 9 of COB-3], and
- c) Smooth Start-Up Program ("SSP") [pages 10 – 12 of COB-3].

[57] The oral evidence adduced by the Company to prove that the Claimant had failed to complete the relevant project items assigned to her is as below:

- a) It is COW-2's testimony that the Claimant had failed to complete the IGR project item assigned to her.

Examination-in-Chief of COW-2 [COWS-2B, Q&A No. 7]

Q : Please refer to pages 4 - 6 of COB (Volume 3). What is this document?

A : This is one of the checklist items in PPMS Suite for the ALEXIS GPS Project to be completed which is Integrated Gate Review (IGR). IGR was assigned to the Claimant as seen at pages 4 - 6 of COB (Volume 3) as she is named as the 'assignee'. The planned start date of this project item is on 7.5.2018 and the planned end date is 18.5.2018. This project item is categorised as "Planned – Late" as seen at the red box at page 4 of COB (Volume 3). This project item was supposed to be completed by the Claimant according to the planned end date. IGR was planned to be completed by 18.5.2018 but it has not been completed up until the date the Claimant was released from the ALEXIS GPS (Stage 3) Project on 17.9.2018.

- b) It is COW-2's testimony that the Claimant had failed to complete the RMVA project item assigned to her.

Examination-in-Chief of COW-2 [COWS-2B, Q&A No. 8]

Q : Please refer to pages 7 – 9 of COB (Volume 3). What is this document?

A : This is one of the checklist items in PPMS Suite for the ALEXIS GPS Project which is Risk Mitigation Validation & Assessment (RMVA). RMVA was assigned to the Claimant as seen at pages 7 – 9 of COB (Volume 3) as she is named as the assignee. The planned start date of this project item is on 29.4.2018 and the planned end date is 10.05.2018. This project item is categorised as "Planned – Late" as seen at the red box at page 7 of COB (Volume 3). This project item was supposed to be completed by the Claimant according to the planned end date. RMVA was planned to be completed by 10.5.2018 but it has not been completed up until the date the Claimant was released from the ALEXIS GPS (Stage 3) Project on 17.9.2018

- c) It is COW-2's testimony that the Claimant had failed to properly manage the update on the SSP Workshop project item assigned to her.

Examination-in-Chief of COW-2 [COWS-2B, Q&A No. 9]

Q : Please refer to pages 10 – 12 of COB (Volume 3). What is this document?

A : This is one of the checklist items in PPMS Suite for the ALEXIS GPS Project which is Smooth Start-Up Program (SSP) Workshop. SSP Workshop was assigned to the Claimant as seen at pages 10 – 12 of COB (Volume 3) as she was named as the assignee. The planned start date of this project item is on 12.3.2018 and the planned end date is 31.12.2018. This project item is categorised as "In Progress – Late" as seen at the red box at page 10 of COB (Volume 3). Although the planned end date was on 31.12.2018 which was after the Claimant had left ALEXIS GPS (Stage 3) Project, but during her time in ALEXIS GPS (Stage 3) Project the last date that she had updated this project item was on 20.3.2018 as seen under the "Audit Trail" and column "In Progress" at pages 11 – 12 of COB (Volume 3). Therefore, during the time that the Claimant was assigned to the Project, she did not properly manage the updates on this project item and only last updated on 20.3.2018. Since 20.3.2018, there was no update for 6 months until the date she was released from the ALEXIS GPS (Stage 3) Project on 17.9.2018.

- [58]** During the cross-examination of the Claimant, the Claimant accepted that the items as listed in the PPMS Suite (i.e. IGR, RMVA and SSP) were assigned to her. With the greatest of respect, this court is unable to accept her reason on why the items were incomplete for the IGR and SSP project items, which is that there were insufficient documents and deliverables to complete the task at hand, in the absence of any supporting evidence. In this context, it is pertinent

to re-emphasise that the Claimant held an important role in driving the ALEXIS Project as second in command.

Cross-Examination of the Claimant on 11.5.2022

Q : Sila rujuk mukasurat 4, COB-3, bahagian Timeline di sebelah kanan mukasurat 4. Di baris ke-2 menyatakan Planned End Dated 18.5.2018. Soalan saya, setuju bahawa anda ditugaskan menyelesaikan perkara IGR ini pada 18.5.2018?

A : Setuju, ada saya ada penjelasan.

Q : Jadi Puan Adibah, soalan saya sekali lagi, di dalam PPMS Suite menunjukkan bahawa bahagian completed di m/s 6, COB-3, adalah kosong dan ini bermakna perkara IGR tidak diselesaikan pada tarikh planned end date iaitu 18.5.2018. Setuju?

A : Saya setuju, ada saya ada penjelasan.

Q : Mengikut rekod di dalam sistem PPMS, tugas IGR ini tidak diselesaikan oleh anda seperti tarikh penyelesaian atau planned end date yang ditetapkan?

A : Saya setuju dan saya ada penjelasan mengapa tidak dilaksanakan.

