

INDUSTRIAL COURT OF MALAYSIA
CASE NO.: 14(6)(15)/4-739/19

Between

POONMOLI A/P MAHENDRAN

And

RHB BANK BERHAD

AWARD NO.: 1054 OF 2024

Before : **Y.A. Puan Esuary Maree**
- Chairman

Venue : Industrial Court Malaysia,
Kuala Lumpur

Date of Reference : 07.05.2019

Dates of Mention : 26.06.2019; 31.07.2019; 16.08.2019;
03.09.2019; 10.09.2019; 11.09.2019;
11.10.2019; 21.10.2019; 07.11.2019;
27.01.2021; 12.08.2021; 02.11.2021;
22.12.2021; 07.03.2022 & 09.10.2023

Dates of Hearing : 21.11.2019; 09.12.2019; 10.12.2019;
14.02.2020; 05.03.2020; 26.04.2022;
27.04.2022; 28.04.2022; 05.08.2022;
30.08.2022; 12.12.2022; 14.04.2023;
27.04.2023; 24.05.2023 & 23.06.2023

Representation : Mr. Ramesh N P Chandran &
Ms. Tejal Harash
(Counsels for the Claimant)
Messrs Ramesh Yum & Co

Ms. Thavaselvi Pararajasingam
(Counsel for the Bank)
Messrs Zul Rafique & Partners

REFERENCE

This is a reference under Section 20(3) of the Industrial Relations Act 1967 (the Act) by the Honourable Minister of Human Resources, emanates from the dismissal of **Poonmoli a/p Mahendran** ("the Claimant") by **RHB Bank Berhad** ("the Bank") on 03.12.2018.

AWARD**PREAMBLE**

[1] This case was partly heard before the then Learned President Yang Arif Puan Reihana binti Abd Razak and the hearing was continued before me as directed by the said Learned President. With this regard, Section 23(6) of the Act reads as follow:-

"During the absence or inability to act from illness or any other cause by the Chairman, the Yang Di-Pertuan Agong may appoint another person to exercise the powers or perform the functions of the Chairman and, notwithstanding that the Chairman may have resumed the duties of his office, the person so appointed may continue to exercise the powers or perform the functions for the purpose of completing the hearing and determining any trade dispute or matter commenced before him."

[2] Thus, it is clear that Section 23(6) of the Act allows another Chairman to continue hearing and determine a part heard case. Reference is also made to the High Court decision in **Bax Global (Malaysia) Sdn Bhd v. Sukhder Singh Pritam Singh & Anor [2011] 2 ILR 251** wherein it was held that a Learned Chairman has the jurisdiction to hand down an Award in a matter heard by another Chairman.

[3] This Court will determine the issues before it and make its findings based on the pleadings, notes of proceedings, the relevant oral and documentary evidences, the cause papers and submissions. The following documents were filed before this Court:-

- (i) Statement of Case dated 17.07.2019;
- (ii) Statement in Reply dated 10.9.2019;
- (iii) Rejoinder dated 01.11.2019;
- (iv) The Bank's Bundle of Documents marked as COB-1, COB-2, COB-3, COB-4 and COB-5 respectively;
- (v) The Claimant's Bundle of Documents marked as CLB-1 and CLB-2, respectively;
- (vi) Item 3 of ID (except for Item 3, all other items referred to in the Index of ID, which was filed after the close of the Bank's case was objected to by the Bank on 12.12.2022);
- (vii) Witness Statements of the Bank's Witnesses which was marked as follows:-
 - COWS-1 : Thanaletchumy A/P Semaselaun;
 - COWS-2 : Nurun Najihah Binti Zainal Abidin (Subpoenaed Witness);
 - COWS-3 : Norliana Binti Abdul Aziz (Subpoenaed Witness);
 - COWS-4 : Lau Chin Hock;
 - COWS-5 : Chandran Selvarajah;
 - COWS-6 : Lim Yok Chaw;
 - COWS-7 : Arumi Binti Kiswantoh;
 - COWS-8 : Mohd Fadzil Bin Ahmad;
 - COWS-9(a) and COWS-9(b) : Chong Sam Yee (Subpoenaed Witness);
 - COWS-10(a) and COWS-10(b) : Chan Wai Leng (Subpoenaed Witness);
- (viii) Witness Statement of the Claimant's witnesses which was marked as follows:-
 - CLWS-1 : Poonmoli A/P Mahendran (the Claimant)
 - CLWS-2 : Shajidah Binti Maiden
- (ix) The Claimant's Written Submissions dated 01.09.2023;
- (x) The Bank's Written Submission dated 01.09.2023;
- (xi) The Claimant's Written Submissions In Reply dated 06.10.2023; and
- (xii) The Bank's Written Submissions In Reply dated 02.10.2023.

BRIEF FACTS

[4] The Claimant commenced employment with the Bank on permanent basis on 01.04.2014 as an Executive (Personal Grade: R1) and she was confirmed in her position on 01.10.2014. With effect from 01.01.2016, the Claimant was promoted to the position of Sales Manager - Bancassurance. The Claimant was suspended from service with effect from 30.08.2018. Thereafter, a Notice of Intended Disciplinary Action (NOIDA) dated 22.10.2018 was issued to the Claimant. By a letter dated 25.10.2018, the Claimant provided her explanation to NOIDA. Finally, the Bank dismissed the Claimant with effect from 03.12.2018.

THE BANK'S CASE

[5] By a letter of Offer of Employment on Contract Basis dated 01.04.2013, the Claimant was offered employment with the Bank as Financial Executive on contract basis posted at the Kampung Baru Sungai Buloh Branch (KBSB Branch) with effect from 03.04.2013, subject to the terms and conditions specified therein, which was accepted by the Claimant on 28.03.2014.

[6] On 28.03.2014, the Claimant also acknowledged receipt of Section 62(1) of the then Banking & Financial Institution Act 1989 and the Group Code of Ethics and Conduct for Employees and declared adherence to the said Group Code of Ethics and Conduct.

[7] By a letter dated 28.03.2014, the Bank informed the Claimant that it was offering the Claimant employment on permanent basis effective 01.04.2014, based on the terms of the Offer of Employment enclosed therein.

[8] The Claimant also acknowledged and agreed to comply with the Group's policies, including strict adherence to ethical standards and consequences for breaches such as disciplinary action and dismissal.

[9] By a letter dated 01.10.2014, the Claimant was confirmed in her employment with the Bank effective 01.10.2014.

[10] By a letter dated 30.12.2015, the Claimant was informed, amongst others, that:-

- (i) The Bank had reviewed the grading and salary structure for sales personnel in Group Retail Banking and have established a one grading and one salary structure;
- (ii) Pursuant to this new structure, she would be assigned with a new grade and this would take effect from 01.01.2016;
- (iii) Effective 01.01.2016, her grade and position would be Sales Manager - Bancassurance (Personal Grade: S2) and her new grading would be subject to the terms and conditions specified therein;
- (iv) The Bank reserved the right to terminate her employment immediately without giving any prior notice or compensation when, amongst others, the Claimant commit any act or acts of serious and wilful misconduct, or gross negligence.

[11] By a letter dated 06.08.2018, the Claimant was transferred to the Bank's Ampang Point Branch as Sales Manager - Bancassurance (Personal Grade: S3) effective 01.08.2018.

[12] The Bank and Tokio Marine Life Insurance Malaysia Berhad (TML) had entered into a bancassurance partnership, at all times, as Executive (Personal Grade: R1) and subsequently, as Sales Manager - Bancassurance (Personal Grade: S3), the Claimant's primary duties and responsibilities was to sell the TML insurance products.

[13] At all material times, the Claimant was required to discharge her duties and responsibilities as Executive (Personal Grade: R1) and subsequently, as Sales Manager - Bancassurance (Personal Grade: S3), in accordance with the Bank's existing manuals, rules, guidelines and policies, as well as the applicable manuals, rules, guidelines and policies relating to TML's insurance products.

[14] On 28.08.2018, TML reported to the Bank concerning a complaint received from an existing customer of the Bank's KBSB Branch, one Madam Chan Wai Leng (COW-10) wherein she claimed that:-

- (i) She was only aware that she had one policy with TML known as Tokio Marine Essential Prime Secure Policy No. 30138735;
- (ii) There were five (5) other TML insurance products which had allegedly been fraudulently taken up in her name without her knowledge and/or consent (the disputed policies), as follows:
 - Tokio Marine Essential Elite Saver Policy (No. 30154957);
 - Tokio Marine Essential Prime Builder Policy (No. 30156818);
 - Tokio Marine Essential Prime Secure Policy (No. 30160705);
 - Tokio Marine Essential Prime Builder Policy (No. 30165044); and
 - Tokio Marine Essential Prime Link Policy (No. 30453316);

[15] COW-10 claimed that her signatures on the proposal forms for the disputed policies had been forged.

