

INDUSTRIAL COURT OF MALAYSIA

CASE NO: 31(22)/4-376/16

BETWEEN

MOHD ARIF BIN MOHD SHARIF

AND

TENAGA NASIONAL BERHAD

AWARD NO : 324 OF 2019

Before : **SYED NOH BIN SAID NAZIR @ SYED NADZIR**
Chairman- sitting alone

Venue : Industrial Court Malaysia, Kuala Lumpur

Date of Reference : 06.01.2016

Dates of Mention : 22.03.2016, 22.04.2016, 11.07.2016, 26.08.2016,
16.01.2017, 07.06.2018, 07.09.2017, 27.06.2018

Dates of Hearing : 18.07.2018, 26.07.2018, 17.08.2018, 12.10.2018,
19.11.2018

**Claimant's Oral
Submission** : 19.11.2018

**Company's Written
Submission** : 14.12.2018

**Solicitors/
Representation** : Mr. A.Sivananthan
Malaysian Trades Union Congress (MTUC)
Representative for the Claimant

Ms. Wong Keat Ching & Ms. Syazwani Suhaimi
Messrs Zul Rafique & Partners
Counsel for the Company

Reference:

This is a reference made under section 20 (3) of the Industrial Relations Act 1967 (the Act) arising out of the dismissal of **Mohd Arif Bin Mohd Sharif** (hereinafter referred to as "the Claimant") by **Tenaga Nasional Berhad** (hereinafter referred to as "the Company") on 5.6.2015.

AWARD

[1] The Ministerial reference in this case required the Court to hear and determine the Claimant's complaint of dismissal by the Company on 5.6.2015. This case was transferred from Court 22 to this division of the Court on 27.6.2018.

BRIEF FACTS OF THE CASE

[2] The parties to the dispute before this Court are Mohd Arif Bin Mohd Sharif ("the Claimant") and Tenaga Nasional Berhad ("the Company") over the dismissal of the Claimant from the services of the Company with effect from 5.6.2015.

[3] The Claimant was initially employed by the Company (previously known as "Lembaga Letrik Negara") as a "Buruh Am" with effect from 16.7.1976 and during the Claimant's tenure in employment, he was transferred and/or re-designated to various positions. The Claimant's last held position in the Company was "Penyelia Pembaca Jangka (KUP) (PSO9)" drawing last monthly salary of RM4,325.00 and fixed transport allowance of RM300.00 per month.

[4] In April 2014, the Company received a complaint concerning the Claimant's failure and/or neglect to conduct a final reading of the electricity consumption "bacaan jangka akhir" for Account No. 0324 00734171 07 belonging to one Encik Toh Hang Soo in the premises located at No. 13, Lot

298 BWH, Taman Kampong Gelam, 71000 Port Dickson resulting in an erroneous recording of the electricity consumption that subsequently caused the Company loss amounting to RM734.25 ("Toh Hang Soo's case").

[5] Meanwhile, the Company also received a report against the Claimant on his failure to report the irregularities in respect of the electricity meter readings at his premises located at No. 83, Type 3, Kwarters TNB Batu 4, Jalan Pantai, Taman Abu Zarim, Port Dickson, Negeri Sembilan. The report was on the Claimant's failure to take any action in respect of the defective electricity meter reader at his premises "kejanggalan mengenai jangka meter elektrik" despite having been notified of the same and inaccurate electricity meter readings were recorded in the Claimant's account in the Enhanced Customer Information Billing System ("e-CIBS") which contained, *inter alia* meter billing data, financial and reporting.

[6] By a letter dated 13.11.2014, the Claimant was suspended from service (COB-1, 13) and he was given half pay for a period of fourteen (14) days effective 14.11.2014, pending investigations. By the same letter, the Claimant was also notified that if the Company was unable to complete its investigations within the fourteen (14) days period, his suspension would be continued on full pay until further notice.

[7] Consequently, by a Notice of Inquiry dated 3.12.2014 (COB-1, 14-17), the Claimant was required to attend a Domestic Inquiry ("the Inquiry") on 13.1.2015, 14.1.2015 and 15.1.2015 to answer the charges of misconduct preferred against him, as stated therein. However, the Inquiry only commenced on 20.1.2015 wherein the Claimant pleaded not guilty.

[8] The Inquiry then went on on 21.1.2015, 22.1.2015, 23.3.2015, 24.3.2015, 25.3.2015, 14.4.2015, 15.4.2015, 18.5.2015, 19.5.2015, 1.6.2015 and was completed on 2.6.2015. The Inquiry fixed 3.6.2015 for decision when the verdict of the Inquiry was communicated to the Claimant.

[9] By a Letter dated 5.6.2015, the Company wrote to inform the Claimant that the "Jawatankuasa Tatatertib Bagi Kumpulan Bukan Eksekutif, TNB" (Disciplinary Committee for Non-Executive Staff) ("the Disciplinary Committee") was satisfied that the charge preferred against the Claimant had been proven and proceeded to dismiss the Claimant effective 5.6.2015.

[10] By a letter dated 15.6.2015, the Claimant appealed to the Disciplinary Appeals Committee against the punishment of dismissal imposed on him by the Disciplinary Committee.

[11] By a letter dated 4.8.2015, the Claimant was informed that having reviewed the reasons set out in his appeal, the seriousness of the Claimant's acts of misconduct and relevant matters, the Disciplinary Appeals Committee had decided to dismiss his appeal and maintain his dismissal from service (COB-1, 49).

COMPANY'S CASE

[12] It has been pleaded and submitted by the Company that it had preferred specific charges of misconduct against the Claimant, conducted the Inquiry in accordance with established principles of industrial relations practice and the Disciplinary Procedures of the Company.

[13] It has been submitted by the Company that the Claimant was, at all material times, not only informed of the right to defend himself against the charges of misconduct preferred against him but, was also given every opportunity to be heard, to explain and/or exculpate himself from the charges of misconduct preferred against him.

[14] The Company has also submitted that the Claimant was represented at the Inquiry by representatives from the Junior Officers Union (JOU), Tenaga Nasional Berhad.

[15] It was the Company's pleaded case that on the totality of the evidence adduced before the Inquiry, the Company had, on a balance of probabilities, proven the charges of misconduct preferred against the Claimant and that the charges of misconduct for which the Claimant was found guilty were sufficiently serious to warrant the punishment of dismissal.

[16] It was also submitted by the Company that the punishment of dismissal was proportionate in all the circumstances of the case and on the facts and circumstances, the Company had operated within the limits of its management prerogative in disciplinary matters and there was a genuine and lawful exercise of the power to penalise the Claimant for his acts of misconduct.

[17] The Company further submitted that upon considering the serious nature of the charges of misconduct which the Claimant was found guilty, the punishment of dismissal was justified in the circumstances of the case since the Company could no longer repose in him any further trust and confidence for the full and faithful discharge of his duties with the Company and accordingly, it would not be conducive to industrial harmony nor will it be in accordance with equity and good conscience to make any order of reinstatement of the Claimant to his former position.

[18] Wherefore, the Company prays that the Claimant's case be dismissed.

THE CLAIMANT'S CASE

[19] It has been contended by the Claimant that the allegations as contained in the four charges against him were not proven during the proceeding of Domestic Inquiry and that his termination was without just cause or excuse.

[20] The Claimant submitted that his termination was harsh, unwarranted and baseless as it did not commensurate to the years of his service in the Company.

[21] The Claimant prays for reinstatement without any loss of wages, seniority or benefits or any other relief that this Court deems fit and proper.