...

Q : Rujuk mukasurat 7 – 9, COB-3. Risk Mitigation Validation & Assessment (RMVA) adalah salah satu checklist dari Projek ALEXIS GPS di dalam PPMS Suite yang ditugaskan kepada anda?

A : Yang Arif saya bersetuju.

Q : Di mukasurat 8, COB-3. Assignee adalah anda iaitu perkara RMVA ditugaskan kepada anda. Setuju?

A : Yang Arif, saya bersetuju.

Q : Di mukasurat 9 COB-3, bahagian Completed adalah kosong. In bermakna perkara RMVA tidak diselesaikan pada tarikh planned end date 10.5.2018?

A : Yang Arif, saya bersetuju. ...

Q : Puan, sila rujuk mukasurat 10 – 12, COB-3. Smooth Start-Up Program (SSP) Workshop. Ini adalah perkara di dalam PPMS Suite berkenaan Projek ALEXIS GPS yang ditugaskan kepada anda. Setuju?

A : Yang Arif saya bersetuju.

[59] As such, based on the above, it is clear that the Claimant had failed to complete the tasks assigned to her on the PPMS Suite, which formed part of her duties and responsibilities as a Project Engineer for the ALEXIS GPS Stage 3 Project.

Whether Claimant was in defiance of her superior's instructions when she self-declared that she was no longer in ALEXIS Stage 3 Project

[60] The Claimant's main contention for refusing to carry out her tasks and responsibilities is that she was not officially assigned to the ALEXIS Stage 3 Project. From the emails issued by COW-1 and COW-2, clearly there had been no instructions for the Claimant to leave the Project prior to 17.9.2018 [page 19, COB-2]. However, in defiance of her superiors' email instructions, the Claimant

had unilaterally declared; on her own accord that she was no longer in the Project at the following instances:

Q : Jadi mengikut mukasurat 12, COB-3. Sejak tarikh kemaskini pada 20.3.2018 sehingga tarikh 17.9.2018 (iaitu tarikh anda dikeluarkan dari Projek ALEXIS 3), anda tidak mengemaskini tugas SSP ini?

A : Saya bersetuju dan saya ada penjelasan mengapa tidak dilaksanakan tanpa tenaga kerja yang diperlukan.

[61] Based on the above, there is compelling evidence that the Claimant had failed to complete the tasks assigned to her on the PPMS Suite, which formed part of her duties and responsibilities as a Project Engineer for the ALEXIS GPS Stage 3 Project. The Claimant had unilaterally declared that she was no longer in ALEXIS Stage 3 Project in defiance of her superior's clear instructions. This can be seen at the following instances:

- a) An email dated 31.7.2018 from the Claimant to Encik Fandi Othman (an officer from the Governance team) asking for instructions with regard to the Project, to which the Claimant responded, ***“Thank you very much for your email. Please kindly liaise with En. Razif, ALEXIS GPS Project Manager for the said inquiry as I am no longer with the project”*** [page 2, COB-3].
- b) Email dated 14.8.2018 from the Claimant to COW-2, stating that ***“to date I’m assisting PCD-PGB team as Auditor for Project Audit, Facilitator for PRA & PIR session prior to awaiting new project assignment”*** [page 1, COB-2].

- c) The Claimant had submitted the Handover Form [AH-5, pages 34 – 40, CLB-1] in which the Claimant had signed the Form without getting approval from her superiors [see AH-5, page 35, CLB-1].

[62] The Claimant was only formally released from the Project on 17.9.2018 [page 19, COB-2] after she had failed to report for duty on the Project despite COW-2's email instructions on 14.8.2018 [page 1, COB-2].

Whether the Claimant was responsible to be physically present at the Project office in Santong

[63] The company submits that as the Project Engineer, it is the Claimant's responsibility to be physically present at the Project office. This court found that this is supported in COW-2's testimony that it was important for the Claimant to be at the Project office because the Claimant was the right hand person to the Project Manager and ought to step up to lead, coordinate and guide the team. The Claimant was also a full-time employee and therefore should be present at the Project office to ensure that work was done efficiently and delivered on time.

Examination-in-chief of COW-2 [COWS-2B, Q&A No. 11]

“Q : Refer to your emails at pages 1 – 3 of COB (Volume 2) dated 22.7.2018, 29.7.2018 and 14.8.2018 which instructed the Claimant to resume her work at the Project's Office. Please explain why is it important for the Claimant to be at the Project's Office?”