[16] Upon receipt of the report, Group Internal Audit (GIA) proceeded to conduct investigations. In the course of the investigations by GIA, the Claimant was interviewed on 29.08.2018, for purposes of recording her statements with regard to her involvement in the disputed policies where the Claimant admitted that:-

- (i) The proposal forms for the disputed policies were completed by her using her handwriting; and
- (ii) COW-10's signature on the proposal forms for the disputed policies were fake signatures.

[17] By a letter dated 30.08.2018, the Claimant was informed that:-

- (i) She was alleged to have committed a major misconduct and in view of the seriousness of the alleged misconduct and pending an investigation into the matter, the Bank had decided to suspend her from service with

effect from 30.08.2018 until further notice, based on the terms stated therein; and

- (ii) During her suspension from service, she was not permitted to enter her workplace/branch without prior approval from Management and/or conduct any business for and on behalf of the Bank.

[18] During the course of the investigations, the GIA discovered that:-

- (i) COW-10's signatures on the following four (4) proposal forms of the disputed policies appeared to have been forged (the four (4) policies):-
- Tokio Marine Essential Elite Saver Policy No. 30154957;
 - Tokio Marine Essential Prime Builder Policy No. 30156818;
 - Tokio Marine Essential Prime Secure Policy No. 30160705; and
 - Tokio Marine Essential Prime Builder Policy No. 30165044
- (ii) COW-10's signatures on the proposal forms for the four (4) policies were noted to be different from her signature as captured in her interview statement recorded by GIA, as well as her existing policy bearing Policy No. 30138735, which she signed up at the Bank's KBSB Branch in December 2014;
- (iii) COW-10 denied signing up for the four (4) policies and claimed that the signatures on the proposal forms of the four (4) policies were not hers, but forged;
- (iv) COW-10 confirmed that she had only liaised with the Claimant when dealing in financial products which were taken up by her at the Bank's KBSB Branch;
- (v) In respect of the four (4) policies which were found to have been issued to COW-10 based on forged proposal forms, the Bank was exposed to a total loss of RM4,646.32 being commissions and marketing incentives previously earned by the Bank, which would need to be refunded to TML to enable TML to refund the full premiums to COW-10.

[19] On 17.10.2018, the said customer lodged a police report in respect of her forged signatures on the proposal forms of the four (4) policies.

[20] By a NOIDA dated 22.10.2018 the Claimant was informed, amongst others, that:-

- (i) She was alleged to have forged COW-10's signatures on the proposal forms for the four (4) policies;
- (ii) The matter undoubtedly constitutes serious misconduct as it appears to involve elements of dishonest and reflects considerable doubt on her integrity, which would warrant dismissal from service; and
- (iii) Before any decision is taken against her for the alleged misconduct, she may provide any ground to refute and/or rebut the decision to be taken, including any factors of mitigation for the Bank's consideration.

[21] On 25.10.2018, the Claimant provided her written explanation to the allegation specified in the NOIDA dated 22.10.2019.

[22] Having deliberated on the facts and evidence, including the Claimant's written explanation, the Bank found the Claimant guilty of the allegation of misconduct preferred against her vide the NOIDA dated 22.10.2019.

[23] Consequently, by a letter dated 04.12.2018, the Bank informed the Claimant, amongst others, that after considering all the relevant facts and circumstances surrounding the case, as well as the seriousness of the misconduct committed by her, the Group Disciplinary Committee decided that she be dismissed from service effective 03.12.2018.

[24] In the circumstances, the Bank pleads that the Claimant's dismissal from service with effect from 03.12.2018 was with just cause and excuse, lawful, bona fide as well as in accordance with fair labour practice, the principles of natural justice and in compliance with equity and good conscience.

THE CLAIMANT'S CASE

[25] The Claimant was employed by the Bank and her last held position in the Bank was that of a Sales Manager at Ampang Point Branch with a last drawn salary of RM4,200.00. The Claimant was also entitled to sales incentives, fixed travel allowance and yearly bonus.

[26] The Claimant's job scope was only to sell TML insurance product.

[27] The Claimant states that on 17.08.2018 she was called to attend a meeting with the representative from TML at the KBSB Branch.

[28] The Claimant states that during the meeting, TML's representative had accused the Claimant to have committed a misconduct in that she was alleged to have forged COW-10's signature on the disputed policies purchased under COW-10's name.

[29] The Claimant states that the allegation was bizarrely premised on the basis that COW-10 only knew and dealt with the Claimant and the customer had consented to purchase a policy (Policy No. 30138735) in 2015 which sale was closed by the Claimant.

[30] The Claimant states that she was shocked and upset with these allegations during the meeting as she was not prepared for the meeting. She thought it to be a casual meeting with the TML representative, the Bank's representative and COW-10.

[31] During the meeting Ms. Arumi binti Kiswantoh, TML's Compliance & Business Support (COW-7), Ms. Yap Su Yin (TML's Business Development Manager) Ms. Cherish Hong Swee Lan (The Bank's Regional Sales Head, Affluent and Wealth of Klang Valley North) and COW-10 were present to address the complaint.

[32] The Claimant states that after the meeting she sought access to certain documents and files to enable her to refute the allegations of misconduct however the Claimant was advised by Ms. Yap Su Yin, Ms. Cherish Hong Swee Lan and Ms. Ng Kiam Foong (KBSB Assistant Branch Manager) not to enter the Bank despite not being suspended.

[33] The Claimant states that on 29.08.2018 she was called to attend the Bank's GIA interview session following the complaint made by COW-10 in the presence of Mr. Faizal (The Bank's Internal Audit representative), COW-7, Mr. Low Sea Seng (KBSB Branch Manager), the Claimant, COW-10 and two (2) other Personal Banker Banca (PBB), Ms. Norliana Binti Abdul Aziz (COW-3) and Ms. Thanalechthumy a/p Semoselaun (COW-1).

[34] The Claimant states that during the said interview she was questioned by COW-7 without being given the chance to explain herself. The Claimant states that COW-7's conduct was unbecoming and bias as she had prejudged the matter without any detailed investigation and decided to put the blame solely on the Claimant.

[35] The Claimant states that vide letter dated 30.08.2018 the Bank suspended her with immediate effect for alleged misconduct.

[36] The Claimant states that the Bank issued NOIDA dated 22.10.2018 to the Claimant, inter alia, stating as follows:-

"It was reported that you had forged the customer's signatures, i.e. Ms. Chan Wai Leng ("Ms. Chan") on the proposal forms for the four (4) Tokyo Marine Life Insurance Malaysia ("TMLM") life insurance policies without the customer's knowledge and authorization. The details are as follows:-

No.	Policy No. / Basic Plan	Commence Date	Policy Sum (RM)	Premium	Status	Closed By
1.	No.30154957 Essential Elite Saver	31.10.2015	19,200.00	300.00 Monthly	In Force	Claimant
2.	No. 30156818 Essential Prime Builder	31.11.2015	28,000.00	630.70 Monthly	Lapsed	Najihah
3.	No. 30160705 Essential Prime Secure	29.01.2016	31,000.00	890.00 Monthly	Surrendered	Norliana
4.	No. 30165044 Essential Prime Builder	31.03.2016	17,000.00	382.95 Monthly	Lapsed	Norliana

Investigation revealed that:-

- (i) The customer's signatures on the proposal forms for the four (4) policies, i.e. policy numbers 30154957, 30156818, 30160705 and 30165044 appeared to have been forged. The said customer's signatures were noted to be different from Ms. Chan's signature as captured in her interview statement recorded by Group Internal Audit ("GIA") as well as that in her existing policy bearing number 30138735 which she signed up via the Kampung Baru Sungai Buloh Branch ("Branch") in December 2014;*
- (ii) Ms. Chan clarified that for the policy bearing numbers 30154957, 30156818, 30160705, 30165044, she denied to have signed up for the said policies and claimed that the customer's signatures on the proposal forms were forgery;*
- (iii) You had admitted in your interview statement recorded by GIA that the said proposal forms were completed by you using your handwriting. Ms. Chan further confirmed that she had been liaising only with you when dealing in financial products taken up from the Branch; and*
- (iv) The then Personal Banker, Pn. Norliana Binti Abdul Aziz (Norliana) claimed that the proposal forms for the two (2) policies, i.e. 30160705 and 30165044 submitted by her were received from you. She was able to recall that one of the proposal forms was completed with the customer's signatures when it was passed to her for submission. For the other proposal form, she was however not certain whether the customer had already signed the form when she received it from you. Since Ms. Chan had claimed to have only dealt with you and no one else when dealing with insurance matters at the Branch, this clearly showed that Norliana did not meet with Ms. Chan for the said two (2) proposals.*

The matter stated above undoubtedly constitutes serious misconduct as it appears to involve elements of dishonesty and reflects considerable doubt on your integrity and warrants dismissal".