PLEADINGS, BUNDLE OF DOCUMENTS AND WITNESS STATEMENT

[22] The pleadings filed by parties in this case are as follows:

- (a) Statement of Case dated 8.7.2016
- (b) Statement in Reply for the First Claimant dated 5.8.2016. The Claimant did not file Rejoinder thereafter.

[23] The parties have filed the following Bundle of Documents and the Court had marked the bundles as:

- (a) Company's Bundle of Documents [Volume 1] (COB-1).
- (b) Company's Bundle of Documents [Volume 2] (COB-2).
- (c) Company's Bundle of Documents [Volume 3] (COB-3).

[24] The following documents were tendered by the Company in the course of the hearing and marked as exhibits accordingly:

- (a) Register Reading of All Details for the Claimant's account (COB-4)

[25] The following Witness Statements were tendered by the Company and the Claimant respectively in the course of the hearing and duly admitted as evidence-in-chief of the following witnesses and marked as exhibits accordingly:

- (a) Company's Witness Statement of Esmet Sidqie Bin A. Mutalib (COWS-1) – Chairman of Panel of Domestic Inquiry;

- (b) Additional Witness Statement of Esmet Sidqie Bin A. Mutalib (COWS-1A);
- (c) Company's Witness Statement of Salmy Binti Abdul Samad (COWS-2) – Management Assistant;
- (d) Company's Witness Statement of Mohd Azman Bin Mat Dan (COWS-3) – Assistant Technician;
- (e) Company's Witness Statement of Charanjit Singh A/L Dharam Singh (COWS-4) – Head/COO, Single Buyer; and
- (f) Witness Statement of the Claimant Mohd Arif Bin Mohd Sharif (CLWS-1).

COURT'S FUNCTION AND BURDEN OF PROOF

[26] The functions of this Honourable Court under Section 20 of the Act in a dismissal case are twofold, namely:

- (a) to determine whether the misconduct complained of by the employer has been established; and
- (b) if so, whether the said misconduct constitutes just cause or excuse for the dismissal.

[27] It is well established principle of industrial jurisprudence that in a dismissal case such as the instant one, the burden of proof lies on the Company, as an employer, to prove on a balance of probabilities that the Claimant's dismissals were with just cause and excuse. In *Telekom Malaysia Kawasan Utara v. Krishnan Kutty Sanguni Nair & Anor [2002] 3 CLJ 314*), the Court of Appeal decided that:

"In our view the passage quoted from Administrative Law by H.W.R. Wade & C. F. Forsyth offers the clearest statement on the standard of proof required that is the civil standard based on the balance of probabilities, which is flexible, so that the degree of probability required is proportionate to the nature of gravity of the issues."

COURT'S FINDING AND DECISION

[28] The issues that merit consideration and to be determined by this Court are as follows:

- (a) Whether the four (4) charges of misconduct proffered against the Claimant are proved on a balance of probabilities;
- (b) Whether there was compliance with natural justice in the Company's disciplinary process and/or Domestic Inquiry proceedings; and
- (c) Whether the punishment of dismissal that was based on the charges of misconduct was proportionate.

(I) THE FIRST CHARGE

[29] The First Charge against the Claimant reads as follows (COB-1, 14):

"Salah Laku Pertama

Telah gagal untuk membuat bacaan jangka akhir bagi akaun pengguna Encik Toh Hang Soo, No. Akaun 0324 00734171 07 di alamat No. 13, Lot 298 BWH, Taman Kampong Gelam, 71000 Port Dickson seperti 'Work Order 91 Complaint Log' bertarikh 12.7.2013 sehingga menyebabkan kerugian berjumlah RM 734.25 kepada Syarikat.

Perbuatan tuan ini adalah merupakan salah laku berat. Mengikut Prosedur Tatatertib Tenaga Nasional Berhad (Edisi Keenam, 2013) tuan telah melanggar:

- (a) *Perkara 23, Senarai Salah Laku Berat, Lampiran "J" di muka surat 43
"Mengabaikan tugas dan tanggungjawab yang diamanahkan oleh Syarikat"; dan/atau*
- (b) *Perkara 25, Senarai Salah Laku Berat, Lampiran "J" di muka surat 43
"Berkelakuan sedemikian cara hingga menjatuhkan reputasi perkhidmatan atau menghilangkan kepercayaan terhadap perkhidmatan Syarikat dan/atau jawatannya sendiri".*

[30] The Company has adduced unequivocal documentary and oral evidence to prove that the Claimant had in fact committed the misconduct in the First Charge:

- (a) The oral evidence directly relevant to proving the First Charge are adduced by COW-2 and admission by the Claimant.
- (b) The documentary evidence directly relevant to proving the First Charge are the Work Order 23 dated 27.5.2013 (COB-3, 47), Display Work Order 91 dated 12.7.2013 (COB-3, 48-49), the Claimant's reply to Show Cause Letter dated 6.11.2013 (COB-3, 115), Complaint Letter from Lee Peng Tor to the Company dated 25.9.2013 (COB-3, 5) and Debit Letter from Company to Toh Hang Soo dated 18.3.2014 (COB-3, 57-58).

[31] It was not disputed that the Claimant was assigned on 27.5.2013 to check the last reading at the premise of a consumer, Toh Hang Soo at No. 13, Lot 298 BWH, Taman Kampong Gelam, 71000 Port Dickson as stated in the

Work Order 23 dated 27.5.2013 (COB-3, 47) and testified by COW-2 in this examination-in-chief (Q&A 13, COWS-2).

[32] During cross-examination, the Claimant admitted that he recorded the final reading for the premise of Toh Hang Soo from the Enhancement Customer Information and Billing System ("e-CIBS") and not the actual reading at site.

[33] The Claimant had further agreed during cross-examination that the final reading he recorded which was 1840 kWh was the final normal reading recorded in the e-CIBS.

[34] COW-2 testified under examination-in-chief that the final reading of the consumer, Toh Hang Soo must be the actual reading recorded at the premise and if the meter was situated inside the locked premise, the Claimant would then need to report the matter back to the Unit Perkhidmatan Pelanggan dan Pemasaran (PP&P) or his superior. The Company could not close the consumer's account and return the consumer's deposit until the actual final reading had been recorded properly (Q&A 19 & 20 COWS-2).

The Claimant's failure to complete Work Order 91

[35] COW-2 testified during examination-in-chief that there was change of tenant "COT" where there was a change of consumer at the premise at the address of No. 13 Lot 298 Bwh, Taman Kg Gelam, 71000, Port Dickson, without the meter being changed. The old consumer was Toh Hang Soo whereas the new consumer was Lee Peng Tor and the meter remained the same (Q&A 10 & 14 COWS-2).

[36] COW-2 testified during examination-in-chief that the new consumer/tenant Lee Peng Tor lodged a complaint that he was overbilled and requested for the Company to check his meter. Therefore, the Complaint Log was created with Work Order 91 dated 12.7.2013 (COB-3, 48-49) which was

assigned to the Claimant (Q&A 9 & 12 COWS-2) ("Lee Peng Tor's case").

[37] COW-2 also testified under examination-in-chief that for the Work Order 91, the Claimant had inserted his comment in the system that "Bacaan yang dibaca oleh pembaca jangka adalah betul" (COB-3, 48-49).

[38] Evidently, the Claimant failed to report back the result of his inspection to Unit PP&P for follow up action with the consumer, Lee Peng Tor. Therefore, Lee Peng Tor was not informed on the outcome of his complaint and he lodged another written complaint dated 25.9.2013 to the Company (COB-3, 5) (Q&A 12 COWS-2) as testified by COW-2 during his cross-examination and admitted by the Claimant in his cross-examination.