A : There are a few reasons:

- (a) *The main persons that the project team receives directions from are the Project Manager, who was me, and the Project Engineer who was the Claimant. The Claimant as a Project Engineer was the right hand man of the Project Manager to lead and coordinate the team since the Project Manager cannot be full-time at the Project's office since he manages multiple projects. At the material time, the Claimant was only assigned to this Project. During these times, the Claimant must be able to step up and step in for the Project Manager to ensure that the project is running smoothly;*
- (b) *As a full-time member of the team, the Claimant as the Project Engineer is expected to be at the Project's office at PETRONAS Gas Berhad, Main Administration Building, KM8, Kg. Tok Arun, Off Jalan Santong, 23100 Paka, Dungun, Terengganu Darul Iman to guide the team members in carrying out their work to ensure that deliverables are delivered timely. For example, she is required to set up discussions with stakeholders to resolve issues, coordinate governed review sessions and provide directions. These tasks require her to physically be at the Project's office*
- (c) *Project resources are in the office. At that point in time, the Engineering team was at the Project office, along with the Contracts Executive preparing the engineering deliverables for the tender document. Therefore, as the Project Engineer, the Claimant would need to be at the Project office to coordinate these teams*
- (d) *As a full-time Project Engineer, the Claimant's presence at the Project office and full-time commitment on the Project would impact on the delivery time of the Project items or deliverables. As can be seen in the PPMS Suite, there were many project items under the Claimant's responsibilities that were delayed.*

During Re-examination on 31.3.2021, COW2 further explained:

“Q : You were asked during cross that as you are not fully stationed at ALEXIS project office or site, you cannot monitor 100% and you disagree. Can you please explain?”

A : In this case again the project will have a few key members, the project engineer is one of them. And if we refer also to the same org chart, we can see also the engineering manager En Rafendi is also a full time team member and he is available at site. So usually if I’m not around—if I’m not at site then either or both the PE and Engineering Manager will be responsible.”

- [64] The Claimant’s failure to carry out her duties and responsibilities adequately or failure and/or refusal to be present at the Project office had resulted in the Company having to get replacement staff in the Claimant’s absence so as not to impact the Project progress. This can be gathered from the email dated 1.8.2018 from Puan Jasmin Jamarei (a Project Engineer for a different project) wherein it was stated that **“Norlida will help out temporarily to support Alexis on this matter, while we get a new PE replacement”** [page 2, COB-3]. It is on evidence that other Project Engineers had to *ipso facto* step in for the Claimant due to her absence in the Project and failure to carry out the duties and responsibilities assigned to her.

Examination-in-chief of COW-2 [COWS-2B, Q&A No. 3]

“Q : What happened after the Claimant’s email dated 31.7.2018?”

A : After the Claimant’s email dated 31.7.2018 (refer to page 2 of COB [Volume 3]), I then had to ask for Project Engineers from other projects that I was supervising who are Encik Jasman Amin Jamarei and Encik Zaim Aiman Bin Che Rosli to take over the Claimant’s responsibilities in

the Project because the Claimant had self-declared that she was no longer on the Project without my approval.

At page 2 of COB (Volume 3) in the email dated 1.8.2018 from Encik Jasman to Encik Fandi, it was informed that Puan Norlida Bt Piee would temporarily support the Project until the new Project Engineer is assigned.

At page 1 of COB (Volume 3), it was stated in the email trails dated 2.8.2018 from Encik Zaim to Encik Fandi, to arrange for a meeting with Encik Fandi and Puan Norlida.

Therefore, based on these emails, Encik Jasman and Encik Zaim had to step in to carry on the Claimant's responsibilities after the Claimant had abandoned her responsibilities as the Project Engineer of the Project.

Charge 5

[65] Charge No. 5 of the Claimant's Notice of Domestic Inquiry in relation to Project EMERY, states as follows:

"That you Adibah Hani binti Azit staff number 1006462 Executive Project Management Plant Change Delivery East Coast, Petronas Technical Services Sdn Bhd in your capacity as Project Engineer for EMERY project had committed an act of misconduct on 20th March 2019 when you had accused your Project Manager Head Cluster 4 Mariam binti Md Said for forcing you and Farah Tasha binti Nordin – Executive Schedule & Control, Project Control and Support PD&T to make a false reporting(make everything green) when you highlighted issues about EMRI project to Mariam binti M Said. Accusation was done via email dated 20th March 2019 to En M Kabir bin Nordin, Head Gas Processing and Utilities, Petronas Gas Berhad (PGB)."

[66] The oral and documentary evidence required to prove Charge No. 5 is as below:

- a) The monthly progress report for Project EMERY as extracted from the Schedule Control Report (SCR) for July 2018 to March 2019 which was prepared by Puan Farah Tasya (COW-4), the Project Controller for Project EMERY [pages 44 – 45, COB-2]
- b) The email dated 20.3.2019 [page 15, COB-2] wherein the Claimant had written to Encik Kabir bin Noordin on the alleged false reporting for Project EMERY
- c) Examination-in-chief of COW-4 (Puan Farah Tasya) on the contents of the email dated 20.3.2019

Examination-in-chief of COW-4 [COWS-4, Q&A No. 20]

“Q : Please refer to page 15 - 17 of COB (Volume 2). What are the contents of the email dated 22.3.2019 from the Claimant to Encik Mohammed Kabir bin Noordin?”

