

**IN THE INDUSTRIAL COURT OF MALAYSIA**

**CASE NO: 15/4-1491/19**

**BETWEEN**

**AHMAD ZIL SYAMIL BIN SUKHAIRI  
AND**

**MALAYSIA AIRLINES BE-RHAD**

**AWARD NO : 1477 OF 2020**

**BEFORE** : Y.A. PUAN REIHANA BTE ABD. RAZAK  
Chairman

**VENUE** : Industrial Court, Kuala Lumpur

**DATE OF REFERENCE** : 07.08.2019.

**DATES OF MENTION** : 23.09.2019, 21.10.2019, 06.11.2019,  
09.12.2019, 20.12.2019, 26.12.2019,  
07.01.2020, 09.03.2020, 16.03.2020.

**DATES OF HEARING** : 17.02.2020 and 18.02.2020.

**REPRESENTATION** : Mr. Nasrul Hadi bin Mat Saad  
Messrs. Adnan Sharida & Associates  
Counsel for the Claimant

Mrs. Wong Keat Ching together with Ms.  
Syazwani Suhaimy  
Messrs. Zul Rafique & Partners  
Counsel for the Company

## **REFERENCE**

This is a reference made under section 20 (3) of the Industrial Relations Act 1967 arising out of the alleged dismissal of **AHMAD ZIL SYAMIL BIN SUKHAIRI** (The Claimant) by **MALAYSIA AIRLINES BERHAD** (The Company) on 14.12.2018.

## **AWARD**

[1] This dispute arises from the Claimant's dismissal from the service of the Company with effect from 14.12.2018.

## **CLAIMANT'S PLEADED CASE**

[2] The Claimant commenced his employment with the Company as a Second Officer Pilot on 01.09.2015 and was a confirmed employee.

[3] The Claimant's last held position was First Officer and at the time of the Claimant's dismissal, his last drawn basic salary was RM8,395.00 per month.

[4] The Claimant states that the Company vide letter dated 28.11.2018 issued him a show cause letter with two allegations of as follows:

### ***Charge 1***

***"That you, as First Officer of the Company on 16 November 2018 around 1630hrs were absent from duty without proper authorization or justification whereby it was reported that you***

***have refused to accept standby called up for MI-II 79 KUL/CMB/KUL Reporting time at 2110hrs.***

***The alleged act of misconduct committed by you tantamount to a breach of the Company's policies which includes but not limited to the Malaysia Aviation Group — Industrial Relations Handbook "***

***Charge 2***

***"That you, as First Officer of the Company on 24 November 2018 had failed to follow the standard operating procedures where you had reported sick last minute for MH752/753 KUL/HAN estimated time of departure at 1015hrs. Your action has disrupted the operations and resulted to the delay of the said flight for 20 minutes.***

***The alleged act of misconduct committed by you tantamount to a breach of the Company's policies which includes but not limited to the Malaysia Aviation Group — Industrial Relations Handbook. '***

**[5]** The Claimant states that the Company suspended his services and he was not allowed to enter the Company's premises.

**[6]** The Claimant by letter dated 2.12.2018 submitted his written explanation denying the allegations alleged by the Company.

**[7]** The Claimant contends that vide letter dated 14.12.2018 the Company terminated his services.

[8] The Claimant appealed to the Company on his dismissal but the Company rejected his appeal.

[9] The Claimant contends that the termination was without just cause or excuse and was carried out in bad faith, in breach of natural justice, unfair labour practice and done *mala fide*.

### **COMPANY'S PLEADED CASE**

[10] The Company avers that Captain Mohd Ezzaddin Bin Mohd Roslan who was responsible in handling pilots' welfare and disciplinary issues received a report that the Claimant had refused to accept a standby call up duty on 16.11.2018 as stated in the Duty Executive, Crew Tracking Control Daily Report.

[11] Captain Mohd Ezzaddin also received email dated 24.11.2018 from the Duty Executive Crew Tracking Control (CTC) that the Claimant had failed to operate Flight MH752/753 KUL/HAN/KUL on 24.11.2018 when the Claimant reported to go on medical leave on the last minute to the CTC.

[12] The Company issued a Show Cause letter dated 28.11.2018 requiring the Claimant to explain 2 allegations of misconducts against him to which the Claimant provided his explanation by letter dated 2.12.2018.

[13] After taking into consideration the Claimant's explanations and the gravity of the alleged acts of misconduct committed by the

Claimant, the Company decided to dismiss the Claimant from the services of the Company with effect from 14.12.2018.