[39] Furthermore, the Company's Witness COW-1 testified during cross-examination that the Claimant only inserted the comment "Bacaan yang dibaca oleh pembaca jangka adalah betul" for Work Order 91 dated 12.7.2013 in the system without providing the actual reading he sighted at the consumer's premise.

[40] In view of the above, it was argued by the Company that the Claimant had failed to complete the task assigned to him by the Company accordingly as seen in both Work Order 23 dated 27.5.2013 which was to record the actual final reading at the premise for the old consumer, Toh Hang Soo as well as for Work Order 91 dated 12.7.2013 which was to do final meter reading at the premise of the new consumer, Lee Peng Tor in relation to the high billing. Both Work Orders were for the premise at the address at No. 13, Lot 298 Bwh Taman Kg Gelam, 71000 Port Dickson.

Company Suffered Loss

[41] In his examination-in-chief, COW-2 testified that the Company had made a recalculation for the billing of the old consumer, Toh Hang Soo and the

Company had under billed Toh Hang Soo and overbilled the new consumer, Lee Peng Tor. The under billing for the consumer Toh Hang Soo was because the Claimant failed to record the actual final reading at the premise of the consumer (as per First Charge) (Q&A 17, COWS-2).

[42] COW-2 also testified during examination-in-chief that the underbilling amount was RM734.25 and was debited to the account of consumer, Toh Hang Soo (COB-3, 57-58). However, the Company could not recover the debited amount as the Company had closed the account of Toh Hang Soo (when the Claimant closed Work Order 23 by recording 1840 kWh) and the amount of RM 734.25 became bad debt (Q&A 17 & 18, COWS-2).

[43] Therefore, it was submitted that the Company suffered loss of RM734.25 as the Company could not recover the bad debt from consumer, Toh Hang Soo due to the Claimant's failure to record the actual final reading of the meter at the consumer's premise.

The Findings of the Domestic Inquiry on the First Charge

[44] The Domestic Inquiry Panel had come to a conclusion that the Claimant was guilty for the First Charge and concluded as follows (COB-2, 141-142):

"Salah Laku Pertama

Bagi pertuduhan salah laku pertama, OKT didapati bersalah.

Bagi pertuduhan pertama, OKT telah dibuktikan tidak mengambil bacaan akhir di jangka pengguna Toh Hang Soo, sebaliknya menggunakan bacaan N terakhir 1840 yang bertarikh 14.5.2013 dari rekod e-CIBS.

WO23 telah dikeluarkan pada 17.5.2013. Sekalipun WO23 boleh diselesaikan dalam beberapa hari dari tarikh ia dikeluarkan, OKT telah bertindak menyelesaikan Work Order tersebut pada tarikh yang sama di pejabat. Ia bertentangan

dengan kewajibannya membuat bacaan akhir jangka di tapak.

(Emphasis added)

Bagi menjustifikasikan tindakan tersebut OKT telah mereka-reka alasan dimana alasannya didapati berubah-ubah (tidak konsisten). Perbezaan alasannya dinyatakan seperti di bawah:

- (i) Dalam DO1 - OKT menyatakan telah melawat 4 kali ke tapak untuk tujuan ambil bacaan akhir tetapi pintu kedai berkunci dan gagal mendapatkan bacaan kerana meter dalam bangunan.
- (ii) Dalam PO38 - OKT menyatakan telah pergi 3 kali sahaja ke tapak dan pengguna tidak dapat dihubungi
- (iii) Dalam sesi prosiding pula OKT menyatakan dia tidak ke tapak tetapi sekadar menghubungi pengguna 3 kali dimana sekali berjaya.

Kesimpulan;

- (i) OKT tidak mengambil bacaan akhir di tapak
- (ii) OKT menggunakan data bacaan akhir e-CIBS yang meragukan
- (iii) OKT mereka-reka alasan mengapa ia tidak membuat bacaan akhir bagi akaun pengguna Toh Hang Soo dimana alasannya didapati berubah- ubah"

[45] With all due respect, the Court is unable to agree with the finding of the Panel of Domestic Inquiry in respect of the First Charge.

[46] Having analysed the testimonies as given by the Company's Witnesses, the Court finds that the evidence produced were substantially in relation to the Work Order No. 23 dated 27.5.2013 in respect of the premise known as No. 13, Lot 298 BWH, Taman Kampong Gelam, 71000 Port Dickson, which at the material time occupied by Toh Hang Soo.

[47] The First Charge alleged the Claimant's failure to conduct final meter reading at the same premise occupied by Toh Hang Soo as per the Work Order 91 IR Complaint Log dated 12.7.2013. It was evidence that by virtue of the Sale and Purchase Agreement dated 17.12.2012 (COB-3, 14-21) the Company was notified of the change of occupant of the said premise to Lee Peng Tor.

[48] Documentary evidence (COB-3, 48) reveals that Work Order No. 91 IR Complaint Log was created on 12.7.2013 in respect of customer's name Lee Peng Tor whereas the First Charge referred to Toh Hang Soo and in its finding, the Panel of Domestic Inquiry had for unexplained reasons, referred to Work Order 23 which was not indicted in the First Charge.

[49] The ambiguity of the First Charge and the contradiction between the First Charge and the finding of the Panel of Domestic Inquiry tantamount to the charge being considered as defective.

[50] It is unsafe for the Court to agree to the finding of guilt on the part of the Claimant reached by the Panel of Domestic Inquiry in respect of the First Charge. The Court finds that the Company has failed to prove the First Charge on the balance of probabilities.

(ii) THE SECOND CHARGE

[51] The Second Charge against the Claimant reads as follows (COB-1, page 14-15):

"Salah Laku Kedua

Tuan dengan sengaja tidak melaporkan mengenai jangka elektrik bernombor K 20074490 jenis KRIZIK (Malaysia) Sdn. Bhd. di premis tuan beralamat No. 83, Type 3, Kuaders TNB Batu 4, Jalan Pantai, Taman Abu Zarim, Pod Dickson, Negeri Sembilan yang terhenti pada bacaan 41555kwh sejak 9 Mei 2012 hingga 30 Jun 2013.

Perbuatan tuan ini adalah merupakan salah laku berat. Mengikut Prosedur Tatatertib Tenaga Nasional Berhad (Edisi Kelima, 2006) tuan telah melanggar:

- (a) Perkara 78, Senarai Salah Laku Berat, Lampiran "H" di muka surat 44

"Gagal atau sengaja tidak melaporkan sesuatu kerosakan atau sesuatu kejadian yang boleh menyebabkan kerosakan harta benda/kerugian kepada Syarikat"; dan/atau

- (b) Perkara 25, Senarai Salah Laku Berat, Lampiran "H" di muka surat 39

"Menyalahgunakan kuasa yang diberi oleh Majikan atau Syarikat atau menggunakan kedudukan jawatan atau pangkatnya untuk faedah dirinya atau keluarga terdekat atau orang lain sewaktu bertugas atau selepas waktu bertugas"; dan/atau

- (c) Perkara 23, Senarai Salah Laku Berat, Lampiran "H" di muka surat 39

"Tidak jujur dan/atau tidak amanah di dalam menjalankan tugas sebagai seorang pekerja Syarikat"; dan/atau

- (d) Perkara 27, Senarai Salah Laku Berat, Lampiran "H" di muka surat 40

"Tidak bertanggungjawab sebagai seorang pekerja Syarikat"; dan/atau

(e) *Perkara 28, Senarai Salah Laku Berat, Lampiran "H" di muka surat 40*

"Mengabaikan tugas/kerja dan tanggungjawab yang diamanah oleh Syarikat"."