[37] The NOIDA, among other things states that before a decision is taken against the Claimant for the misconduct, she may provide any ground to refute and/or rebut the decision to be taken by the Bank including any mitigation for the Bank's consideration failing which the Claimant will be presumed to have no ground to refute and/or rebut.

[38] Vide letter dated 25.10.2018 the Claimant had written her response to the NOIDA's dated 22.10.2018 and denied all the allegations made against her.

[39] Notwithstanding the clarification given by her, the Bank had vide letter dated 04.12.2018 informed the Claimant that the matter was referred to the Group Disciplinary Committee held on 03.12.2018 and the Committee viewed the Claimant's action as an act of serious misconduct hence decided to summarily dismissed the Claimant from service effective 03.12.2018.

[40] The Claimant states that she was never called to attend any inquiry pertaining to the allegations of serious misconduct committed by the Claimant prior to being dismissed.

[41] The Claimant states that she was made a scapegoat by the Bank without any proper investigations wherein there were other parties that were involved in the four (4) policies highlighted by the Bank in the NOIDA and not solely the Claimant.

[42] The Claimant states that the Bank failed to take into consideration the fact that there had been no disciplinary action taken on her for the past six (6) years of service in the Bank.

[43] The Claimant states that the Bank had failed to hold a domestic inquiry to establish their allegations of serious misconduct committed by the Claimant as stated in the letter of dismissal.

[44] The Claimant states that by failing to hold a domestic inquiry against her, the findings of the Bank is tainted with bias, not substantiated with proper or adequate reasons in the views that the Claimant had committed serious misconduct whilst in the employment with the Bank as stated in the letter of dismissal which are wholly misconceived, baseless and unfounded.

[45] The Claimant states that by failing to hold a domestic inquiry, the Bank failed to give fair, due and adequate consideration to the possible explanation of the Claimant (which rights have been denied) in respect of the allegation as stated in the letter of dismissal which any reasonable and right thinking tribunal would have considered.

[46] The Claimant states that the allegation that the Claimant had committed serious misconduct as stated in the letter of dismissal have not been proved as she was never in breach of her duties and responsibilities or the implied terms and conditions of her employment and the Bank's scheme of service.

[47] The Claimant further states that she was made a scapegoat and that the Bank failed to consider evidence that other employees were involved in the disputed policies. She also asserts that her dismissal was premeditated and aimed at removing her from the banking sector.

[48] The Claimant contends that her dismissal was harsh and inequitable, given her six (6) years of loyal service without prior disciplinary issues. She alleges victimization and unfair labor practices by the Bank.

THE LAW

[49] The function of the Industrial Court in dismissal cases on a reference under Section 20 of the 1967 Act is twofold:-

- (i) To determine whether the misconduct complained of by the employer has been established;
- (ii) Whether the proven misconduct constitute just cause or excuse for the dismissal.

[See *Milan Auto Sdn Bhd v. Wong Seh Yen* [1995] 4 CLJ 449 and *Wong Yuen Hock v. Syarikat Hong Leong Assurance Sdn. Bhd. & Another Appeal* [1995] 3 CLJ 344; [1995] 2 MLJ 753]

[50] As was opined by His Lordship Raja Azlan (CJ Malaya) (as HRH then was) in the Federal Court decision of **Goon Kwee Phoy v. J & P Coats (M) Bhd [1981] 1 LNS 30**, it is trite that where representations are 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.

[51] It has been settled that in cases where the dismissal was caused by the employer, it is the employer that must discharge the burden of proof that the dismissal is with just cause and excuse. This long settled principle was demonstrated in the case of **Ireka Construction Berhad v. Chantiravathan Subramaniam James [1995] 2 ILR 11** wherein the Learned Chairman opined that:-

It is a basic principle of industrial jurisprudence that in a dismissal case the employer must produce convincing evidence that the workman committed the offence or offences the workman is alleged to have committed for which he has been dismissed. The burden of proof lies on the employer to prove that he has just cause and excuse for taking the decision to impose the disciplinary measure of dismissal upon the employee. The just cause must be, either a misconduct, negligence or poor performance based on the facts of the case.

[52] On the standard of proof applicable, the Court of Appeal in the case of **Telekom Malaysia Kawasan Utara v. Krishnan Kutty Sanguni Nair & Anor [2002] 3 CLJ 314** had laid down the principle that the standard of proof that is required to prove a case at the Industrial Court is on the balance of probabilities wherein His Lordship Justice Abdul Hamid Mohamad, JCA opined:-

Thus, we can see that the preponderant view is that the Industrial Court, when hearing a claim of unjust dismissal, even where the ground is one of dishonest act, including "theft", is not required to be satisfied beyond reasonable doubt that the employee has "committed the offence", as in a criminal prosecution. On the other hand, we see that the Courts and learned authors have used such terms as "solid and sensible grounds", "sufficient to measure up to a preponderance of the evidence," "whether a case... has been made out", "on the balance of probabilities" and "evidence of probative value". 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 issue. But, again, if we may add, these are not "passwords" that the failure to use them or if some other words are used, the decision is automatically rendered bad in law.

[53] Since the fact that the Claimant had been dismissed by the Bank on 03.12.2018 is not in dispute, the sole issue to be determined by this Court is whether the dismissal of the Claimant was done with just cause or excuse.

EVALUTION AND FINDINGS

[54] The alleged misconduct against the Claimant as specified in the NOIDA dated 22.10.2018 relating to the four (4) disputed policies, reads as follows:-

"It was reported that you had forged the customer's signatures, i.e. Ms. Chan Wai Leng ("Ms. Chan") on the proposal forms for the four (4) Tokyo Marine Life Insurance Malaysia ("TMLM") life insurance policies without the customer's knowledge and authorization. The details are as follows:-

No.	Policy No. / Basic Plan	Commence Date	Policy Sum (RM)	Premium	Status	Closed By
1.	No.30154957 Essential Elite Saver	31.10.2015	19,200.00	300.00 Monthly	In Force	Claimant
2.	No. 30156818 Essential Prime Builder	31.11.2015	28,000.00	630.70 Monthly	Lapsed	Najihah
3.	No. 30160705 Essential Prime Secure	29.01.2016	31,000.00	890.00 Monthly	Surrendered	Norliana
4.	No. 30165044 Essential Prime Builder	31.03.2016	17,000.00	382.95 Monthly	Lapsed	Norliana

The matter stated above undoubtedly constitutes serious misconduct as it appears to involve elements of dishonesty and reflects considerable doubt on your integrity and warrants dismissal."

[55] As stated earlier, it is a trite law that the burden of proof in the Industrial Court is on the balance of probabilities. The Industrial Court in **Sivam Atamalingam v. Appraisal Property Management Sdn Bhd [Award No. 58 of 2022]** held:-

What is essential to note is that the test is not whether the employee did it; but rather whether the employer acted reasonably in thinking the employee did it; and whether the employer acted reasonably in subsequently dismissing him. What this means is that there is no burden on the employer to prove that the employee had committed the misconduct with malicious intent; or even establish for certain that the alleged misconduct caused the company financial loss or a dent in its reputation and prestige. What there is, is a burden to establish that the employer had cogent and rational grounds upon which to reasonably infer that the employee had committed the misconduct. In order to discharge this burden, all the employer has to show is that an investigation into the matter had been carried out as was reasonable in all the circumstances of the case.

[56] Now, going back to the four (4) disputed policies, this Court finds that Ms. Chan Wai Leng, namely COW-10 being the best person to know and confirm whether her signature is authentic or forced irrespective of any forensic evidence had given the following unchallenged evidence:-

- (i) She did not sign the Proposal Forms and the Policy Summary Illustration Page (PSIP) for the four (4) disputed policies (COWS-10A, Q&A 11, pages 21-22, 31, 40, 41, 45 and 52 of COB-2);
- (ii) The signatures at the columns "Signature of Account Holder (Policy Owner)", "Signature of Life Assured" and "Signature of Client" in the Proposal Forms and the PSIP for the four (4) disputed policies are not her signatures (COWS-10A, Q&A 11, pages 21-22, 31, 40, 41, 45 and 52 of COB-2); and
- (iii) Her signature had been forged on the Proposal Forms and the PSIP for the four (4) disputed policies (COWS-10A, Q&A 25, pages 22, 31, 40, 41, 45 and 52 of COB-2).

[57] COW-4 testified that the GIA found the signatures on the Proposal Forms of Policy Nos. 30154957, 30156818, 30160705 and 30165044 (the four (4) disputed policies), appear to have been forged, on grounds that there were obvious discrepancies in the 1st and 2nd character of those signatures, as compared with COW-10's signature in the Proposal Form and PSIP for Policy No. 30138735, as well as in her Interview Statement dated 29.08.2018.