[14] By a letter dated 21.12.2018, the Claimant appealed against the dismissal imposed on him and the Company rejected the Claimant's appeal on his dismissal.

## LAW

[15] 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.”*

[16] 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. The Court is restricted in its inquiry into the veracity of the reason chosen by the employer for the dismissal of its employee. 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**

[17] The Claimant was dismissed vide letter dated 14.12.2018 [COB-1 pages 5] on the two grounds of misconduct.

[18] The issue before this court is to determine whether the Company had on a balance of probabilities established that the Claimant committed the misconducts complained of by the Company, and if so, whether the proven acts of misconduct warrants a dismissal.

[19] Charge 1 against the Claimant read as follows [COB-I, page 3]:

### ***Charge 1***

***"That you, as First Officer of the Company on 16 November 2018 around 1630hrs were absent from duty without proper authorization or justification whereby it was reported that you***

***have refused to accept standby called up for MH179  
KUL/CMB/KUL Reporting time at 2110 hrs***

***The alleged act of misconduct committed by you tantamount to  
a breach of the Company's policies which includes but not  
limited to the Malaysia Aviation Group — Industrial Relations  
Handbook.***

**[20]** Captain Mohd Ezzaddin Bin Mohd Roslan [COW-1] responsible in handling pilots' welfare and disciplinary issue testified that on 16.11.2018 the Claimant was informed through the Malaysia Airlines Crew Web Portal to be on standby duty from 16:00 hours because his scheduled duty to operate Flight MH774/775 at 3.10pm from Kuala Lumpur to Bangkok and back to Kuala Lumpur was cancelled by Operations Control due to aircraft constraint.

**[22]** COW-1 states that the Claimant had acknowledged the change of duty at 09:58 hours on 16.11.2018 as shown in COB-2 page 10.

**[23]** COW-1 testified further that on 16.11.2018 at 16:30 hours the Crew Tracking Control [CTC] called up the Claimant [CTC] for duty to operate Flight MH179 from Kuala Lumpur to Colombo and back to Kuala Lumpur and was asked to report for duty at 21:10 hours, but the Claimant had refused to be on duty.

**[24]** COW-1 states that the Claimant's refusal to operate Flight MH179 from Kuala Lumpur to Colombo and back to Kuala Lumpur on

16.11.2018 is shown in the Crew Unavailable Duty Report in Daily Executive (DE) Report at COB-1 pages 22-23.

**[25]** It was the Company's contention that as the Claimant did not have any scheduled flight on 15.11.2018 and that his scheduled flight to Bangkok on 16.11.2018 was cancelled, the rest period for the Claimant was sufficient for him to operate the Kuala Lumpur to Colombo, Sri Lanka and back to Kuala Lumpur as per the flight time limitation stated in the Company policy.

**[26]** It is the Claimant's case that on 16.11.2018 at 13:50 hrs he was ready on-standby to depart for his scheduled flight at 15:10 hrs to Bangkok and back to Kuala Lumpur.

**[27]** The Claimant contended the Company then instructed him to be on standby at 16:00 hrs without any prior notice and that he was only aware of the cancellation of flight to Bangkok at 13:50 hours on 16.11 .2018.

**[28]** The Claimant avers that the Company instructed him to operate an overnight flight from Kuala Lumpur to Colombo, Sri Lanka and back to Kuala Lumpur, which will arrive at 6.40 am on 17.11.2018.

**[29]** The Claimant avers that he raised his concern to the Company about the change of his roster and the duty at the last minute but the Company did not consider his concerns.



**[30]** The Claimant asserts that he did not reject the Kuala Lumpur-Colombo-Kuala Lumpur flight but requested for a shorter flight but he was not given any duty on that day by the Company.

**[31]** It was the Claimant's contention that he refused the duty when called up to operate the Flight MH 179 from Kuala Lumpur to Colombo and back to Kuala Lumpur on 16.11.2018 because he was not sufficiently rested before the duty.

**[32]** It was not disputed by the Claimant that he was on a standby duty on 16.11.2018 when he was called up to operate Flight MH179 from Kuala Lumpur to Colombo and back to Kuala Lumpur and asked to report for duty at 21:10 hours.

**[33]** It was also admitted by the Claimant to which he admitted that he had refused to accept the said KL-Colombo-KL flights duty. As such COW-1's evidence that the Claimant's refusal to operate Flight MH179 from Kuala Lumpur to Colombo and back to Kuala Lumpur on 16.11.2018 as shown in the Crew Unavailable Duty Report in Daily Executive (DE) Report [COB-1 pages 22-23] remained unchallenged.