[52] The oral evidence that is directly relevant to proving the Second Charge are adduced by COW-1, COW-2, COW- 3 and from the Claimant, himself.

The house belonged to the Claimant

[53] It was undisputed that the Claimant was the house owner of the premise at the address No. 83, Type 3, Kuarters TNB Batu 4, Jalan Pantai, Taman Abu Zarim, Port Dickson, as per the Second Charge. COW-3 who was the "Penolong Juruteknik Tingkatan Biasa, Unit Perjangkaan" confirmed that he had inspected the meter at the Claimant's house on 13.5.2014.

"Ceper Meter" stopped at 41555 kWh

[54] This was confirmed by the Claimant during cross-examination that on 13.5.2014, COW-3 had inspected the electricity meter at his house and changed the meter as well.

"Q : Setuju bahawa pada 13.5.2014, Encik Azman Bin Mat Dan (COW-3) telah membuat semakan meter di rumah anda dan menukar baru di rumah anda?

A : Setuju."

[55] During cross-examination, the Claimant also admitted that COW-3 changed the meter at his house because the "ceper meter" stopped but there was still electricity usage at his house.

"Q : Setuju bahawa Encik Azman (COW-3) membuat penukaran meter baru kerana beliau mendapati ceper meter di rumah anda terhenti dan tidak bergerak walaupun terdapat alat elektrik di rumah anda pada masa itu?"

A : Setuju."

[56] COW-3 testified that the reading of the meter at the Claimant's house on 13.5.2014 was stopped at 41,555 kWh and the reading was recorded on the "Senarai Kerja Juruteknik" dated 13.5.2014 (COB-3, 79-80) (Q&A 9, COWS-3).

[57] The Claimant contended that the meter reader Encik Muhammad Rusfaisal Bin Ruslan had reported that the "ceper meter" had reversed "pusing terbalik" which caused the meter reading to wind back to 41555 kWh. However, during cross-examination, the Claimant testified that Encik Muhamad Rusfaisal Bin Ruslan was only a meter reader and not a technician. As such Encik Muhamad Rusfaisal did not make any technical inspection on the meter at the Claimant's house.

"Q : Setuju bahawa Encik Rusfaisal adalah seorang Pembaca Jangka dan bukan Juruteknik?"

A : Setuju.

Q : Memandangkan Encik Rusfaisal bukan Juruteknik maka tugas beliau ialah membaca jangka di rumah anda dan beliau tidak membuat pemeriksaan teknikal ke atas jangka di rumah anda?"

A : Setuju."

[58] COW-3 during re-examination testified that the meter reader, Encik Muhamad Rusfaisal Bin Ruslan was not a "Juruteknik" or technician and did not make any technical inspection on the meter at the Claimant's house.

Q : Adakah Encik Rusfaisal seorang Juruteknik seperti anda?

A : Tidak. Rusfaisal ialah seorang Pembaca Jangka.

Q : Apabila Encik Rusfaisal menekan kod A ceper jangka pusing terbalik, adakah beliau berbuat demikian setelah membuat pemeriksaan teknikal?

A : Tidak Encik Rusfaisal hanya membuat bacaan pada meter tersebut sahaja."

[59] During cross-examination, COW-3 explained that the meter did not reverse to 41555 kWh because there was no problem with the wiring of the meter:

Q : Oleh kerana pusingan ceper terbalik yang didapati pada 9.4.2014, setuju bahawa bacaan telah jatuh dari 50073 ke 41555?

A : Tidak setuju.

Q : Kenapa tak setuju?

A : Semasa pemeriksaan yang dilakukan didapati pendawaian di rumah Encik Mohd Arif berada dalam keadaan teratur."

[60] During re-examination, COW-3 further explained the detailed procedure that he and his "Juruteknik", Encik Amdan Bin Tawan carried out during the

inspection of meter at the Claimant's house. COW-3 testified that Encik Amdan Bin Tawan climbed up a ladder to ensure that his eye level was aligned with the position of the meter and observed that the "ceper meter" had stopped at 41555 kWh. COW-3 also carried out the same process and double confirmed that the "ceper meter" had stopped at 41555 kWh before changing the meter at the Claimant's house.

Q : Memandangkan tidak ada kejanggalaan pendawaian, adakah ceper jangka itu boleh pusing terbalik sebanyak 8518kwh dalam masa 2 bulan?

A : Tidak boleh.

Q : Sila beritahu bagaimanakah anda membuat pemeriksaan double check untuk memastikan ceper jangka rumah Yang Manuntut telah berhenti dan bacaan pada masa itu adalah 41555?

A : Semasa saya dan juruteknik saya Encik Amdan datang ke rumah Encik Mohd Arif, juruteknik saya Encik Amdan memeriksa fizikal meter tersebut dan mendapati tiada perubahan pada fizikal meter.

Encik Amdan juga duduk di atas tangga setentang dan separa 1800 dengan kedudukan meter yang betul dan mendapati ceper tidak bergerak dan juga Encik Amdan mengambil bacaan pada 13.5.2014 adalah 41555.

Encik Amdan mengarahkan saya untuk membuat penukaran jangka baru.

Sebelum saya membuat penukaran jangka baru, saya mendapati bahawa ceper meter lama tidak bergerak dan juga bacaan adalah 41555.34.

Q : *Adakah anda juga naik tangga dan berada di kedudukan setentang dan separa dengan kedudukan meter lama, sebelum membuat penukaran meter baru?*

A : *Ya, betul."*

[61] During examination-in-chief, COW-3 testified that based on the Register Reading History All Details of the Claimant's account (COB-3, 31-34), the date which had the same reading of 41555 kWh recorded was on 9.4.2012 which meant that the meter at the Claimant's house had stopped on 9.4.2012 (Q&A 10 & 11, COWS-3). The meter had stopped for approximately 34 days when it was inspected by COW-3 on 13.5.2014.

[62] Furthermore, COW-2 during examination-in-chief also testified that based Register Reading History All Details of the Claimant's account (COB-3, 31-34), the date which had the same reading of 41555 kWh recorded was on 9.4.2012 which means that the meter at the Claimant's house had stopped since 9.4.2012.

[63] The Court is satisfied that the Company had established the fact that the meter at the Claimant's house had stopped at the reading of 41555 kWh since 9.4.2012. The Claimant's allegation that the meter disc had reversed which caused the meter reading to windback to 41555 kWh ought to be rejected as the Claimant had relied on the report by a meter reader and not a technician.

The Claimant was informed by Meter Readers about irregularities in the electricity bills for his house

[64] COW-1 testified (Q&A 3, COWS-1A) that Encik Sivabalan A/L Poomalai (a meter reader) had confirmed during the Inquiry that he had informed the Claimant of the irregularity of the meter at the Claimant's house (COB-2, 65) as follows:

"Q : Adakah tuan pernah maklumkan kejanggalaan jangka di rumah En. Mohd Arif kepada En. Arif sendiri?"

A : Ada memaklumkan."

[65] In the "Percakapan Dalam Pemeriksaan" (statements during investigation) of Encik Sivabalan A/L Poomalai dated 28.10.2014 (COB-3, 81-84) which was tendered during the Inquiry, Encik Sivabalan confirmed that he had handed over electricity bills of the Claimant's house dated 11.2.2013 and 14.4.2013 to the Claimant.