[58] During cross-examination, COW-4 confirmed that the GIA's investigations were determined based on the review of the signatures on the Proposal Forms for the four (4) disputed policies where the GIA had compared the signatures and found clear discrepancies and readily admitted that he and his team are not experts in handwriting. COW-4 clarified during re-examination as follows:-

- (i) They compared the signatures character by character. In this particular case, there are three (3) characters in COW-10's signature in Chinese script; and

- (ii) They noticed that as far as Character 1 and Character 2 of COW-10's signature in Chinese script, the signatures on the Proposal Forms for the four (4) disputed policies are not smooth and are stiff as compared to COW-10's sample signature found in in her Interview Statement dated 29.08.2018 and in the Proposal Form for Policy No. 30138735.

[59] In this regard, COW-4 highlighted that 1st character of the disputed signature in COB-2, page 98, from left to right. The curve at the bottom of the 1st character itself is stiff in comparison to COW-10's sample signature found in in her Interview Statement dated 29.08.2018 in COB-2, page 237.

[60] This Court also finds that evidence of COW-4 and COW-10 is corroborated by the obviously different signatures found in the Claimant's Interview Statement dated 29.08.2018 and in the Proposal Form for Policy No. 30138735 and the expert evidence of the Forensic Document Examiner, COW-6.

[61] This Court finds that even on a visual examination and comparison, the signatures on the Proposal Forms of the four (4) disputed policies and COW-10's sample signature found in in her Interview Statement dated 29.08.2018 and in the Proposal Form for Policy No. 30138735 do not match.

[62] COW-6, an Associate Member of Institute of Chemistry, Malaysia and gazetted as the Document Examiner for the Department of Chemistry Malaysia with effect from 1990 and an experienced Forensic Document Examiner wherein his evidence as an Expert Witness were accepted by the Courts, provided the following unchallenged evidence:-

- (i) He has extensive experience and expertise in verifying signatures and detecting forgery, with at least twenty-five (25) years' in the field. He is experience as a Forensic Document Examiner verifying signatures, handwritings, fraudulent documents and forgery detection for other Government departments, mainly the Police Department and the private sector;

- (ii) He prepared the Signature Verification Report (the SV Report) using side-by-side comparison methodology, concluding that the signatures on the disputed documents do not match COW-10's authentic signatures (pages 122 to 142 of COB-5 and Q&A No. 10 of COWS-6);
- (iii) Based on his observations, the Disputed Signatures marked as "Q1" to "Q20" in the SV Report are most probably of a common authorship meaning the Disputed Signatures are most probably written by the same writer (page 135 of COB-5 and Q&A No. 11 of COWS-6);
- (iv) Based on his observations, the Specimen Signatures marked as "S1" to "S5" in the SV Report are most probably of a common authorship meaning the Specimen Signatures were also most probably written by the same writer (page 130 of COB-5 and Q&A No. 12 of COWS-6); and
- (v) From his examination and comparison of the Disputed Signatures marked as "Q1" to "Q20" and the Specimen Signatures marked as "S1" to "S5" in the SV Report, the Disputed Signatures marked as "Q1" to "Q20" and the Specimen Signatures marked as "S1" to "S5" are most probably of different authorship meaning the Disputed Signatures marked as "Q1" to "Q20" were most probably not written by the writer of the Specimen Signatures marked as "S1" to "S5" (COW-10).

[63] This Court also finds that the Claimant neither questioned COW-6's credibility nor called her own expert witness to counter the findings of COW-6.

[64] When it was put to the Claimant during her cross-examination, that COW-6 concluded that the Disputed Signatures in the Proposal Forms for the four (4) disputed policies marked as "Q1" to "Q20", which was inclusive of the signatures in Chinese script on the Proposal Form for Policy No. 30154957 (ESV+), were "*most probably*" not written by COW-10, the Claimant merely testified that she was not sure.

[65] In the case of **Elizabeth Chiew Yee Fung v. Leong Fook Ngen & Ors** **[2001] 3 CLJ 729** the Industrial Court held as follows:-

"Now, in considering the evidence of PW1 this court has to note that generally his evidence should be admitted without any requirement of corroboration. In Dr. Shamuganathan v. Periasamy Sithambaram Pillial [1997] 2 CLJ 153 his Lordship Anuar CJ (Malaya) said thus, inter alia pages 182-185:

- (i) It is trite law that the principal object of expert evidence is to assist the court to form its own opinion. An expert should give his reasons. The court is the final arbiter, not the experts or eyewitness... The learned judge should have considered the reasoning given by the expert and with that assistance arrived at the conclusion. In failing to do so the learned judge had abdicated his function. The learned judge is entitled to reject the evidence but not before considering such evidence. The evidence of the expert is admissible and relevant to the fact in issue properly placed before the learned judge. The learned judge ought to consider all such evidence that is before him prior to arriving at a finding on the issue. Only after such due consideration been given could he come to a finding. In the case before us, the learned judge did not consider the evidence of PW1 at all. The learned judge did not determine the issue of the forgery.*
- (ii) In the present case, there was no challenge by the defendant either on the qualification of PW1 as an expert or on the method adopted in coming to his conclusion. The basic complaints in fact were that PW1 failed to give evidence to cover the situation where a person might have purposely signed differently from his usual signature and that no specimen was produced for the month of October 1975 when the alleged forgery purportedly took place. Meanwhile, it was the testimony of PW1 that in considering the signature appearing in exh. P3a purportedly to be that*

of the deceased he compared it with 19 specimen signatures of the deceased from the years 1968 to 3rd August 1978 (exh. P8-18). It was the opinion of PW1 that the signatures in those 19 specimens were written by the same hand. In respect of the signature in exh. P3a however, he was of the opinion that it was of different authorship. In fact PW1 prepared a report that was duly admitted as exh. P7.

(iii) Accordingly, in view of the total absence of any form of challenge against the evidence of PW1 as to his expertise and method adopted to examine the disputed signature are having considered the overall testimony of PW1, I have no reason to reject his evidence as a whole. Indeed the defendant did not deem it necessary to call its own expert to counter the finding of PW1."

[66] This Court has no hesitation in accepting COW-6's expert evidence. COW-6 has analysed the signatures and his clear, didactic exposition of his analysis has not been credibly challenged. The impressive credentials of this expert and his finding that the signature on the four (4) disputed policies are not of COW-10 are unassailable.

[67] In the circumstances, based on COW-10's unchallenged evidence and the evidences of COW-4 and COW-6, coupled with the Claimant's agreement during cross-examination that COW-10 is the best person to say if the signatures in Chinese script on the Proposal Forms of the four (4) disputed policies are her signatures, this Court finds that the Bank had proven on a balance of probabilities that COW-10's signatures on the Proposal Forms of the four (4) disputed policies are forged.

[68] It is undisputed that the Claimant's signature is in roman script. In this regard, it is COW-6's unchallenged evidence during cross-examination that as the Claimant's signature is in roman script, but the Disputed Signatures (on the Proposal Forms for the four (4) disputed policies) are in Chinese script, then, COW-6 cannot compare the Claimant's signature with the disputed signatures.

[69] Be that as it may, this Court finds that the following proved, admitted facts and evidence establishes the Claimant's means and opportunity to forge COW-10's signatures:-

(i) The Claimant agreed as follows during cross-examination:-

- COW-10 was a regular customer of the Bank's KBSB Branch, who maintained numerous bank accounts therein;
- The Claimant could access COW-10's bank account details;
- COW-10 signed up for Policy No. 30138735 (EPS) in December 2014 on the Claimant's advice and recommendation;
- After the Claimant closed the sale of Policy No. 30138735 (EPS) in December 2014, she and COW-10 became very friendly with each other and as well as maintained a good relationship until 2018;
- Until 2018, the Claimant even shared with COW-10 personal matters relating to her household and they chatted about trivial matters in their respective daily lives;
- COW-10 was the Claimant's regular customer that she serviced and COW-10 trusted the Claimant;
- The Claimant was fully aware from her interactions with COW-10 that COW-10 is unable to read, understand and communicate in English;
- Coincidentally, the Claimant submitted to TML, Policy No. 30154957, during the 1st month of Sales Manager Challenge (SM Challenge);
- COW-1, COW-2 and COW-3 were under the Sales team that the Claimant headed at that material time in 2015 and 2016, respectively.