A : In the email dated 20.3.2019 from the Claimant to Encik Mohammed Kabir bin Noordin, the Claimant stated that the Claimant and myself have highlighted the issues on Project EMERY to Puan Mariam. The Claimant also stated that Puan Mariam’s response to the issues we raised about Project EMERY was to force us to make false reporting (“make everything green”). The Claimant’s email was copied to all the persons stated in Encik Mohammed Kabir’s reply email at page 15, COB (Volume 2).”

- d) Examination-in-Chief of COW-4 stating that what the Claimant stated in her email to Encik Mohammed Kabir, that Puan Mariam (COW-3) had forced COW-4 and the Claimant to falsely report the monthly progress reports for Project EMERY [see pages 44 – 45, COB-2], was untrue:

Examination-in-Chief of COW-4 [COWS-4, Q&A No. 23]

“Q : In reference to the Claimant’s email dated 20.3.2019 at pages 15 – 17 of COB (Volume 2), did you receive any instructions from your Project EMERY’s Project Manager, Puan Mariam Binti Said to falsely report or “make everything green” on the Project EMERY Monthly Progress Reports as alleged by the Claimant?

A : No, I did not receive any instructions from my Project Manager, Puan Mariam to falsely report on the Project EMERY Monthly Progress Reports. The Claimant’s allegation against Puan Mariam is not true.

- e) Project EMERY’s Project Manager, Puan Mariam Binti Said (COW-3) also explained the progress of Project EMERY based on the Monthly Progress Reports, stating that there was delay in the progress of the project in August 2018, September 2018, November 2018, December 2018, January 2019 and February 2019 – all of which are highlighted yellow. In October 2018 and March 2019 there was no delay in the progress of the project and thus highlighted green.
- f) It is COW-4’s testimony during examination-in-chief that (a) there is no false reporting in the Monthly Progress Report for Project EMERY; (b) that COW-4 did not receive any instructions from COW-3 to falsely report or “make everything green” on the Monthly Progress Reports as alleged by the Claimant; and (c) that the Claimant’s allegation against COW-3 was untrue.
- g) COW-3 testified during examination-in-chief [please see COWS-3, Q&A 18 at page 8] that she did not instruct nor force COW-4 or the Claimant to change any part of the actual progress stated in the Monthly Progress Reports, and that there was no false reporting in those progress reports.

[67] It is pertinent to note that during the trial, COW-4’s evidence that there was no issue of false reporting of the Monthly Progress Reports for Project EMERY

was never challenged. In the circumstances, COW-4's testimony that (a) there was no false reporting on the progress reports for Project EMERY and (b) that COW-3 did not instruct neither COW-4 nor the Claimant to falsely report the progress of Project EMERY, is deemed accepted by the Claimant as it had been held in the case of **Forest Steel Sdn Bhd v Iconic Gateway Sdn Bhd & Anor and Another Appeal [2020] 7 CLJ 19:**

“It is settled law that failure to cross-examine a witness on a crucial part of the case will amount to an acceptance of the witness’s testimony (Wong Swee Chin v. PP [1980] 1 LNS 138). Iconic is deemed to have accepted the evidence of PW2 and PW3 when they failed to cross-examine them on the issue of the preliminary works.”

[68] Based on all the above, we respectfully submit that the Claimant's claim that there was indeed false reporting or that she had been instructed by COW-4 to falsely report on the progress reports for Project EMERY does not stand.

Charge 6

[69] Charge No. 6 levelled against the Claimant is as follows:

“That you, Adibah Hani binti Azit (S/N: 1006462), Executive (Project Management), Plant Change Delivery - East Coast, PETRONAS Technical Services Sdn. Bhd. and in your capacity as the Project Engineer for EMERY project had committed an act of misconduct on 20 March 2019 when you had been dishonest in your information of your performance rating for FY2018 was rated 3L instead of 3S as

communicated to you by your Project Manager/Head (Cluster 4), Mariam binti M Said on 23 February 2019.

The claim and/or accusation was done via an email dated 20 March 2019 to En. M Kabir bin Noordin, Head (Gas Processing & Utilities), PETRONAS Gas Berhad (PGB)."

[70] The oral and documentary evidence on the above are:

- a) The email dated 20.3.2019 where the Claimant had written to Encik Kabir bin Noordin on amongst others, the fact that she was given a performance rating of 3L instead of 3S for FY2019 [page 16, COB-2]:

"And after all this effort, I was even given 3L Rating last year and IRSO Management never care to highlight this issues."

- b) Screenshot from the Company's Employee Performance Management (EPM) System on the Claimant's Personal Performance Appraisal (PPA) for the period of 1.1.2018 to 31.12.2018, showing that the Claimant was given an overall final rating of 3 and the cluster is solid (S), which means that the Claimant's performance rating is 3S (solid) for the year 2018 [page 18, COB-2].
- c) Screenshot from the Company's online system showing the workflow history for the Claimant's EPM form for the financial year 2018 [pages 49 – 50, COB-2].
- d) COW-3's testimony during examination-in-chief that (i) she had input the details of the Claimant's performance rating for FY2018 on 23.2.2019 before the Claimant had sent the email dated 20.3.2019,

and (ii) the Claimant had viewed her performance rating for FY2018 on the same day on 23.2.2019.

