

**INDUSTRIAL COURT OF MALAYSIA**

**CASE NO: 4/4-544/18**

**BETWEEN**

**ERIC BOON CHUAN KIT**

**AND**

**METRONIC ENGINEERING SDN. BHD.**

**AWARD NO: 430 OF 2019**

**BEFORE** : **Y.A. TUAN AUGUSTINE ANTHONY**  
**Chairman**

**VENUE** : Industrial Court, Kuala Lumpur

**DATE OF REFERENCE** : 27.12.2017.

**DATE OF RECEIPT OF**  
**ORDER OF REFERENCE** : 15.01.2018.

**DATES OF MENTION** : 20.02.2018, 30.03.2018, 27.04.2018,  
04.06.2018, 04.07.2018, 03.08.2018.

**DATE OF HEARING** : 19.09.2018.

**REPRESENTATION** : Ms. Khoo Ai Theng of Messrs Ng Kee  
Way & Co., Counsel for the Claimant.

Mr. Lim Kon Keen and Ms. Chan Jia Kay  
of Messrs Seow & Megat, Counsel for  
the Company.

**THE REFERENCE**

This is an order of reference dated 27.12.2017 by the Honourable  
Minister of Human Resources pursuant to section 20(3) of the Industrial

Relations Act 1967 arising out of the alleged dismissal of **Eric Boon Chuan Kit** (“Claimant”) by **Metronic Engineering Sdn. Bhd.** (“Company”) on 11.07.2017.

### **AWARD**

**[1]** The parties in this matter filed their respective written submissions on the 19.10.2018 (Company’s Submissions), 22.10.2018 (Claimant’s Submissions) and 02.11.2018 (Company’s Written Submissions in Reply).

**[2]** This Court considered all the notes of proceedings in this matter, documents and the cause papers in handing down this Award namely:-

- (i) The Claimant’s Statement of Case dated 16.03.2018;
- (ii) The Company’s Statement in Reply dated 17.04.2018;
- (iii) The Claimant’s Rejoinder dated 26.04.2018;
- (iv) The Claimant’s Bundle of Documents – CLB1 & CLB2;

- (v) The Company's Bundle of Documents – COB;
- (vi) Claimant's Witness Statement – CLW1-WS; and
- (vii) Company's Witness Statement – COW1-WS (Lee Rui Chuan).
- (viii) Company's Witness Statement – Koh Wai Chee (disregarded due to non-appearance of witness in Court)

## **INTRODUCTION**

**[3]** Eric Boon Chuan Kit, the Claimant in this case was appointed as the Group Financial Controller (Category 3) of the Company on the 05.10.2015 and was placed on a probationary period of 6 months. On the 18.04.2016 the Company issued a letter of confirmation, confirming the Claimant as the Group Financial Controller (Category 3) effective 15.04.2016 thus signalling that the Company is satisfied with the overall performance of the Claimant. The Claimant's salary was then increased from RM8,000.00 to RM10,000.00 upon the confirmation. Due to a need for a special audit to be conducted upon the recommendation of Bursa Malaysia and the Company' auditor on matters relating to issues

highlighted by the Company auditor in the audit report, the Company instructed the Claimant to go on leave of absence during the special audit period by a letter dated 04.05.2017 and by a letter dated 29.06.2017 to the Claimant, this leave of absence was further extended until the special audit is completed.

**[4]** On the same day of 29.06.2017, the Company issued a show cause letter to the Claimant alleging various misconducts on part of the Claimant and directed him to offer explanation by 05.07.2017. The Claimant offered his explanation to the show cause letter on the 01.07.2017. The Company then on the 11.07.2017 issued a letter of termination to the Claimant on 5 counts of misconducts.

**[5]** The Claimant now claims that the dismissal of the Claimant from the employment with the Company is without just cause or excuse and prays for reinstatement to his former position in the Company without any loss of seniority, wages or benefits monetary or otherwise. The Company on the other hand contends that the dismissal of the Claimant from his employment with the Company is with just cause or excuse.

**[6]** The Claimant gave evidence under oath and remained the sole witness for his case. The Company's evidence on the other hand was

led by COW1 – Lee Rui Chuan (the Manager of the Human Resources Department of the Company). It is also taken notice by this Court here that the key witness for the Company Koh Wai Chee (who is the Executive Vice President of the Company) did not appear in Court on the date of the hearing and as such his witness statement filed in Court is hereby disregarded by this Court.

### **THE CLAIMANT'S CASE**

**[7]** Briefly the Claimant's case can be summarised as follows:-

- (i) The Claimant was asked to go on leave of absence for about 2 months after the Claimant had completed the Annual Report for 2016 and submitted it to Bursa Malaysia at the end of April 2017.
- (ii) The Claimant was further asked to go on extended leave of absence during the special audit period.
- (iii) The Claimant was then issued a show cause letter on the 29.06.2017 with various allegations of misconducts which the Claimant denies ever committing.

- (iv) The Claimant gave his explanation to all the allegations levelled against him on the 01.07.2017 however the Company issued a letter of termination against the Claimant on the 11.07.2017 without even taking into account his explanation given on the 01.07.2017.
  