- (ii) The three (3) disputed policies involved COW-2 and COW-3, respectively.
- (iii) Policy No. 30156818 (EPB) was submitted to TML during the 2nd month of the Claimant's SM Challenge.
- (iv) Policy No. 30160705 (EPS) and Policy No. 30165044 (EPB), were submitted to TML within the 1st and 3rd month of the Claimant's promotion as Sales Manager-Bancassurance.
- (v) COW-10 confirmed that she only liaised with the Claimant when dealing with insurance matters at the Bank's KBSB Branch and during cross-examination she confirmed that she neither knew nor dealt with COW-2 and COW-3.
- (vi) It is the unchallenged evidence of COW-2 and COW-3, respectively that they were neither introduced to COW-10, nor have personally spoken to her throughout COW-2's employment with the Bank.
- (vii) During cross-examination, although COW-10 agreed that she had dealt with COW-1, she also explained that she had no business with her. In this regard, the Claimant's following evidence during cross-examination, proved on a balance of probabilities that at all material time, COW-10 only trusted and liaised with the Claimant when dealing with insurance policy and she had no dealings with COW-1:-
 - Prior to the Banca day, sometime at the end of 2016, the Claimant may have given COW-10's contact details as a lead, amongst others, for purposes of introducing the TML EPL Policy to COW-1.
 - COW-1 then, reported to the Claimant that when she contacted COW-10 and attempted to introduce EPL Policy but, COW-10 cut COW-1 off and COW-10 told COW-1 that she would look for the Claimant at the Bank's KBSB Branch.

- The Claimant then informed COW-1 that she would liaise directly with COW-10 relating to the quotation and attempt to close the case with COW-10;
- When the Claimant allegedly presented, explained and secured COW-10's signature on the Proposal Form and PSIP, for Policy No. 30453316 (EPL), COW-1 was not present;

Notwithstanding this, when the Claimant was 1st questioned via the Producer Statement dated 10.08.2018, she alleged that she presented Policy No. 30453316 (EPL) with COW-1, which is not truth;

- COW-1 was neither involved in nor witnessed COW-10 signing the Proposal Form and PSIP for Policy No. 30453316 (EPL) in COB-2, pages 156, 166, 168, 172 and 184;
- Sometime in the late afternoon on 29.12.2016, the Claimant handed to COW-1 the Proposal Form and PSIP dated 29.12.2016 for Policy No. 30453316 containing COW-10's signatures in Chinese script, together with a copy of COW-10's NRIC, wherein the relevant details therein were already completed by the Claimant except for the information relating to COW-10's health status;
- The Claimant instructed COW-1 to contact COW-10 via telephone to only confirm on her current health status in pages 158 to 159 of COB-2; and
- Even when COW-10 became aware of the monthly deductions from her joint bank accounts, she sought the Claimant's help.

(viii) It is COW-1's unchallenged evidence that even when she contacted COW-10 via telephone sometime in November 2017, COW-10 merely said she will look for the Claimant, and COW-1 then, duly reported to

the Claimant. Hence, the Claimant is therefore, precluded from denying this fact.

- (ix) Similar to when the Claimant handed to COW-1 the Proposal Form and PSIP dated 29.12.2016 for Policy No. 30453316, it is the unchallenged evidence of COW-2 and COW-3, respectively, that the Claimant handed to them the Proposal Forms and PSIP for the three (3) disputed policies, containing signatures in Chinese script.
- (x) During cross-examination, the Claimant agreed that Syafiza was the serving agent for Policy No. 30158202 under COW-9's name but there is no document to support her allegation that COW-10 knew and dealt with Syafiza and in any event, none of the four (4) disputed policies involved Syafiza.
- (xi) During cross-examination, the Claimant agreed that she completed all relevant details in the Proposal Form and the PSIP for Policy No. 30154957 as well as relevant details in the Proposal Forms and the PSIP for Policy No. 30156818 (EPB), and Policy No. 30160705 (EPS) save and except for:-
 - The details in the box on the top right hand corner of COB-2, page 56 as well as the columns "*Signature of Witness*", "*Signature Authorised Bank Staff*" and "*Signature of Intermediary*" in COB-2, page 68, 73, 75 for Policy No. 30156818 (EPB); and
 - The details in the box on the top left hand corner of COB-2 page 86 as well as the columns "*Signature of Witness*", "*Signature Authorised Bank Staff*" and "*Signature of Intermediary*" at pages 98, 100 and 103 of COB-2, for Policy No. 30160705 (EPS).

[70] This Court also finds that contrary to the Claimant's allegation that it was within the job scope of any PB-Banca or Sales Manager-Banca to complete the customer's personal details in the Proposal Forms and PSIP, during cross-

examination the Claimant agreed that the "*Important Notice*" on the Proposal Form for Policy No. 30154957 (ESV+) (page 29 of COB-2) states that the customer is required to complete the personal details and ensure accuracy.

[71] During cross-examination, CLW-2 agreed that it was merely a common practice amongst Sales Managers-Banca and PBs to complete details in the Forms in the presence of customers, to help, to speed up the process.

[72] During cross-examination the Claimant and CLW-2 agreed that when the Claimant completed the customer's personal details in the Proposal Form and PSIP on behalf of the customer, she was required to ensure that the customer's personal details that she completed were accurate and obtained with the customer's consent. The Claimant also agreed that the filling up/completion of personal details of the customer has to be in the presence of the customer.

[73] The Claimant also agreed during cross-examination that when the Claimant completed the customer's personal details in the Proposal Form and PSIP on behalf of the customer, she was required to go over the completed documents with the customer to ensure accuracy of the personal details, before submission.

[74] However, during cross-examination, the Claimant testified she was not sure when it was put to her that COW-10's personal details in the Proposal Forms and PSIP for the four (4) disputed policies were not completed in COW-10's presence and COW-10's personal details in the Proposal Forms and PSIP for the four (4) disputed policies were included without COW-10's consent.

[75] This is despite the fact that the Claimant completed the details in the Proposal Form and the PSIP for Policy No. 30154957 (ESV+) in its entirety, and she partially completed the details in the Proposal Form and the PSIP for Policy No. 30156818 (EPB), and Policy No. 30160705 (EPS), respectively.

[76] On the issue of the accuracy of telephone numbers on documents, COW-10 confirmed discrepancies in the telephone numbers. She confirmed the number stated in the column "*Te/ No.*" for Policy No. 30138735 in COB-2, page 201 is her

accurate contact number and that the telephone number stated in COB-2, pages 30, 57, 87, and 123 was not her contact number at all.

[77] During cross-examination the Claimant agreed that in the meeting on 17.08.2018, when the Claimant's clarification was sought regarding the information stated in the column "*Mobile No.*" for Policy No. 30154957 in COB-2, page 30, she merely alleged that she obtained the number stated in COB-2, pages 30 from COW-10's records maintained in the Bank's system and that she had no knowledge that the said number did not belong to COW-10.

[78] On hearing the Claimant's response, during the meeting on 17.08.2018, Ms. Cherish Hong Swee Lan immediately logged into the Bank's system through her laptop and informed the Claimant that the number stated in COB-2, pages 30, 57, 87 and 123 was not at all found in COW-10's records maintained in the Bank's system.

[79] The number stated in the column "*Tel No.*" of Policy No. 30138735 in COB-2, page 201 is the same with the number stated in "*Tel No. 1*" in CLB-1, page 16 and COW-10 gave the number stated in CLB-1, page 16. However, the number that the Claimant wrote in the column "*Mobile No.*" of Policy No. 30154957 in COB-2, page 30 is different from the number stated in CLB-1, page 16.

[80] During the meeting on 17.08.2018, the Claimant alleged that she could not remember exactly and further claimed that if the number stated was not consistent with COW-10's records maintained in the Bank's system, it may have been obtained directly from COW-10 during proposal application. However, COW-10 denied the Claimant's allegation and reiterated that the number stated in COB-2, pages 30, 57, 87 and 123 was not her contact number.

[81] During cross-examination, the Claimant yet again alleged that she did not know that the number she wrote in the column "*Mobile No.*" of Policy No. 30154957 in COB-2, page 30 is not COW-10's number at all and that the number stated in COB-2, page 30 was given to her by COW-10. However, the Claimant subsequently agreed during cross-examination that she was not telling the truth and the number that COW-10 gave is in CLB-1, page 16, printed and generated from the Banca portal.

[82] This Court also finds that despite the Claimant's contention in CLWS-1, Q&A No. 16 (page 5, para 3), to wit "*As a sales staff, I must provide documents to CSO and/or BM and there are procedures to be followed by the Officers to verify the signature and/or call verification before any customer account is debited*", it is pertinent to note that the same was not put to any of the Bank's witnesses. It is trite law that the failure to put one's case to his opponent's material witnesses would preclude the former from raising it in his argument. In any event, during cross-examination, the Claimant agreed that there is no documentary evidence to support her allegation and she further agreed that her evidence that she had such evidence is untrue and that since the Claimant wrote an erroneous number in the column "*Mobile No.*" of Policy No. 30154957 in COB-2, page 30, COW-10 would not have received any such call verification before RM300.00 was auto-debited from her joint bank account effective October 2015.