Examination-in-chief of COW-3 [COWS-3, Q&A No. 21]

“Q : Please refer to pages 49 - 50, COB (Volume 2). What is this document?”

A : This is the screenshot from the Company’s online system that shows the workflow history for the Claimant’s Employee Performance Management (EPM) form for the financial year 2018. At page 50, COB (Volume 2), on the date 23.2.2019 at the time 16:29:18, with username 117810 (which is my staff number), the message text is “Final appraisal of Criteria Group ‘Overall Performance Result’ entered”. Therefore, this shows that I had inserted the details of her performance rating for FY2018.

On the same day as seen at page 50, COB (Volume 2), on the date 23.2.2019 at the time 17:06:20, with username 1006462 (which is the Claimant), the message text is “Appraisal Document Displayed”. Therefore, this shows that the Claimant had viewed her performance rating for FY2018 on the same day on 23.2.2019 after I had inserted performance rating for FY2018 into the system.”

“Q : How did you know the username 1006462 is the Claimant?”

A : The username is based on the staff number. As seen at page 46, COB (Volume 2), the Claimant’s staff number is 01006462.”

[71] The Claimant testified during cross-examination that she had viewed her performance appraisal document for FY2018 done by COW-3 where she was rated 3S instead of 3L on 23.2.2019 at 5.06pm, which is almost a month before

she sent the email to Encik Mohammed Kabir bin Noordin on 22.3.2019 at 7:52:20.

Cross-Examination of Claimant on 11.5.2022

“Q : Rujuk mukasurat 50, COB-2, baris ke-9, jam 17:06:20 pada 23.2.2019. Anda telah memasuki system ini dan system telah memaparkan markah prestasi kerja anda seperti yang dirakamkan sebagai “Appraisal document displayed”?

A : Setuju.

Q : Nombor pengguna anda adalah 1006462 seperti di mukasurat 50, COB-2?

A : Betul.

Q : Rujuk mukasurat 46, COB-2. Nama yang ke-10 ialah nama anda, nombor pengguna 1006462?

A : Betul.

Q : Rujuk mukasurat 18, COB-2. Ini adalah EPM appraisal result untuk tahun 2018 iaitu markah prestasi kerja anda untuk 2018 yang mana Manager ialah Mariam M. Said?

A : Setuju

Q : Mengikut mukasurat 18, COB-2 di kolumn “Overall Rating” adalah markah 3, dan di kolumn “Cluster”, markah adalah “Solid”. Ini bermakna anda mendapat markah 3S daripada Puan Mariam?

A : Setuju.

Q : Rujuk muka surat 16, COB-2. Di perenggan yang ke-2, baris ke-4 terakhir, "I was given 3L rating last year". Adakan anda mengesahkan kenyataan anda ini bahawa prestasi anda untuk tahun 2018 adalah 3L? Adalah ini benar?

A : Ya.

Q : Emel ini anda tulis pada 20.3.2019?

A : Betul.

Q : Setuju bahawa pada tarikh emel ini iaitu 20.3.2019, anda telah mengetahui bahawa markah prestasi kerja anda untuk tahun 2018 adalah 3S dan bukannya 3L?

A : Setuju.

[72] Based on the above, it is undisputed that the Claimant had viewed and knew that her performance rating was 3S for FY2019, and yet she had dishonestly declared that her performance rating for FY2019 was 3L in her email dated 20.3.2019.

Whether the claimant had breached the Company's Code of Conduct and Business Ethics (CoBE)

[73] This court is in agreement that the Claimant's misconduct contained in Charges 1 to 6 hereinabove are in breach of the Company's CoBE provisions on insubordination and being dishonest or conducting oneself in such a manner as

to lay oneself open to suspicion of dishonesty in which the Company placed serious emphasis. The relevant provisions in CoBE on core values and culture are reproduced here [pages 18 – 19, COB-1]:

“2. CORPORATE VALUES AND CULTURE

2.3. *PETRONAS expects that, throughout your time of service as a PETRONAS employee, you will: -*

- a) *strive towards a **high standard of professionalism**;*
- b) *give your undivided loyalty and devotion to PETRONAS at all times and on all occasions;*
- c) *serve with **honesty and integrity**, goodwill and courtesy;*
- d) *display group cohesiveness based on oneness of purpose together with a caring attitude for the individual;*
- e) *uphold the **duty of care for the interests** and reputation of PETRONAS;*
- f) *display a **high sense of discipline**, cooperativeness and diligence in carrying out your duties;*
- g) *act consistently to maintain PETRONAS’ **confidence and trust** in you;*
- h) *promote creativity and new approaches in the course of carrying out your work; and*
- i) *comply with applicable laws, regulations and PETRONAS policies and procedures.”*