[66] During examination-in-chief, COW-1 testified (Q&A 2, COWS-1A) that Encik Sivabalan A/L Poomalai's statement in handing over the electricity bills dated 11.2.2013 and 14.4.2013 to the Claimant are at Questions and Answers number 9 and 11 of the "Percakapan Dalam Pemeriksaan" (statements during investigation) of Encik Sivabalan A/L Poomalai dated 28.10.2014 which are reproduced as follows:

"S9: Pada tarikh 11.2.2013 dan 14.4.2013 dari semakan Details by Route anda membuat bacaan dengan bacaan 'E'. Adakah ianya benar?"

A9 : Ya benar.

S11: Adakah bil E yang dikeluarkan itu diserahkan di rumah En Mohd Ariff?"

J11: Ya, satu di rumah beliau dan satu salinan diserahkan kepada beliau untuk ambil tindakan kerana bacaan menunjukkan DI (Data Integrity)."

[67] In the "Percakapan Dalam Pemeriksaan" (statements during investigation) of Encik Rozaimi Bin Hassan dated 28.10.2014 (COB-3, 97-100),

Encik Rozaimi confirmed that he had handed over electricity bills of the Claimant's house dated 13.3.2013 and 14.5.2013 to the Claimant.

[68] During examination-in-chief, COW-1 testified that Encik Rozaimi Bin Hassan's statement that he handed in over the electricity bills dated 13.3.2013 and 14.4.2013 to the Claimant are at Question and Answer number 7 and 12 of the "Percakapan Dalam Pemeriksaan "(statements during investigation) of Encik Rozaimi Bin Hassan dated 28.10.2014 which are reproduced as follows:

"S7: Dari semakan "Details by Route" iaitu pada tarikh 13.3.2013, pada tarikh 14.5.2013 anda telah baca dengan bacaan 'E' di premis beliau. Adakah ianya benar.

A7 : Ya benar.

S10: Adakah pada tarikh tersbeut anda ada menyerahkan bil kepada En. Mohd Ariff?

J10: Bil-bil yang dikeluarkan di premis itu telah diserahkan kepada pengguna di rumahnya dan salinannya telah dibawa balik dan diserahkan kepada En. Mohd Ariff."

[69] In the aforesaid testimonies, the Court finds that the Claimant had duly received four Estimate electricity bills which were Estimate bills or Bill "E" for his house from both Encik Sivabalan A/L Poomali and Encik Rozaimi Bin Hassan dated, 11.2.2013, 13.3.2013, 14.4.2013 and 14.5.2013. This is unequivocal evidence from COW-1 which was not challenged in cross-examination.

The Claimant was an experienced Meter Reader Examiner

[70] During examination-in-chief, the Claimant admitted that he was an experienced Meter Reader Examiner.

"Q : Setuju anda adalah MRE yang berpengalaman?"

A : Setuju."

[71] It is pertinent to note that as a Meter Reader Examiner with 40 years of experience working in the Company, and upon receiving four (4) consecutive Estimates bills (or Bill "E") in a row, and having been informed by the meter readers Encik Sivabalan A/L Poomalai and Encik Rozaimi Bin Hassan of such Bills E, the Claimant should have known that there was irregularity on the Claimant's meter at his house.

[72] As an experienced Meter Reader Examiner he should have reported the irregularity of the meter at his house to the Company for further inspection.

The Findings of the Domestic Inquiry on the Second Charge

[73] The Domestic Inquiry Panel found the Claimant guilty for the Second Charge and concluded as follows (COB-2, 142-143):

"Salah Laku Kedua

Bagi pertuduhan salah laku kedua OUT didapati bersalah.

Dalam tempoh pertuduhan (9.5.2012 hingga 30. 6.2013) OKT telah menerima pemakluman berkaitan kejanggalaan jangka akaun premis beliau melalui pembaca jangka En. Sivabalan dan En. Rozaimi.

Dalam pemeriksaan ke atas jangka oleh Unit Pengurusan Hasil, ada 2 fakta berikut:

- (i) Meter telah disahkan tidak rosak*
- (ii) Dakwaan meter reverse tidak boleh diterima kerana 13 bacaan N dalam PO12 – register reading history for all details menunjukkan peningkatan setiap kali ianya diambil dari tarikh 9.5.2012 hingga ke 1.3.2014. Dalam tempoh tersebut*

bacaannya telah meningkat sebanyak 8518 unit. Adalah amat meragukan untuk ceper jangka pusing terbalik hanya pada 2 bulan terakhir iaitu April dan Mei 2014 menyebabkan bacaan turun 8518 unit untuk menyamai bacaan pada lalu (41555 kWh) iaitu pada 9.5.2012. Malahan jangka telah pun dibuktikan baik.

Dengan itu adalah munasabah bahawa meter telah terhenti sejak 9.5.2012 atas sebab-sebab lain seperti yang dijelaskan oleh Jurutera Pengujian.

Dalam PO31, En. Sivabalan telah menyerahkan satu salinan bil bacaan jangka rumah OKT pada 11.2.2013 dan 14.4.2013 kepada OKT dan dalam PO 33 En. Rozaimi telah menyerahkan satu salinan bil bacaan jangka rumah OKT pada 13.3.2013 dan 14.5.2013 kepada OKT untuk memberitahu kejanggalan jangka di premis OKT di samping merekod bacaan "E" dalam HHC. Ini bermakna OKT telah menerima makluman kejanggalan jangka di rumahnya 4 bulan berturut-turut dan bacaan jangkanya juga adalah bacaan E selama 4 bulan berturut-turut. Sebagai seorang pekerja berpengalaman hampir 40 tahun OKT pasti tahu apa tindakan yang perlu diambil lebih-lebih lagi melibatkan akaun premis sendiri.

Sebagai MRE yang berpengalaman, apabila menerima laporan kejanggalan jangka rumahnya beliau sewajarnya mengambil bacaan jangka tersebut dan memaklumkan kejanggalan (sekiranya ada) ke pihak pengurusan untuk tindakan lanjut."

[74] Although the inspection of the meter at the Claimant's house by COW-3 on 13.5.2014 showed that the meter reading was 41555 kWh, and the same

reading of 41555 kWh was recorded on 9.4.2012 in the e-CIBS (COB-3, 33), the Register Reading History appears to show that the meter readings for the Claimant's house continued to run or increase from 41555 kWh to 41959 kWh (9.5.2012) to 41716 kWh (13.6.2012) to 42023 (13.7.2012) (COB-3, 33).

[75] COW-2 explained in examination-in-chief that the Claimant as Meter Reader Examiner could enter the system for the Register Reading History and change the data in the system.

“Q : Siapakah yang boleh memasuki system yang mengandungi Register Reading History seperti di muka surat 31-34, COB-3?”

A : Hanya authorised person iaitu MRE (Meter Reader Examiner) yang juga dikenali sebagai Ketua Pembaca Jangka atau Penyelia Pembaca Jangka. Unit PP&P (Unit Perkhidmatan Pengguna & Pemasaran) boleh lihat sistem ini.

Q : Siapa boleh ubah data-data di dalam sistem seperti di muka surat 31-34, COB-3?”

A : Data boleh diubah oleh MRE sahaja. Yang lain tidak boleh.

Q : Siapakah MRE yang bertanggungjawab terhadap Register Reading History di muka surat 31-34, COB-3?”

A : MRE yang bertanggungjawab adalah Yang Menuntut, Encik Arif.