[83] It has been proven on a balance of probabilities before this Court that:-

- (i) The Claimant was directly involved in the four (4) disputed policies when she completed the details in the Proposal Form and the PSIP for Policy No. 30154957 (ESV +) in its entirety, in partially completing the details in the Proposal Form and the PSIP for Policy No. 30156818 (EPB) and Policy No. 30160705 (EPS), respectively. Similar to when the Claimant handed to COW-1 the Proposal Form and PSIP dated 29.12.2016 for Policy No. 30453316, it is the unchallenged evidence of COW-2 and COW-3 respectively, that the Claimant handed to them the Proposal Forms and PSIP for the three (3) disputed, containing signatures in Chinese script;
- (ii) COW-10's personal details in the Proposal Forms and PSIP for the four (4) disputed policies were not completed in COW-10's presence and were included without COW-10's consent; and
- (iii) An erroneous number in the column "*Mobile No.*" of the four (4) disputed policies in COB-2, pages 30, 57, 87 and 123 was stated to prevent anyone from contacting COW-10 regarding the said policies,

since COW-10 was neither aware of nor consented to the purchase of the four (4) disputed policies.

[84] Therefore, this Court finds that based on the totality of the proved or admitted facts and/or evidence, the Bank had proven on a balance of probabilities that at the time of the dismissal, there were reasonable grounds for believing that the Claimant forged COW-10's signatures on the Proposal Forms for the four (4) disputed policies.

[85] The Court also finds that following were established with regard to the four (4) disputed policies:-

(i) Policy No. 30154957 (ESV +)

- (a) The Claimant alleged that COW-10 signed the Proposal Form in her presence, but this was not put to COW-10 during her testimony. COW-10's evidence denying her signatures on the Proposal Forms was not challenged by the Claimant.
- (b) It is undisputed that the Claimant prepared and completed Policy No. 30154957 (ESV+) documents. During cross-examination, the Claimant admitted that the mobile number she entered was incorrect and not COW-10's number, indicating to prevent contact with COW-10.
- (c) The Claimant was unsure during cross-examination whether COW-10's details were completed in her presence or with her consent. The Claimant admitted that COW-10 is the best person to verify the authenticity of the signatures.
- (d) The Claimant agreed that she requested the policy document to be sent to the Bank's KBSB Branch instead of COW-10. The evidence indicated that COW-10 did not receive the policy document and the Claimant could not confirm if the

acknowledgement slip for Policy No. 30154957 (ESV +) was ever returned to or received by TML.

- (e) COW-10 was a regular customer who trusted the Claimant, often signing documents on her advice without fully understanding them. The Claimant submitted Policy No. 30154957 during the 1st month of her three (3) months SM Challenge, which establishes a motive for forging the signatures to succeed in the challenge.
- (f) The evidence, including COW-6's analysis, suggests that all the signatures on the disputed policies were likely from the same author, indicating forgery.
- (g) Based on the evidence and testimonies, it is proven on a balance of probabilities that COW-10's details in the Proposal Forms and PSIP for Policy No. 30154957 (ESV +) were completed without her presence or consent, the Claimant had a motive to forge signatures to meet sales targets and earn incentives and there is substantial evidence indicating that the signatures on the disputed policies, including Policy No. 30154957 (ESV +), were forged. The Bank has proven that at the time of dismissal, there were reasonable grounds for believing that the Claimant forged COW-10's signatures on the relevant documents.

(ii) Policy No. 30156818 (EPB)

- (a) The Claimant agreed during cross-examination that COW-2 was under her Sales team during the SM Challenge.
- (b) COW-2 confirmed that the Claimant handed over completed Proposal Form and PSIP for Policy No. 30156818 (EPB) with COW-10's forged signatures.
- (c) The Claimant agreed that the signatures in the documents were forged but denied forging them herself.

- (d) The Claimant was inconsistent about her knowledge of COW-2 and the completed forms.
- (e) COW-2's testimony was that she only added her details and submitted the forms, which were already completed and signed by the Claimant.
- (f) The Claimant was required to fill out personal details in the presence of the customer, but inconsistencies were noted in the details provided across different policies.
- (g) Evidence pointed towards the Claimant's involvement in generating and verifying the documents, which were not effectively challenged during the cross-examination.
- (h) No acknowledgment slips for the policies were found, unlike for other policies, indicating potential irregularities.
- (i) The Claimant was part of a SM Challenge and achieving targets was crucial, which might have motivated her to ensure the policies were completed, even if it meant forging signatures.
- (j) The combination of the Claimant's own admissions, unchallenged testimonies, and documented evidence led to the conclusion that it was more probable than not that the Claimant forged COW-10's signatures.
- (k) The evidence against the Claimant primarily relies on her own admissions during cross-examination, corroborated by consistent testimonies from COW-2 and COW-7. Despite the Claimant's attempts to disassociate from the actions, the preponderance of evidence indicates her involvement in the forgery of COW-10's signatures for Policy No. 30156818 (EPB). The inconsistencies in her statements and the motive provided by the SM Challenge further support this conclusion.

(iii) Policy No. 30160705 (EPS)

- (a) COW-3 was part of the Bancassurance team headed by the Claimant from January 2016 to August 2018.
- (b) COW-10 interacted with the Claimant regarding insurance matters but did not know or interact with COW-3.
- (c) The signatures of COW-10 on Policy No. 30160705 (EPS) were confirmed to be forged. The Claimant initially agreed to this fact but later attempted to deny it.
- (d) COW-3 did not witness the signing of these forged signatures, despite being listed as a witness.
- (e) The Claimant completed the relevant details on the proposal forms for Policy No. 30160705 (EPS) and was responsible for their accuracy.
- (f) The Claimant handed over these forms to COW-3 for submission to TML.
- (g) The Claimant provided conflicting statements about her knowledge of the forgery and the completion of forms in COW-10's presence.
- (h) The Claimant benefited from the policies through achieving sales targets and receiving commissions.
- (i) The Claimant was responsible for ensuring the accuracy of all submissions under her team.
- (j) The Claimant and COW-3 both benefited from the completion and submission of Policy No. 30160705 (EPS), with the Claimant receiving overriding commission incentives.

- (k) The Claimant requested the policy document for Policy No. 30160705 (EPS) to be sent to the Bank's KBSB Branch, but the Claimant later denied this when questioned.
- (l) There was no documentary evidence supporting the Claimant's claim that she assisted COW-3 due to her early stage of pregnancy.
- (m) The Claimant's involvement in the forgery and the mismanagement had been proven before this Court.
- (n) It has been established that the Claimant was involvement in the irregularities related to Policy No. 30160705 (EPS).
- (o) The banks' evidence and testimonies presented before this Court established the fact that the Claimant was involved in the forgery of COW-10's signatures on Policy No. 30160705 (EPS), mishandled the submission process, and benefited financially from these actions.

(iv) Policy No. 30165044 (EPB)

- (a) When COW-3 received the Proposal Form and PSIP for Policy No. 30165044 (EPB), they only had Chinese signatures in the "Signature of Life Assured" column without completed details.
- (b) The Claimant admitted that the signatures of COW-10 on Policy No. 30165044 (EPB) are forged.
- (c) Despite agreeing that the signatures are forged, the Claimant claimed ignorance of COW-3 not witnessing the signing.
- (d) COW-3 completed the relevant details in the Proposal Form and PSIP using information provided by the Claimant, including a sheet of paper with COW-10's information.

- (e) COW-3 confirmed that the Claimant instructed the policy cover to be sent to the Bank's KBSB Branch.
- (f) It is unchallenged that the PSIP for Policy No. 30165044 (EPB) was generated by the Claimant.
- (g) The Claimant's email dated 31.03.2016 attached the Proposal Form, PSIP and other documents for Policy No. 30165044 (EPB).
- (h) COW-3 and COW-7's testimonies regarding the preparation and submission of documents, as well as the handling of policy covers, were not seriously challenged by the Claimant.
- (i) The Claimant failed to provide evidence to rebut the statements regarding her involvement in generating and submitting the PSIP.
- (j) The Claimant received an overriding incentive of RM183.84 for Policy No. 30165044 (EPB), despite her claim of not benefiting from the policy.
- (k) The Bank has proven that the Claimant was involved in forging COW-10's signatures and handling the Proposal Form and PSIP for Policy No. 30165044 (EPB).

[86] Based on the totality of the evidence, including unchallenged testimonies of and the Claimant's admission, the Bank has proven on a balance of probabilities that the Claimant was involved in forging the signatures of COW-10 in the Proposal Forms and PSIP for all the four (4) disputes policies. All the evidence also establishes the fact that the Claimant's knowledge and participation in the preparation, submission and benefit from the policy, leading to reasonable grounds for the Bank's belief in her misconduct at the material time.