PART IV: DISCIPLINE, DISCIPLINARY PROCESS AND SANCTIONS

1.3 *The following acts may be treated as misconduct for which a person covered by this Code may be liable for disciplinary action, subject to the requirements of applicable law:*

- i. ***Insubordination;***

...

vi. being dishonest or conducting oneself in such a manner as to lay oneself open to suspicion of dishonesty

...

viii. negligence, neglect or dereliction of duty

[74] During cross examination, the claimant admitted that she had breached CoBE; however, she had explanation for such breach. This court found that her explanation, which was that she did not receive any official letter of assignment, devoid of any merit and as such must be rejected. The claimant's conviction is clearly a misdirection in that merely because there was no letter of assignment, she took it upon herself that it would be acceptable for her to having breached CoBE.

[75] This court is convinced that the Claimant had breached Clauses 1.3(i) on insubordination, Clause 1.3 (vi) on being dishonest to the Company, and Clauses 1.3(viii) on negligence and dereliction of duty, by failing to abide by her superior's instructions to carry out her duties despite multiple reminder emails and by being dishonest in making false allegations towards her superiors and other members of the Company.

FAIRNESS OF DOMESTIC INQUIRY

[76] This Court had been informed that the company shall not be relying on the Domestic Inquiry conducted and that the Company shall proceed which it so did, to prove the charges of misconduct against the Claimant via a de novo hearing before this Court. Nevertheless, since the issue of fairness of the domestic inquiry proceedings was raised by the claimant, this court shall address the claimant's contentions i.e. :

- a) The alleged "delay" in issuing the Notice of Domestic Inquiry on 24.4.2019 was to ensure that the Claimant was fit to work to undergo the disciplinary process, including the Domestic Inquiry.

Examination-in-Chief of COW-5 on 30.3.2022 [Q&A 14, COWS-5]

Q: So in a nutshell, can you explain Encik Aizat, why the Company waited 6 months from the date of the Claimant's Reply to Show Cause Letter in October 2018 to issue the Notice of DI on 24.4.2019? Why this 6 months gap?

A: As explained earlier, this is due to the fact that the Company has sent the Claimant for fit to work assessment to ensure she is fit to undergo disciplinary process and procedure taken against her...Hence the delay in issuing the Notice of Inquiry.

- b) The Claimant was given sufficient time to prepare for the Domestic Inquiry, and she did not at any point request for more time to conduct necessary preparations [see Q&A 19, COWS-5].

- c) The Domestic Inquiry procedures were explained to the Claimant, and she had asked questions during the process which were duly addressed [see Q&A 12, COWS-6].
- d) During the Domestic Inquiry, the position titles of the panel members and Chairman of the Domestic Inquiry (COW-6) were informed to the Claimant, who were all of a higher level than the Claimant. The Claimant stated she had no issues with the composition of the Domestic Inquiry Panel [see Q&A 13, COWS-6].
- e) The Claimant was given “plenty of breaks throughout the entire Domestic Inquiry proceedings”, and the “Domestic Inquiry Panel would also check with the Claimant if she would like to take a break at any given time” [see Q&A 14, COWS-6].
- f) The Claimant was not permitted to make a personal audio recording since the Company had its own official audio recording of the Domestic Inquiry. Thus, the Claimant was informed that she can request for a copy of the Domestic Inquiry minutes transcript if she wished [see Q&A 15, COWS-6].

[77] Additionally, it must be observed that the Claimant was, at all material times when she was assigned to the ALEXIS GPS Project and the Project EMERY, fit to work and fit to undergo disciplinary proceedings. **The Company had conducted a “Fit to Work Medical Examination” for the Claimant first before commencing with disciplinary proceedings as per the Letter of Undertaking dated 10.12.2018 [see page 37 – 38, COB-1], on the Claimant’s request for the Fit To Work assessment to be conducted at Klinik Rantau Petronas instead of Kuantan Medical Centre.**

[78] The Fit To Work assessment was conducted to ensure that the Claimant was fit to undergo the disciplinary proceedings. Following which, a psychiatric assessment was done on 2.3.2019 by Dr Noor Jan Kasim @ Khin Ohnmar Naing (Consultant Psychiatrist) (“Dr Noor Jan Kasim”). It is pertinent to note that in the letter dated 4.3.2019 from Dr Noor Jan Kasim, it was stated that the Claimant was found to have **“not exhibited any depressive or anxiety symptoms. All assessments indicated that she is in stable condition. Based on her current psychological status, she is fit to continue working at her current position”** [see page 45, COB-1].

[79] Subsequently, based on the medical report dated 27.3.2019 by Dr Asma’Nur Kamarul Azman (Occupational Health Doctor) on page 44, COB-1 (“Medical Report dated 27.3.2019”), it was found that the Claimant **“has been sleeping well and performing very well at work and denies any depressive or anxiety symptoms”**. The Medical Report dated 27.3.2019 containing an assessment of the Claimant’s fitness to work was valid until 2.1.2021 [see page 43, COB-1]. As such based on the Medical Report dated 27.3.2019, the Claimant was “fit to continue normal duties”.