**[33]** The Claimant avers that the Company changed his duty on 16.11.2018 to operate Flight MH179 from Kuala Lumpur to Colombo and back to Kuala Lumpur on the very last minute, therefore he was not fit to operate Flight MH179 due to insufficient resting period before flying.

**[34]** COW-1 explained that according to the Company's Operation Manual Part A at Paragraph 7.15.12.1 [COB-2 page13], the minimum rest period which must be taken before undertaking a flying duty period shall be at least as long as the preceding duty period or 12 hours whichever is greater.

**[35]** COW-1 states that according to the duty roster in COB-2page 3, the Claimant's preceding duty period, which was on 14.11.2018, was 7 hours 40 minutes and the Claimant was not on duty on 15.11.2018. As such, the Claimant had more than 24 hours resting time before his next scheduled duty on 16.11.2018 at 1600 hours.

**[36]** COW-1's evidence in relation to the minimum rest period which must be taken before undertaking a flying duty and the calculation of the Claimant's resting hours before operating Flight MH179 from Kuala Lumpur to Colombo and back to Kuala Lumpur was not disputed by the Claimant. It is therefore no doubt that there was sufficient resting period and the Claimant was fit for his standby duty on 16.112018 at 1600 hours.

**[37]** The Claimant asserted that Company changed his standby duty of operating the flight from Kuala Lumpur to Bangkok and back to Kuala Lumpur on 16.11.2018 at 16:00 hours at the last minute.

**[38]** COW-1 testified that based on the Company's Avient Crew Portal System [COB-2 page 16], on 16.11.2018 at 02:17 hours, the Claimant had been reassigned from operating Flight 774/775 from

Kuala Lumpur to Bangkok back to Kuala Lumpur to standby at 16:00 hrs and that the Claimant had acknowledged his reassignment to standby duty on 16.11.2018 at 09:58 hours. The Claimant did not challenge what was recorded in the Company's Avient Crew Portal System [COB-2 page 16]. As such the Claimant's contention that his duty changed to standby duty on 16.11.2018 at 16:00 hours at the very last minute is therefore an afterthought.

**[39]** COW-1's testimony that any amendment or changes made in the Company's Avient Crew Portal System would be linked to the portal where the flight crews crew would be able to view it was also never challenged by the Claimant.

**[40]** It is clear that the Claimant indeed had checked the portal at 09:58 hours on 16.11.2018 and he had acknowledged the reassignment of duty from operating the flight from Kuala Lumpur to Bangkok and back to Kuala Lumpur on 16.11.2018 was reassigned to standby duty on 16.11.2018 at 16:00 hours.

**[41]** The Claimant attempted to justify his refusal to operate Flight MH179 from Kuala Lumpur to Colombo and back to Kuala Lumpur by contending that he was unable to comply with the duty limitation after calculating the allocated duty time and assuming delayed reporting in single Flight Duty Period before operating the flights.

**[42]** COW-1 explained that the delayed reporting in a single Flight Duty Period was not applicable to the Claimant because the

Claimant's initial scheduled flight on 16.11.2018 which was from Kuala Lumpur to Bangkok and back to Kuala Lumpur was cancelled not delayed and the Claimant was then reassigned to be on standby duty at 16:00 hours on 16.11.2018.

**[43]** The Claimant asserted that since the flight to Bangkok was entirely cancelled on 16.11.2018, the allowable Flight Duty Period (FDP) should be calculated at 21:10 hours based on the reporting time for flight to Colombo.

**[44]** The Claimant however during cross-examination agrees that paragraph 7.5.8.3 of the Company's Operations Manual Part A [COB-2 page 8] in particular at Table A was applicable where the FDP that is applicable to him is 18:00 to 21:59 and for 2 sectors flights, local time 18:00 to 21:59 to start duty, the allowable FDP is 11 hours 15 minutes.

**[45]** The claimant too in cross examination agreed that to calculate the FDP, it is by taking the starting time of the flight which is 21:10 hours plus the 11 hours 15 minutes which will be at 08:25 am [the next day] where the flight duty too ends at 8.25 am the next day.

**[46]** The Claimant did not dispute that the flight from Kuala Lumpur to Colombo and back to Kuala Lumpur would arrived at 6.40 am on 17.11.2018. With the Claimant's own admission, COW-1's evidence that based on the schedule flights from Kuala Lumpur- Colombo- Kuala Lumpur which would arrive at 06:40 hours (before 08;25 hours) and that the Claimant was within the maximum allowable FDP to

operate the Flight MH179 from Kuala Lumpur to Colombo and back to Kuala Lumpur remained unchallenged.