[87] The following has been established by the Bank on the issue of *surrender/declaration of Lost Policy for Policy No. 30160705 (EPS) and Policy No. 30165044 (EPB)*:-

- (i) COW-10 testified that the Claimant advised her to surrender Policy No. 30160705 (EPS) and Policy No. 30165044 (EPB) and apply for a full refund;
- (ii) COW-10 signed the relevant documents on the Claimant's advice, despite not recalling signing any Proposal Form or PSIP for these policies or receiving copies of the policy coverage;
- (iii) COW-10 signed the documents without reading them, and without her children present;
- (iv) The Claimant admitted to completing the details and witnessing COW-10's signature on the forms;
- (v) The Claimant advised COW-10 to declare the policies lost and apply for duplicate copies, even though surrendering the policy negates the need for such declarations; and
- (vi) COW-7's testimony supports that there was no basis for declaring the policies lost if they were being surrendered. In fact it was established that the Claimant hastily secured COW-10's signatures on various documents related to policy surrender and duplicate applications upon inquiries about deductions from her account.

[88] Based on the evidence and testimonies, it is proven on a balance of probabilities that COW-10 was advised by the Claimant to sign documents and declare policies lost, despite surrendering them. The Claimant's pattern of behavior shows a consistent modus operandi of securing signatures and completing forms without proper consent, indicating potential forgery and dishonesty. This behavior reflects negatively on the Claimant's integrity and supports the Bank's decision to believe there were reasonable grounds for dismissing the Claimant.

[89] It is apparent to this Court from the totality of the proved or admitted evidence directly and strongly indicates the Claimant's culpability in forging COW-10's signatures on the Proposal Forms of the four (4) disputed policies. The evidence includes both direct testimonies and strong circumstantial evidence, highlighting the

Claimant's actions, the pattern of behavior, and the opportunity she had to commit the forgery.

[90] This Court finds that the circumstantial evidence against the Claimant is compelling and points irresistibly to her guilt, extending beyond mere suspicion. In the case of **Mui Bank Bhd. Johor V. Tee Puat Kuay @ Tee Puat Kway [1993] 4 CLJ 69** it was held that strong circumstantial evidence can establish guilt.

[91] Based on the balance of probabilities, this Court finds that the Claimant is guilty of the misconduct, which involves elements of dishonesty that significantly affect her integrity as an employee.

THE CLAIMANT'S CONTENTION OF IRREGULARITY IN DISMISSING THE CLAIMANT

[92] The Claimant pleaded that there was no Domestic Inquiry (DI) held by the Bank. It is undisputed that there was no Domestic Inquiry (DI) held against the Claimant with regard to the allegations preferred against her which brought about her dismissal. On the authority of **Wong Yuen Hock v. Syarikat Hong Leong Assurance Sdn Bhd & Another Appeal [1995] 3 CLJ 344** which followed the decision of the Supreme Court in **Dreamland Corporation (M) Sdn Bhd v. Choong Chin Sooi & Industrial Court of Malaysia [1988] 1 CLJ 1**, a defective inquiry or failure to hold a DI is not a fatality but only an irregularity curable by *de novo* proceedings before this Court.

[93] In **Dreamland Corp. Sdn. Bhd. [supra]**, SCJ Wan Suleiman (as he then was) stated as follows:-

- (i) *The absence of DI or the presence of a defective inquiry is not a fatality but merely an irregularity, it is open to the employer to justify his action before the Industrial Court by leading all relevant evidence before it and by having the entire matter referred before the Court.*
- (ii) *Unless the Industrial Court has found that the dismissal is without just cause or excuse, the Court has no jurisdiction to offer any relief whatsoever.*

[94] In the present case, the Bank issued NOIDA dated 22.10.2018 by which the alleged misconduct against the Claimant was that she had forged COW-10's signatures on the Proposal Forms of the four (4) disputed policies based on the details enumerated therein. The Claimant was thus, given sufficient opportunity to explain herself specifically, to refute and/or rebut the Bank's decision to be taken for the alleged misconduct, including any factors of mitigation, for the Bank's consideration. The Claimant had in fact explained herself at length in the Claimant's reply dated 25.10.2018 in response to the alleged misconduct specified against her in the NOIDA dated 22.10.2018 but it was not accepted by the Bank. Further, even prior to the issuance of the NOIDA dated 22.10.2018, the Claimant's explanations to COW-10's complaint regarding the four (4) disputed policies were also sought through the Producer Statement dated 10.08.2018 (which she duly completed on 14.08.2018), the meeting at the Bank's KBSB Branch on 17.08.2018 and the GIA Interview on 29.08.2018. Hence, it is apparent that the Claimant was given ample opportunity to be heard and was given chances to explain and rebut the misconduct specified against her in the NOIDA dated 22.10.2018, and the Bank's decision to be taken for the same.

[95] The term "due inquiry" expressed in s. 14 of the Employment Act has been undefined. In the case of **Jeana Yeo See Nah v. Virgoz Oils & Fats Sdn Bhd** **[2021] 1 ILR 516** it was stated as follows:

It was discussed in the case of *LADANG SUNGAI TAMU v. NATIONAL UNION OF PLANTATION WORKERS* [1991] 1 ILR 1 (AWARD NO. 1 OF 1991):-

...the term "due inquiry" has not been defined but nevertheless the Industrial Courts have quite clearly established the rule that the employer's procedure for dismissal on the grounds of misconduct must conform to the rules of natural justice, that is to say, the employee must be informed of the grounds alleged against him and he must be given a chance to answer the charge.

[96] The Court is further guided by the decision of the High Court in the case of **Ganesan G Suppiah v. Mount Pleasure Corp Sdn Bhd. [1998] 1 CLJ 637** wherein his Lordship Abdul Kadir Sulaiman J held:-

The applicant also contends that the Industrial Court here had asked itself the wrong question when that question was not remitted to it for determination when it held that the absence of a domestic inquiry under s. 14 of the 1955 Act is not fatal and therefore the Industrial Court has the power to look into the merits of the case to determine whether the dismissal of the applicant was with just cause or excuse. I see no merit in the contention in the light of the principle enunciated in Wong Yuen Hock. The Industrial Court exercised the jurisdiction it hear the representations of the applicant upon its reference by the Minister to it pursuant to s. 20(3) of the 1967 Act. Once the case is referred to it, the Industrial Court is seised with power to hear the dispute and make its award: See A-G, Malaysia v. Chemical Workers' Union of Malaya & Anor [1970] 1 LNS 6; [1991] 1 MLJ 38. In Goon Kwee Phoy v. J & P Coats (M) Bhd [1981] 1 LNS 30; [1981] 2 MLJ 129, Raja Azlan Shah CJ (Malaya) (as he then was) speaking for the Federal Court held at p. 136:-

We do not see any material difference between a termination of the contract of employment by the notice and a unilateral dismissal of a summary nature. The effect is the same and the result must be the same. Where representations are 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.

In this case, the reason given by the respondent was that the applicant had contravened s. 13(2) of the 1955 Act for being absent without leave for more than two consecutive working days without prior leave which by s. 15(2) the applicant is deemed to have broken his contract of service with the respondent which entitles the respondent to act under s. 13(2) to terminate his service. Therefore, for the reason given by the respondent, the duty of the Industrial Court in this case is to enquire whether that excuse or reason has or has not been made out. That was what exactly the learned Chairman in this case did and found by his Award that the dismissal of the applicant was with just cause or excuse. The Industrial Court here did not in any way misconstrue or misapply the ratio in Wong Yuen Hock as so contended by the applicant.

[97] Further, on the rights of a workman to have a domestic inquiry before dismissal by his employer, the Federal Court in **Wong Yuen Hock [supra]** had stated as follows:-

"...In any event, we held the view that once a case of wrongful dismissal had been properly referred by the Minister under s. 20(3), the Industrial Court was seized with jurisdiction and was obliged under the Act to determine the dispute on its merits. Thus, even where there was a breach of contractual or statutory obligation to hold an inquiry, the Industrial Court should proceed to determine on the merits firstly, whether the misconduct complained of was in fact committed by the employee, and secondly whether the nature and extent of the misconduct could constitute just cause or excuse for the dismissal.

... The very purpose of the inquiry before the Industrial Court was to give both parties to the dispute an opportunity to be heard irrespective of whether there was a need for the employer to hold a contractual or statutory inquiry. We were confident that the Industrial Court as

constituted at present was capable of arriving at fair result by fair means on all matters referred to it. If therefore there had been a procedural breach on natural justice committed by the employer at the initial stage, there was no reason why it could not be cured at the re-hearing by the Industrial Court.