[80] Based on such medical opinions, the Domestic Inquiry was thereafter held on 7.5.2019 and 8.5.2019. In view of the above, the Company has shown that it had taken sufficient steps to ensure that the Claimant had a fair opportunity through the Domestic Inquiry process. Any alleged “delay” in the process was

only to ensure that the Claimant was truly mentally and emotionally ready to undergo the disciplinary process in a fair manner.

[81] In summary, it is COW-6's testimony as the DI Chairman's testimony that the DI was conducted fairly:

Examination-in-Chief of COW-6 [COWS-6, Q&A No. 19]

“Q : Please refer to paragraph 19 of the Claimant's Statement of Case. Please comment.

A : The Domestic Inquiry against the Claimant was conducted fairly. The Claimant was informed even before the Domestic Inquiry through the Notice of Inquiry, and also throughout the Domestic Inquiry proceedings, that she would have the opportunity to call witnesses and adduce evidence to defend her case. The Claimant had almost 2 weeks from the Notice of Inquiry to prepare for the Domestic Inquiry. The Claimant did not at any point during the Domestic Inquiry request for more time to conduct the necessary preparations. If the Claimant felt that she required more time, she could do so. She was also allowed to cross-examine and ask questions to all the Company's witnesses which she did. She was allowed to present her case or any evidence in her defence.

Cross-examination of COW-6 on 31.3.2022

Q : Now can you, just one last question, when you explain to the court, when you were explaining the DI process at the outset before the commencement of the DI, you explain DI process before the commencement of the DI. What was the claimant's reaction, did she understand or did she ask questions? What was the claimant's reaction?

A : Claimant actually was fairly well prepared and asked reasonable questions as an accused employee. Upon providing all the explanation regarding the process and procedure inclusive of the issue under audio

recording claimant accepted my explanation as well as my fellow panel member's explanation and she was okay to proceed with the hearing.

Whether punishment of dismissal that was based on the 6 charges of misconduct was proportionate

[82] Having considered the facts and circumstances of the case in its entirety, this court is satisfied that the Claimant's conduct in totality clearly showed wilful defiance to the lawful orders of the Company, dishonesty and also negligence in the performance of her duties. Her persistent refusal to obey the instructions of her superior to attend at the Project office to carry out her duties and her dishonesty in making false statements about her superior amounted to serious acts of misconduct. In the case of **Zainudin Kassim v. Johan Ceramic Berhad [2008] 2 LNS 1447 (Award No. 1447 of 2008)** the Industrial Court had held as follows:-

"The right to control employees is a distinguishing feature of a contract of employment. The right to control implies the right to ask the employee what work to do. It is a dominant characteristic in the relationship of employer and employee, which marks off the employee from an independent character. As such, the employee must subject himself to the said control and behave accordingly. (See Misconduct in Employment by B.R.Ghaiye at p. 42)."

EM Rao in OP Malhotra's The Law of Industrial Disputes, Volume II, 6th Edition, page 1153 stated as follows:

“It is the duty of the workman to comply with the lawful order of the employer because obedience of superior officers and loyalty to the management are inherent in the jural relationship of master and servant and they need not be prescribed. There is no doubt that an employee however old and senior in service has no right to defy the orders of his superiors whatever his grievance in that behalf. A subordinate officer is, therefore, duty bound to obey the lawful order of a superior officer. The concept of obedience is implicit in the fact that officer receiving the order is subordinate to the officer giving the order and a lawful order has to be obeyed, unless there is good justification for not complying with such a lawful order. It is this conduct of declining to obey an order which not only results in disobedience but the conduct of workman would also amount to insubordination.”

- [83] This court found that the Claimant’s persistent and intentional defiance of authority, and disobedience of her superior’s lawful instructions to be present at the project office and carry out her duties and responsibilities as the Project Engineer of the ALEXIS Project had been done deliberately and wilfully. The Claimant had also actively chosen to disregard the lawful orders of her superiors by abandoning and/or neglecting her duties as Project Engineer. As a result, the Claimant’s acts had destroyed the employer-employee relationship. Such acts should not be allowed as per the Industrial Court case of **Delcom Services Sdn Bhd v. Parameswara Rajah Krishna [1999] 3 ILR**
7. It was held as follows:

“Now the misconducts by the claimant show that he had been absent from the company’s business premises without leave for a considerable period. Furthermore he had disobeyed the written directions/instructions

of his superiors that he should fill in leave application forms and get approval before going on leave.