**[47]** COW-1's evidence that the claimant's FDP on 16.11.2018 should be calculated based on the reporting time from Kuala Lumpur-Colombo-Kuala Lumpur which was at 21:10 and not be calculated based on from the time the Kuala Lumpur-Bangkok Kuala Lumpur flights were cancelled also was not challenged.

**[48]** The Company had proven that the Claimant was within the maximum allowable FDP to operate Flight MH-179 on 16.11.2018 from Kuala Lumpur to Colombo and back to Kuala Lumpur with reporting time at 21:10 hours. As such, the Company established that the Claimant had no reason or justified to refuse the standby call up for duty on 16.11.2018 to operate the Flight MH179 from Kuala Lumpur to Colombo and back to Kuala Lumpur. The Claimant is deemed to be absent from his duty without any proper authorisation or justification on 16.11. 2018.

**[50]** The Company had proven that the Claimant had been absent from duty on 16.11.2018 at 16:30 hours without authorization. The Claimant had known about his reassigned roster at 0958 hours on 16.11.2018 and he was within the maximum allowable FDP to operate Flight MH179 from Kuala Lumpur to Colombo and back to Kuala Lumpur. The Claimant had no justification to refused the standby duty to operate the Flight MH179 on 16.11.2018 from Kuala Lumpur to Colombo and back to Kuala Lumpur.

[51] The Claimant's claim that he did not refuse the duty to fly but instead requested for a shorter flight and it was the Company did not attend to his request is just an afterthought as there was no evidence adduced by the Claimant to show when, how and to whom he requested for the shorter flight. In the absence of any evidence, the Claimant's contention is therefore baseless.

[52] The Second Charge [COB-1 page 3] against the Claimant reads as follows: -

***"Charge 2***

***That you, as First Officer of the Company on 24 November 2018 had failed to follow the standard operating procedures where you had reported sick last minute for MI-1752/753 KUL/HAN estimated time of departure at 1015hrs. Your action has disrupted the operations and resulted to the delay of the said flight for 20 minutes.***

***The alleged act of misconduct committed by you tantamount to a breach of the Company's policies which includes but not limited to the Malaysia Aviation Group- Industrial Relations Handbook.'***

[53] COW-1 testified that on 24.11.2018 the Claimant was assigned to operate flight assigned to operate flight MH752/753KUL/HAN/KUL departing at 09:40 hours from Kuala Lumpur to Hanoi and back to Kuala Lumpur where the Claimant was to report for duty by 08:25

hours. The Claimant at 08:24 hours reported that he was on medical leave for 1 day on 24.11.2018.

**[54]** COW-1 states that the Claimant had failed to operate flight MH752/753 KUL/ HAN/ KL the flight from Kuala Lumpur to Hanoi back to Kuala Lumpur on 24.11.2018 based from an email dated 24.11.2018 [COB-2 page 15] he received from the Duty Executive, Crew Tracking Control to him informing about the Claimant's last minute reporting that he was on medical leave.

**[55]** COW-1 testified that according to the Company's Flight Crew Administration Manual at paragraph 1.3.2.1 [COB-1 page 26], if a crew member is not available due to sickness or for any other reason, it is the crew member's responsibility to notify the Crew Tracking and Control ("CTC") immediately. COW-1 further states that the flight crew shall notify the Crew Tracking & Control (CTC) immediately by phone upon becoming ill and shall as far as possible state the nature of the illness and estimated duration of the absence and any change in duration shall also be relayed to the CTC as soon as possible.

**[56]** COW-1 also explained that Paragraph 1.6.2.2 of the Company's Flight Crew Administration Manual in COB-4 page 28 provided for alternative notification by flight crew to the CTC by email. Notification by email should only be made more than 4 hours before the start of any duty and shall state the MC Type (Casual or Hospitalization), number of MC days (Start date and End date), name of the clinic or Hospital and the mc reference or serial number.

**[57]** COW-1 in his testimony states that the Claimant had failed to operate flight MH752/753 KULI HAN/ KL the flight from Kuala Lumpur to Hanoi back to Kuala Lumpur on 24.11.2018 in reference to email [COB-2 pages 12] from one Nabila Nor Azman of the Operational Research & Data Analytics to one Ab Shukor Bin Salleh of the Airport Services, regarding the 20 minutes' delay of Flight MH52/753 KULI HAN/ KL] on 24.11.2018 due to waiting for replacement of the original First Officer

**[58]** It was the Claimant's contention that at on 24.11.2018 at 06:30 hours when he was getting ready for work, he was already experiencing slight flu, but he did not notify Crew Tracking and Control regarding his health condition. The Claimant testified that on his way to the airport, his condition was already deteriorating but he did not notify Crew Tracking and Control regarding his health condition.