The distinction sought to be made by the Industrial Court between Dreamland and the present case was founded on s. 14(1) of the Employment Act 1955 which expressly required an inquiry before dismissal be conducted for employees whose monthly wage did not exceed RM1,250... In our view the principle that an initial breach of natural justice by the employer could be cured by the Industrial Court inquiry, should not be grounded on whether the claimant was or was not an employee within the meaning of the Employment Act. The curable principle must apply to all cases and must not depend on the salary of a workman. It would be intolerable to conclude that the defect was curable only where the employee earned more than RM1,250 per month...The statutory requirement of "due inquiry" under s. 14(1)(a) of the Employment Act in the absence of clear intention by Parliament could not in any way excuse the Industrial Court from discharging its duty to enquire into the question of "just cause or excuse" as required by s. 20. notwithstanding the initial failure to hold a proper domestic inquiry."

[98] The hearing before this Court itself which indeed provides a better and impartial forum for the Claimant should be taken as sufficient opportunity for the Claimant to being heard to satisfy natural justice. Indeed, the Minister's Reference is a *de novo* hearing by this Court and it therefore rehears the matter afresh.

WHETHER THE PUNISHMENT OF DISMISSAL WAS APPROPRIATE

[99] At the outset the Court finds that the Claimant's action amounts to a dishonest act which is indeed a grave misconduct where it directly touches the issues of trust and confidence.

[100] In the Court of Appeal case of **Institute of Technology Petronas Sdn Bhd/Universiti Teknologi Petronas v. Amirul Fairuz bin Ahmad [2023] 3 MLJ 15** it was held as follows:-

[74] In determining whether the claimant should be dismissed for the misconduct, we have to consider whether it is reasonable for the university to dismiss the claimant. In Harianto Effendy bin Zakaria & Ors v Mahkamah Perusahaan Malaysia & Anor [2014] 6 MLJ 305; [2014] 8 CLJ 821, the Federal Court had applied the English case of British Leyland UK Ltd v Swift [1981] IRLR 91 in determining whether it was reasonable or not to dismiss an employee. In so holding the court said as follows:-

The conduct of the appellants after the offence was established must be taken into account in deciding whether it was reasonable to dismiss them or not. In British Leyland UK Ltd v Swift [1981] IRLR 91 at p 93 Lord Denning said:-

But there is a further point. It is whether the Industrial Tribunal took into account all relevant considerations. It seems to me that they failed to take into account the conduct of Mr Swift after the offence was discovered. He did not come forward and say. 'I am sorry; I made a mistake, I ought not to have done it. I will not do anything of the kind again'. He did not even tell the same story he told to the police officer. He put forward a 'cock and bull' story about him having lent his Land Rover to another man: and the other man had got the tax disc: and it was the other man's fault: and so forth. As to that, the Industrial Tribunal were quite outspoken. They said: 'It is flying in the face of probability to suggest that he and Mr Rawlins were giving a truthful and accurate account'. So there it is.

Mr Swift did not 'come clean' when he was found out. He put forward a wholly untruthful and accurate account'. That seems to me to be a most relevant consideration for the employers to

take into account in deciding whether it was reasonable to dismiss him or not

...

[75] In the present case, once the claimant exhibits dishonesty or lack of integrity, the trust and confidence reposed in him by the university/employer can no longer subsist.

In the circumstances, it is reasonable for the university to dismiss the claimant, as integrity is the foundation of education, the very purpose of the university.

[101] The Learned Author, Dr. Ashgar Ali, stated as follows in his book, **DISMISSAL FROM EMPLOYMENT AND THE REMEDIES** at page 135:-

"What is certain is that an act of gross misconduct in the workplace or outside the workplace during the working hours and in certain situations even outside working hours, if established against the employee, may entitle the employer to dismiss the employee. Misconduct of a serious nature such as insubordination, moral turpitude, fighting, falsifying company documents, theft of the employer's property, violating the company's security or safety regulations or any substantive violation, may result in dismissal from employment."

[102] I will now go on to consider the case of *British Leyland UK Ltd v. Swift* [1981] IRLR 91 which had been applied in the case of **Norizan Bakar v. Panzana Enterprise Sdn Bhd** [2013] 4 ILR 477 which is a Federal Court decision and **Said Dharmalingam Abdullah v. Malayan Breweries (Malaya) Sdn Bhd** [1997] 1 CLJ 646, where the Court had made the following observation:-

There is a band of reasonableness within which one employer may reasonably take one view: another quite reasonably take a different view. One would quite reasonably dismiss the man. The other would

quite reasonably keep him on. Both views may be quite reasonable. If it was quite reasonable to dismiss him then the dismissal must be upheld as fair; even though some other employers may not have dismissed him.

[103] Applying the case of **Norizan Bakar [supra]**, the issue of whether it was reasonable for the Bank to dismiss the Claimant would depend on the seriousness of the allegation of misconduct. The principle in that case is if the Court is of the view that it was fair for the Bank to dismiss a Claimant, then the dismissal must be upheld as fair. Would a reasonable Bank have retained the Claimant in the circumstances of the case? It is noted that on the facts of that case too, the employee's dismissal was upheld by the Federal Court due to the gravity of the misconduct committed which had destroyed the trust and confidence that the employer in that case would have placed on him. In the present case, it is evident from the facts that the Claimant being a Manager had committed the misconduct of dishonesty.

[104] The proven fact in the instant case is that the Claimant had committed gross misconduct and therefore no reasonable employer can be expected to retain such an employee in its service what more in a banking industry.

[105] The Federal Court in the case of **Norizan Bakar [supra]** in upholding the dismissal of the employee gave due consideration to the fact that the employee had specifically accepted the employer's code of conduct but nevertheless proceeded to breach it, thereby violating the trust and confidence of his employer. The Court held at pages 624 and 625 as below:-

"...The fact is that the appellant was dishonest when he declared in writing that he was not serving on the board of directors of any Company when he was, in fact, at all material time found to be serving on the board of directors of another Company. The appellant had knowingly made a false declaration and with respect, which in our view, in the circumstances and facts of this case is not a minor misconduct, given the fact that the appellant had signed and accepted the Code of Conduct...

[43] In the circumstances, we find that the Industrial Court had failed to direct its mind to all the matters it should have taken into account, and we are convinced that, had the Industrial Court had those factors in mind it would have reached another conclusion in that the dismissal of the appellant was reasonable. In short, the dismissal of the appellant by the respondent was fair and not unfair."

[106] The Bank emphasizes that the banking industry requires the highest standards of integrity and honesty from its employees, given its role as a custodian of public funds.

[107] Forgery is a severe offense involving fraudulent intentions, which directly contradicts the need for integrity in banking. The act of forgery by an employee, if left unpunished, could undermine public confidence in the Bank and by extension the financial system.

[108] The Claimant, as a Sales Manager, held a position of trust and was expected to act with the highest levels of honesty and integrity. Her actions were inconsistent with these expectations. Given the seriousness of her misconduct, it was not desirable to continue her employment with the Bank.

[109] The relationship between the employer and the employee is a fiduciary one. Therefore, if the employee does anything incompatible with the due or faithful discharge of his duties to his master the latter has a right to dismiss. In the case of **United Parcel Service (M) Sdn. Bhd. v. Wan Saadiah Mohd. Ghani [1999] 1 ILR 668** it was held as follows:-

"The relation of master and servant implies necessarily that the servant shall be in a position to perform his duty duly and faithfully, and if by his own act he prevents himself from doing so, the master may dismiss him..."

[110] Aligning myself to the judicial pronouncements in the aforesaid cases and based on the totality of the evidence before this Court and also the submissions, the Court takes the view that the Bank had shown that the Claimant had committed

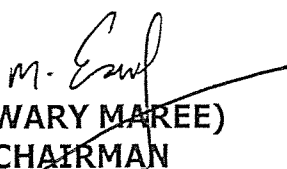
serious misconduct. The Court opines further that no reasonable employer would in this case have retained the Claimant in its employment on the misconduct committed by her. It would not be appropriate to let the Claimant off lightly with any other lighter punishment. It may be argued that the Bank should have taken into consideration the Claimant's performance and years of service as a mitigating factor, it is the finding of this Court that the Claimant's performance and years of service does not immunize the Claimant from dismissal due to misconduct or shield her from the consequences of her action – **Jaya Balan @ Sundra Raj Suppiah v. Texas Instrument (M) Sdn Bhd [2013] 3 ILR 502.** Be that as it may, the Court finds that as a Manager with the Bank, the Claimant has to lead by example in all her actions and conducts. In the circumstance, the Court finds that the Claimant's dismissal was with just cause and excuse.

CONCLUSION

[111] In conclusion, having considered all pleadings, evidences and submissions available before the Court and bearing in mind Section 30(5) of the 1967 Act to act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal form, the Court finds that the dismissal was with just cause and excuse.

[112] Accordingly, the Claimant's claim is hereby dismissed.

HANDED DOWN AND DATED THIS 16th DAY OF JULY 2024


(ESWARY MAREE)
CHAIRMAN
INDUSTRIAL COURT OF MALAYSIA
KUALA LUMPUR