In his book "Employees Misconduct" (1968 Edn.) the author writes at p. 5 as follows:

The necessity for employees to be present for duty at the time and place required is obvious. No enterprise of any kind could function if employees were able to come and go as they choose. Without knowing the size of its labour force, no employer could plan any productive undertaking. As one Canadian Arbitration panel observed:

If an employee regularly and for a long or short period of time absents himself or herself from the employment, it is readily understood that such absence throws into confusion the organisation of the work in any modern plant and necessitate the redistribution of the working force in a manner which detracts materially from the efficiency of the particular force.

and at p. 125, the author further states:

*In an early case the Calcutta Court of Small Causes remarked: **Disobedience to lawful commands is a most noxious offence and the most dangerous in nature for it goes at once to the utter annihilation of all authority.***

*The authority and desires of superiors be they employers are expressed through orders. **Without a willingness by an employee to accept the authority of superiors, no business organisation of any kind or indeed any other kind of organisation could function.** Every employee would do just what he chose and no central plan could be put in operation or successfully carried out. The objects and aims of the employer*

would never be accomplished, the very purpose of the contract of employment.

[84] It is well-established that disobedience of orders and not being present at one's place of work are misconducts which are serious in nature. In ignoring and refusing to obey her superiors' directives and instructions the Claimant had destroyed the employer-employee relationship. In the case of **Perumal Govindasamy v Enkei (Malaysia) Sdn Bhd [2013] 3 ILR 408**, it was held as follows:

(162) In Guna Ratnam S Subramaniam v. Shin-Etsu Polymer, this court at p. 646 held as follows:

In Pearce v. Foster [1886 (71) QBD 536, Lord Esher states as follows:

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

[163] The learned author, B.R Ghaiye too opined as follows:

If rude behaviour towards superior is allowed then it will not be possible to maintain discipline in the factory which is of utmost importance to the smooth running of all operations.

*[164] In this case, COW1 stated that no other employee **had thrown accusations at the Management in the manner done by claimant**. It would have been a simple matter if the claimant had merely explained to the letter without all the accusations or his reporting to the police or that the Management was weak and old-*

*fashioned. That apart, the company was still prepared to give him a chance and to hear him out at the DI. But he was adamant as ever that he would not apologise or retract the accusation used and that he had written the letter CL2 willingly. He had also maintained his stand that he had no respect for the company and that he distrusted it. **These events to mind are a dangerous precedent in an organisation where control, discipline, trust and cooperation were essential components to a good and harmonious relationship between Management and the employees. If no attempt was made to check such wild and baseless accusations and if any employer-employees could say such things about the Management without the realisation that the Management did not look at such behaviour in discipline and consequently the company will suffer from such actions.***

[85] It must be added that the proven misconduct against the Claimant, whether taken individually or cumulatively, are serious acts of misconduct and could not be tolerated by any employer, especially since this is a case of a subordinate who was determined to go her own way to disregard the instructions of her superiors and write dishonest emails. COW-5, Encik Mohd Aizat Bin Azmi (Executive Industrial Relations, Human Capital Expertise, Group Human Resource Management of the Company), elucidated on why the Company had decided to impose the punishment of dismissal:

Examination-in-Chief of COW-5 [COWS-5, Q&A No. 18]

“Q : Why did the Company impose the punishment of dismissal?

A : The Claimant was found guilty for Charges 1 – 4 on acts of insubordination, and Charges 5 and 6 for false accusations and dishonesty. Based on the grounds of misconduct proven against the

Claimant before an independent Domestic Inquiry Panel, it was clear that the Claimant had committed serious and grave acts of misconduct by willingly disobeying the instructions of her superiors, making false accusations regarding the progress report of Project EMERY and also failing to exhibit honest behavior in communicating her performance rating for FY2018. It showed the Claimant's lack of respect towards her superiors and colleagues, and failure to adhere to Company's core values and culture. Hence, upon considering all the circumstances of the case, the Company decided that the Company could no longer repose in the Claimant any further trust and confidence for the full and faithful discharge of her duties with the Company.

[86] Based on the above facts and case law, this court found on the balance of probabilities that the 6 charges proved against the Claimant was sufficiently serious to justify the punishment of dismissal against the Claimant. As such, the dismissal was proportionate to the nature and gravity of the misconduct committed by her. Based on the totality of the proved and/or admitted facts and/or evidence as well as the established authorities enumerated hereinabove, the Company respectfully submits that the Claimant's dismissal was with just cause and excuse. As such, the Claimant's claim for reinstatement and/or compensation ought to be dismissed.

CONCLUSION

[87] It is evidently clear that the Company had successfully established cogent and compelling evidence that the Claimant was guilty of the charges of misconduct

preferred against her and that given the nature of the misconduct as well as the Claimant's position as Project Engineer, the Claimant's claim ought to be dismissed. In the upshot, this Court concludes that the Claimant's dismissal was with just cause or excuse in accordance with Section 30(5) of the Industrial Relations Act 1967 whereby this court, in handing down this award, shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal form. Wherefore, the Claimant's case be hereby dismissed.

HANDED DOWN AND DATED THIS 21TH DECEMBER 2023

-Signed-

(SYED NOH BIN SAID NAZIR @ SYED NADZIR)

CHAIRMAN

INDUSTRIAL COURT OF MALAYSIA

KUALA LUMPUR