**[59]** The Claimant avers that at 7.45 am, when he reached the airport, he was already developing chesty coughs due to nasal drips down to the throat. The Claimant then went to Menara Medical Center, Level 2 KLIA for medical assistance and was rendered unfit to fly and he was given a medical certificate (MC) for one day.

**[60]** The Claimant asserts that he immediately contacted the CTC to inform his condition twice, but that he was passed to three different officers until finally settling with a lady officer which told him that she



has no idea what to do about that situation on that day. Having to be said so, the Claimant returned home to rest.

**[61]** The Claimant states that he on 25.11.2018 submitted his MC dated 24.11.2018 to the Company to which the Company accepted the said MC.

**[62]** It is the Company's contention that as per Company's policy, the Claimant was required to notify the CTC immediately upon becoming ill and shall as far as possible state the nature of his illness. Alternatively, the Claimant was also required to provide notification to the CTC by way of an email more than 4 hours before the start of any duty. The Claimant had only reported sick to the CTC less than 2 hours prior to the duty flight which was at 8:24hrs when the flight was estimated to depart at 09:40hrs.

**[63]** The Court is of the view that the Claimant had plenty of opportunities to notify the CTC regarding his deteriorating health conditions at three different occasions, which was at 06:30 hours when he was at home and experiencing slight flu, on his way to the airport when his condition was already deteriorating and at 07:45 hours when he arrived at the airport and he was already developing chesty coughs due to nasal drips down his throat as a result of his flu.

**[64]** COW-1's evidence that the Claimant had failed to comply with the paragraph 1.6.2.1 and 1.6.2.2 of the Flight Crew Administration Manual as he failed to notify the CTC immediately by phone upon

becoming ill and only notified the CTC 08:24 hours on 24.11.2018 when he was required to report for duty at 08:25 hours was not at all challenged.

**[65]** COW-1's evidence that the Claimant did not have to wait for medical certificate before notifying CTC and should have informed immediately regarding his symptoms of flu upon becoming ill by phone for the Company to make early arrangement for his replacement and to avoid causing any delays to the flight was also not disputed.

**[66]** The Court opined the Claimant as a pilot is responsible for his own health and should not have to wait for medical certificate to notify CTC immediately upon becoming ill.

**[67]** The Claimant was well aware of the notification procedure upon becoming ill as any last minute notification may cause delay where in the present case the Claimant's action had disrupted the operations and resulted the delay of the said flight for 20 minutes.

**[68]** From the evidence adduced, the Company had established the alleged misconduct as stated in Charge 2. As such, on a balance of probabilities the Company had proven the misconducts as stated in Charge 1 and charge 2.

**[69]** Upon weighing all the evidence presented by both parties, the Court is of the opinion that the Company had on a balance of probabilities proven both charges against the Claimant.

**[70]** As a First Officer, the Claimant was well aware that it was a common practice that he had to be on standby at all times due to the Company's nature of business and operations. The Claimant's clear act of refusing to operate the operate flight MHI 79 from Kuala Lumpur to Colombo back to Kuala Lumpur on 16.11.2018 was a clear disobedience of the Company's instruction. The Claimant's act also had cause him to be absent from work without proper authorization.

**[71]** The Court is of the view that the Claimant's conduct of refusing to fly had disrupted the Company's operations where the Company was forced to urgently find another First Officer to replace the Claimant and that the rostered flight from Kuala Lumpur to Colombo was delayed. In relation to the Second Charge, the Claimant had committed serious act of misconduct by not following the Company's notification procedure when the Claimant had reported sick last minute when he was scheduled to operate flight MH752/753 from Kuala Lumpur to Hanoi and had resulted in the delay of the said flight for 20 minutes.

**[72]** This Court having regards to Section 30(5) of the Industrial Relations Act 1967 to act according to equity, good conscience and the substantial merits of the case finds that the Claimant's dismissal by the Company was with just cause or excuse. The punishment of

dismissal against the Claimant was proportionate to the nature and gravity of the misconduct committed by him. The Claimant had breached the mutual trust and confidence required by the Company for the Claimant to perform his functions as a pilot with a high level of integrity, discipline and accountability.

The Claimant's claim is hereby dismissed.

**HANDED DOWN AND DATED THIS 6 OCTOBER 2020**

**-Signed-**

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