Q : Rujuk Soalan No. 24, COWS-2. Rujuk COB-3, muka surat 33. Rujuk 9.4.2012 yang menunjukkan register figure 41555.00. Jika meter di tapak telah didapati berhenti pada bacaan 41555 pada 13.5.2014, bagaimanakah muka surat

33-34, COB-3 boleh menunjukkan register figure yang semakin berjalan?

A : *Ini menunjukkan terdapat manipulasi terhadap sistem."*

[76] Under cross-examination, COW-2 confirmed that the Claimant had the authority to enter meter readings in the e-CIBS/ Register Reading History.

“Q : *Apa system e-CIBS?*

A : *System e-CIBS adalah system yang digunakan oleh TNB dalam menggunakan akaun-akaun pengguna.*

Q : *Anda kata Yang Menuntut telah memanipulasikan e-CIBS. Adakah ada bukti Yang Menuntut memanipulasikan system?*

A : *Apabila didapati bacaan di dalam Register Reading History All Details yang diambil dari system e-CIBS adalah berbeza dengan bacaan sebenar meter di tapak, hal ini hanya boleh berlaku dengan cara memanipulasi system.*

Q : *Bagaimana Yang Menuntut memanipulasi system ini?*

A : *Yang Menuntut mempunyai kuasa untuk memasukkan sebarang bacaan meter untuk setiap akaun pengguna yang diuruskan."*

[77] In the aforesaid, the Court is in agreement that the evidence clearly shows that the meter at the Claimant's house had stopped at 41555 kWh (when COW-3 inspected the meter on 13.5.2014) and yet the e-CIBS/Register Reading History for the Claimant's account showed that the meter readings had progressively run/increased from 41555 as at 9.4.2012 to 50073 as at 11.3.2014. Such irregularities or discrepancies between the meter reading at

his home/at site and the meter reading in the e-CIBS/Register Reading History, was within the Claimant's authority to check. The Court is convinced that the Claimant failed and/ or refused to report such irregularity or discrepancies for the meter in his own house and as such the Company has proved the second charge on the balance of probabilities.

[78] As the Claimant was not charged with manipulation of meter reading, it would be absolutely unnecessary to elaborate on the question of the Claimant's purported manipulation of data in the e-CIBS and whether or not the Claimant benefited from the irregularity or discrepancy between meter reading at his home and the reading in the e-CIBS. Motive is not an issue in this case, and therefore not an ingredient to be proved to find the verdict of guilt as to the charge preferred against the Claimant.

(III) THE THIRD CHARGE

[79] The Third Charge reads as follows (COB-1, 15):

"Salah Laku Ketiga

Tuan telah dengan sengaja tidak melaporkan mengenai jangka elektrik K 20074490 jenis KRIZIK (Malaysia) Sdn. Bhd. di premis tuan beralamat No. 83, Type 3, Kwarters TNB Batu 4, Jalan Pantai, Taman Abu Zarim, Port Dickson, Negeri Sembilan yang terhenti bacaan pada 41555 kWh sejak 1 Julai 2013 hingga 28 Mei 2014.

Perbuatan tuan ini adalah merupakan salah laku berat. Mengikut Prosedur Tatatertib Tenaga Nasional Berhad (Edisi Keenam, 2013) tuan telah melanggar:

(a) *Perkara 66, Senarai Salah Laku Berat, Lampiran "J" di muka surat 47*

"Gagal atau sengaja tidak melaporkan sesuatu kerosakan atau sesuatu kejadian yang boleh menyebabkan kerosakan harta benda/ kerugian kepada Syarikat"; dan/atau

(b) *Perkara 22, Senarai Salah Laku Berat, Lampiran "J" di muka surat 43*

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

(c) *Perkara 25, Senarai Salah Laku Berat, Lampiran "J" di muka surat 43*

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

[80] The Second and Third Charges are similar save for the dates of the act of misconduct. As for the Second Charge, the period was between 9.5.2012 to 30.6.2013 whilst the Third Charge was from 1.7.2013 to 28.5.2014.

[81] The Company had separated the acts of misconduct into two different set of dates to ensure that date of the act of misconduct are governed by the relevant Company's "Prosedur Tatatertib" (Disciplinary Procedure) enforced at the relevant dates that the act of misconduct was committed.

[82] The act of misconduct prescribed in the Second Charge occurred during the enforcement of the "Prosedur Tatatertib Edisi Kelima" (Disciplinary Procedure Fifth Edition 2006) (COB-3, 51-108), whilst the act of misconduct prescribed in the Third Charge occurred during the enforcement of the

"Prosedur Tata tertib Edisi Keenam" (Disciplinary Procedure Sixth Edition) 2013 (COB-3, 109-166).

The Findings of the Domestic Inquiry on the Third Charge

[83] The Domestic Inquiry Panel found that the Claimant was guilty for the Third Charge and concluded as follows (COB-2, 143-144):

"Salah Laku Ketiga

Tuan telah dengan sengaja tidak melaporkan mengenai jangka elektrik K 20074490 jenis KRIZIK (Malaysia) Sdn. Bhd. di premis tuan beralamat No. 83, Type 3, Kuarters TNB Batu 4, Jalan Pantai, Taman Abu Zarim, Port Dickson, Negeri Sembilan yang terhenti bacaan pada 41555 kWh sejak 1 Julai 2013 hingga 28 Mei 2014.

Bagi pertuduhan salah laku ketiga OKT didapati bersalah.

Dalam tempoh pertuduhan (9.5.2012 hingga 30.6.2013) OKT telah menerima pemakluman berkaitan kejanggalaan jangka akaun premis beliau melalui pembaca jangka En. Sivabalan dan En. Rozaimi.

Dalam pemeriksaan ke atas jangka oleh Unit Pengurusan Hasil, ada 2 fakta berikut:

- (i) Meter telah disahkan tidak rosak*
- (ii) Dakwaan meter reverse tidak boleh diterima kerana 13 bacaan N dalam PO12 – "register reading history for all details" menunjukkan peningkatan setiap kali ianya diambil dari tarikh 9.5.2012 hingga ke 1.3.2014. Dalam tempoh tersebut bacaannya telah meningkat sebanyak 8518 unit. Adalah amat meragukan untuk ceper jangka pusing terbalik*

hanya pada 2 bulan terakhir iaitu April dan Mei 2014 menyebabkan bacaan turun 8518 unit untuk menyamai bacaan pada lalu (41555 kWh) iaitu pada 9.5.2012. Malahan jangka telah pun dibuktikan baik.

Dengan itu adalah munasabah bahawa meter telah terhenti sejak 9.5.2012 atas sebab-sebab lain seperti yang dijelaskan oleh Jurutera Pengujian.

Dalam PO31, En. Sivabalan telah menyerahkan satu salinan bil bacaan jangka rumah OKT pada 11.2.2013 dan 14.4.2013 kepada OKT dan dalam PO 33 En. Rozaimi telah menyerahkan satu salinan bil bacaan jangka rumah OKT pada 13.3.2013 dan 14.5.2013 kepada OKT untuk memberi tahu kejanggalan jangka di premis OKT di samping merekod bacaan "E" dalam HHC. Ini bermakna OKT telah menerima makluman kejanggalan jangka di rumahnya 4 bulan berturut-turut dan bacaan jangkanya juga adalah bacaan E selama 4 bulan berturut-turut. Sebagai seorang pekerja yang berpengalaman hampir 40 tahun OKT pasti tahu apa tindakan yang perlu diambil lebih-lebih lagi melibatkan akaun premis sendiri.

Sebagai MRE yang berpengalaman, apabila manerima laporan kejanggalan jangka rumahnya beliau sewajarnya mengambil bacaan jangka tersebut dan memaklumkan kejanggalan (sekiranya ada) ke pihak pengurusan untuk tindakan lanjut."

[84] In full agreement with the finding of the Domestic Inquiry Panel as above, this Court is similarly convinced that the Company has proved the Third Charge on a balance of probabilities that the the Claimant had failed to report to the Company that the meter at his house had stopped at 41555 kWh from

1.7.2013 to 28.5.2014, despite being made aware of the irregularities in his electricity bills by the meter readers, Encik Sivabalan A/L Poomalai and Encik Rozaimi Bin Hassan.

[85] The Claimant's failure in reporting to the Company amounted to a betrayal of the trust and confidence that the Company had reposed on him as an employee.

(IV) THE FOURTH CHARGE

[86] The Fourth Charge reads as follows (COB-2, 10-11):

"Salah Laku Keempat

Di antara 11 Februari 2013 hingga 14 Mei 2013 tuan telah gagal mengambil tindakan terhadap laporan kejanggalan mengenai jangka elektrik bernombor K 20074490 jenis KRIZIK (Malaysia) Sdn. Bhd. di premis tuan beralamat No. 83, Type 3, Kwarters TNB Batu 4, Jalan Pantai, Taman Abu Zarim, Port Dickson, Negeri Sembilan yang terhenti pada bacaan 41555 kWh oleh Encik Sivabalan A/L Poomalai, No. Pekerja 10091393 dan Encik Rozaimi bin Hassan, No. Pekerja 10091313.

Perbuatan tuan ini adalah merupakan salah laku berat. Mengikut Prosedur Tatatertib Tenaga Nasional Berhad (Edisi Kelima, 2006) tuan telah melanggar:

(a) *Perkara 25, Senarai Salah Laku Berat, Lampiran "H" di muka surat 39*

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

- (b) *Perkara 26, Senarai Salah Laku Berat, Lampiran "H" di muka surat 39*
"Tidak jujur dan/atau tidak amanah di dalam menjalankan tugas sebagai seorang pekerja syarikat"; dan/atau
- (c) *Perkara 27, Senarai Salah Laku Berat, Lampiran "H" di muka surat 40*
"Tidak bertanggungjawab sebagai seorang pekerja syarikat"; dan/atau;
- (d) *Perkara 28, Senarai Salah Laku Berat, Lampiran "H" di muka surat 40*
"Mengabaikan tugas/kerja dan tanggungjawab yang amanah oleh Syarikat".

[87] The Fourth Charge is related to the Second Charge above where both are in regard to the meter at the Claimant's house.

Report by Meter Readers

[88] It has been established at paragraph [69] that the Claimant had duly received the Estimate or "E" electricity bills from meter readers, Encik Sivabalan A/L Poomalai and Encik Rozaimi Bin Hassan for the dates 11.2.2013, 13.3.2013, 14.4.2013 and 14.5.2013 which covers the dates as indicated in the Fourth Charge, i.e. between 11.2.2013 to 14.5.2013. That being so, the service of the electricity bills for the stipulated period of time as referred to in the Fourth Charge must be answered in the affirmative.

[89] COW-2 during cross examination testified that the Claimant was the Meter Reader Examiner who processed all the meter readings in Port Dickson.

"Q : Terdapat 2 MRE (Meter Reader Examiner) di Port Dickson, betul?"

A : *Pembahagian Jalan Pantai dan Jalan Seremban ialah untuk tugas-tugas semakan bacaan meter dan Work Order. Untuk bacaan meter bagi bacaan keseluruhan Port Dickson diproses oleh MRE Yang Menuntut.*

Q : *Bacaan meter dijalankan oleh Pembaca Jangka.*

A : *Balik daripada membaca jangka, segala bacaan yang dibawa oleh Pembaca Jangka akan diproses ke dalam sistem oleh MRE Yana Menuntut."*

[90] In light of the above, the Court is of the finding that the Claimant is entirely aware of the irregularities of the meter readings at his house as he had to process all the meter readings in Port Dickson, and he could easily access the meter readings for his house.

Failure to take action on irregularities of meter readings for his house

[91] It is pertinent to note that since Claimant was an experienced meter reader, there would be no reasonable excuse for the Claimant's failure to take any action on the irregularities in the Estimates Bills or "E" Bills for 4 consecutive months when the same were reported to him by meter readers, Encik Sivabalan A/L Poomalai and Encik Rozaimi Bin Hassan.

[92] The Claimant has failed to explain as to the reason why he did not report the irregularities to the Company or take any further actions on the irregularities.

The Findings of the Domestic Inquiry on the Fourth Charge

[93] The Domestic Inquiry Panel in its decision concluded that the Claimant was guilty for the Fourth Charge based on the following evidence (COB-2, 144-145):

“Salah Laku Keempat

Bagi pertuduhan salah laku keempat, OKT didapati bersalah. Dalam pemeriksaan ke atas jangka oleh Unit Pengurusan Hasil, ada 2 fakta berikut:

- (i) Meter telah disahkan tidak rosak oleh Jurutera Pengujian Unit Pengurusan Hasil; dan*
- (ii) Dakwaan meter reverse tidak boleh diterima kerana 13 bacaan N dalam PO12 – “register reading history for all details” menunjukkan peningkatan setiap kali ianya diambil dari tarikh 9.5.2012 hingga ke 1.3.2014. Dalam tempoh tersebut bacaannya telah meningkat sebanyak 8518 unit. Adalah amat meragukan untuk ceper jangka pusing terbalik hanya pada 2 bulan terakhir iaitu April dan Mei 2014 menyebabkan bacaan turun 8518 unit untuk menyamai bacaan pada lalu (41555 kWh) iaitu pada 9.5.2012. Malahan jangka telah pun dibuktikan baik.*

Dengan itu adalah munasabah bahawa meter telah terhenti sejak 9.5.2012 atas sebab-sebab lain seperti yang dijelaskan oleh Jurutera Pengujian.

Dalam PO31, En. Sivabalan telah menyerahkan satu salinan bil bacaan jangka rumah OKT pada 11.2.2013 dan 14.4.2013 kepada OKT dan dalam PO 33 En. Rozaimi telah menyerahkan satu salinan bil bacaan jangka rumah OKT pada 13.3.2013 dan 14.5.2013 kepada OKT untuk memberi tahu kejanggalan jangka di premis OKT di samping merekod bacaan “E” dalam HHC. Ini bermakna OKT telah menerima makluman kejanggalan jangka di rumahnya 4 bulan berturut-turut dan bacaan jangkanya juga adalah bacaan E selama 4 bulan berturut-turut. Sebagai seorang pekerja yang

berpengalaman hampir 40 tahun OKT pasti tahu apa tindakan yang perlu diambil lebih-lebih lagi melibatkan akaun premis sendiri.

Sebagai MRE yang berpengalaman, apabila menerima laporan kejanggalan jangka rumahnya beliau sewajarnya mengambil bacaan jangka tersebut dan memaklumkan kejanggalan (sekiranya ada) ke pihak pengurusan untuk tindakan lanjut.

Kegagalan En. Ariff mengambil tindakan di atas telah menyebabkan isu jangkanya terhenti hanya dapat diselesaikan pada 29.5.2014."

[94] Similarly, in the circumstances, the Court finds that the Company has proved the Fourth Charge on a balance of probabilities that the Claimant had failed to report to the Company and take any further actions on the report of irregularities of the meter at his house.

Whether natural justice applied in the disciplinary process and/or Domestic Inquiry

[95] COW-1 who was the Chairman of the Disciplinary Committee confirmed that the Claimant was present before the Domestic Inquiry and he was represented by union representatives (Q&A 9-10, COWS-1) Encik Rashid Ramly and Encik Rahamat Bin Abdullah.

[96] The Claimant had pleaded not guilty to all charges at the Domestic Inquiry (Q&A 11, COWS-1 and COB-2, 15).

[97] It is to be noted that the authenticity and accuracy of the Minutes of Domestic Inquiry (COB-3, 1-166) was never challenged by the Claimant nor put to COW-1 during cross-examination. That being so, the minutes of Domestic

Inquiry must be deemed admitted by the Claimant (Sudipto Sarkar V R Manohar in Sarkar [Evidence, Volume 2, 15th Edition at page 2178 & 2179]).

[98] The Court finds no evidence of any breach of the fundamental rules of natural justice, namely the *maxim of audi alteram partem* (the right to be heard) and the *maxim of nemo judex in causa sua* (no man shall sit in judgment in his own cause).

[99] It is settled Industrial law that where the Domestic Inquiry is held in accordance with the principles of natural justice, the Industrial Court ought to consider the adequacy of the findings of the domestic inquiry in order to conclude whether the Domestic Inquiry has reached the correct conclusion and whether the employee has been dismissed with just cause or excuse.

[100] In the case of ***Bumiputra Commerce Bank Bhd v. Mahkamah Perusahaan Malaysia & Anor [2004] 7 CU 77*** his Lordship Raus Sharif J (as he then was) quoted ***Metroplex Administration Sdn. Bhd. v. Mohamed Elias [1998] 5 CLJ 467*** as follows:

"In *Metroplex Administration Sdn. Bhd. v. Mohamed Elias [1998] 5 CLJ 467*, Low Hop Bing J in considering a certiorari application to quash an Industrial Court's Award held as follows:

Where a domestic inquiry is held and the rules of natural justice have been applied, the Industrial Court should first consider the adequacy or otherwise of the procedure adopted in the proceedings the Domestic inquiry in order to determine whether the domestic inquiry has applied the correct procedure and reached the correct conclusion having regard to all the evidence, documentary and oral, adduced at the domestic inquiry. If at the domestic inquiry, the rule of natural justice was properly applied, the employee being given the opportunity to be

heard and to present his case, and should a finding be made against the employee based on the evidence which was presented to the domestic inquiry, the Industrial Court ought to consider the finding of the domestic inquiry in order to conclude whether the employee has been dismissed without just cause or excuse. The rule that a domestic inquiry should be held is after all a rule of the court's own devising."

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

[101] In respect of the Second, Third and Fourth Charges, the Claimant's act of not reporting and failed to take any action on the reports of irregularity of the meter at his own house such acts are in breach of the Company policy and dishonest and amounts to dishonesty and/or breach of the trust and confidence reposed on him as employee (*Esso Production Malaysia Inc v. Md Yusop Nordin [1997] 2 ILR 711*).

[102] The Claimant had acted dishonestly and/or in breach of the trust and confidence reposed on him as an employee when he failed to inform the Company about the irregularities of the meter at his house and the fact that the meter at his house had stopped. We humbly submit that as an experienced Meter Reader Examiner, the Claimant was well aware of the fact that if there are irregularities in meter reading or the meter had stopped, especially at his own house, he should have reported the matter to the Company.

[103] In the case of *Yusman Bin Zainal Abidin & Mohd Isnawie Bin Haji Ismail v. Tenaga Nasional Berhad [2018]* (Award No. 2198 of 2018), wherein the Claimants were dismissed from service *inter alia* the misconduct of entering low meter readings at their own homes, the Industrial Court held that the Claimant's misconduct had shattered the trust and confidence reposed in them by the Company:

"[193] The Claimants had through their actions clearly put their personal interests over and above the interests of the Company. The Claimants' misconducts had shattered the trust and confidence reposed in them all this while by the Company. This implied term of mutual trust and confidence is a vital element in any employer and employee relationship and has to be upheld with utmost sanctity. In the case of *Stamford College Petaling Jaya v. Lai Fook Seng* [1994] 2 ILR 679, it was held as follows:

"It is well established that a contract of employment is a contract of confidence and trust. Sometime it is also called contract of fidelity. What it means is that the employee must not place himself in a position where his interest conflicts with the interest of his employer. Some contracts of employment specifically make such provisions. However, it is equally established in law that such term is implied in a contract employment."

[104] Further in the case of *Mohd Aminuddin Md Zain & Anor. v. Perbadanan Usahawan Nasional Berhad* [2006] 3 ILR 2172 (Award No. 1571 of 2006) it was held:

"The relationship between an employer and an employee is of fiduciary character. What this means is that whenever an employer engages an employee, he puts trust that the employee will faithfully discharge his service and protect the interests of the employer. Once the trust is breached, it causes the employer to lose trust and confidence in the employee, as in the instant case, to protect his interests and hence justifies immediate dismissal."

[105] In the case of *Chan Siew Choo v. Manulife Insurance (Malaysia) Berhad* [2010] 2 LNS 0074 (Award No. 74 of 2010), the Industrial Court had held as follows:

"BR Ghaiye in his text 'Misconduct in Employment' had this to say:

"Any breach of an express or implied duty on the part of employee unless it be of a trifling nature, would amount to misconduct"

In *Pearce v. Foster* [1886] (17) QBD 536, Lord Esher MR observed:

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

And Lopes LJ in the same case stated:

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

[106] There are numerous authorities to show that misconduct involving breach of Company's policy and acts of dishonesty amount to a serious offence and **that such betrayal of trust could not be condoned by a punishment lesser than dismissal as it would set a dangerous precedent to other employees.**

[107] In the case of *Zulkifli Abdul Latif v. Sistem Penerbangan Malaysia Bhd [2006] 3 ILR 1923*, the Industrial Court held thus in considering the importance of honesty and integrity:

"Honesty and integrity are virtues that cannot be compromised in an employee no matter what position he holds in an organization. In the instant case, the claimant had, by his acts of misconduct, not only acted against the interests of the company but compromised the said virtues and further betrayed the trust and confidence reposed in him by the company. Since the claimant's misconduct marred, the trust and confidence that the company had in him, the company was right in taking the said virtues into account besides the nature and gravity of the misconduct committed when imposing appropriate punishment on the claimant in the circumstances of the instant case.

In industrial jurisprudence, where an employer no longer has confidence and trust in an employee by reason of the employee's dishonesty the loss to the bank in terms of monetary loss is not a predominant factor. **The court is of the view that honesty and integrity are amongst the key characteristics that any employee should possess, no matter what form of employment the employee is engaged in."**

[108] Guided by the above case laws, the Court is satisfied and hereby rule that 3 of the 4 charges proved against the Claimant as in the present case 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 him.

[109] In the upshot, the Court is satisfied and therefore find that the Company has successfully proved on a balance of probabilities that the Claimant was

terminated with just cause or excuse.

[110] In arriving at the above decision, the Court had taken into account the totality of the evidence adduced by both parties and bearing in mind Section 30 (5) of the Industrial Relations Act 1967 by which virtue the Court shall act according to equity, good conscience and the substantial merit of the case without regard to technicalities and legal form.

[111] The Claimant's case is hereby dismissed.

HANDED DOWN AND DATED THIS ON 18th JANUARY 2019


**(SYED NOH BIN SAID NAZIR @ SYED NADZIR)
CHAIRMAN
INDUSTRIAL COURT, MALAYSIA
KUALA LUMPUR**