- (v) Despite various allegations against the Claimant, the Company did not even conduct a due inquiry into the purported misconducts levelled against the Claimant.
  
- (vi) The Claimant now claims that the dismissal from his employment with the Company is without just cause or excuse.

### **THE COMPANY'S CASE**

**[8]** The Company's case can be summarised as follows:-

- (i) That the Company was made aware by the security guard that the Claimant had entered into office premises after working hours during his compulsory leave of absence.

- (ii) That the Claimant had committed offences of disclosing Company trade secrets and other information without prior sanction or lawful authority of the superiors.
  
- (iii) That certain land titles kept in the safe keeping in the Claimant's room had gone missing and this would be the fault of the Claimant
  
- (iv) That the Claimant had failed to submit financial monthly reports and quarterly reports on time.
  
- (v) That the Claimant had been a habitual late comer to office and it is done so without valid reason given or with prior management's approval.
  
- (vi) These misconducts warranted action against the Claimant and there was no other option other than dismissal of the Claimant from his employment with the Company which dismissal was with just cause or excuse.

## **THE ROLE AND FUNCTION OF THIS COURT IN DETERMINING THE DISPUTE BETWEEN THE PARTIES**

[9] The role of the Industrial Court under section 20 of the Industrial Relations Act 1967 is succinctly explained in the case ***Milan Auto Sdn. Bhd. v. Wong Seh Yen* [1995] 4 CLJ 449**, his Lordship Justice Tan Sri Dato' Haji Mohd Azmi bin Dato' Haji Kamaruddin FCJ delivering the judgment of the Federal Court had the occasion to state the following:-

*“As pointed out by this Court recently in Wong Yuen Hock v. Syarikat Hong Leong Assurance Sdn. Bhd. & Another Appeal [1995] 3 CLJ 344; [1995] 2 MLJ 753, the function of the Industrial Court in dismissal cases on a reference under s. 20 is two-fold firstly, to determine whether the misconduct complained of by the employer has been established, and secondly whether the proven misconduct constitutes just cause or excuse for the dismissal. Failure to determine these issues on the merits would be a jurisdictional error ...”*

[10] Also in the case of ***K A Sanduran Nehru Ratnam v. I-Berhad* [2007] 1 CLJ 347** where the Federal Court again reiterated the function of the Industrial Court:-

*“The main and only function of the Industrial Court in dealing with a reference under s. 20 of the Industrial Relations Act 1967 is to determine whether the misconduct or **irregularities** complained of by the management as to the grounds of dismissal were in fact committed by the workman. If so, whether such grounds constitute just cause and excuse for the dismissal.”*

## **THE BURDEN OF PROOF**

[11] The law is settled in cases where the dismissal is caused by the Company. It follows that whenever the Company caused the dismissal of the workman, it is the Company that must now discharge the burden of proof that the dismissal is with just cause or excuse.

[12] This long settled principle was demonstrated in the case of **Ireka Construction Berhad v. Chantiravathan a/l Subramaniam James** [1995] 2 ILR 11 where the Court 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.”*

## **THE STANDARD OF PROOF**

**[13]** In the case of **Telekom Malaysia Kawasan Utara v. Krishnan Kutty Sanguni Nair & Anor [2002] 3 CLJ 314** the court made it clear that the standard of proof that is required is one that is on the balance of probabilities.

*“Thus in hearing a claim of unjust dismissal, where the employee was dismissed on the basis of an alleged criminal offence such as theft of company property, the Industrial Court is not required to be satisfied beyond a reasonable doubt that such an offence was committed. The standard of proof applicable is the civil standard, ie, proof on a balance of probabilities which is flexible so that the degree of probability required is proportionate to the nature and gravity of the issue.”*

## **THE SHOW CAUSE LETTER AGAINST THE CLAIMANT**

**[14]** Show cause letter dated 29.06.2017 states as follows:-

- “1. We were informed by our security guard that you have entered into office premises after working hours during your compulsory leave of absence.
2. We draw your notice that, it is an offence to disclose company trade secrets or any information without prior sanction of lawful authority or your superiors pursuant to the employee handbook clause 7.1 Major misconduct sub clause 7.1.34.
3. We noticed that certain land titles safe kept in your room have gone missing.
4. You have failed to submit financial monthly reports and quarterly reports on time.
5. You have been habitually late coming to office without valid reason given or prior management’s approval.”

### **THE CLAIMANT’S REPLY TO THE SHOW CAUSE LETTER**

**[15]** The Claimant’s reply to the show cause letter is as follows:-

- “1. - I was never informed that I was not permitted to enter into office premises after working hours during my leave of absence.

- According to the company announcement made on 19 May 2017, I am on voluntary leave of absence instead of compulsory leave of absence which contradicts what you have announced.
  
  - I entered the office premises on 21 May 2017, and worked through the night until 22 May 2017, where I emailed out the Q1 2017 Announcement Results to Vincent Set and Ric Koh at 1.28 am. This is so that we can agree on the results and to email out to the Board on 22 May 2017, of which the email was sent at 5.46 pm. I needed to use the office premises for my work as I needed to use the office wifi and to ensure that my quarterly report was submitted at least 1 week to the Board before the meeting on 31 May 2017. Basically, every time I entered the office premises after office hours, it was solely for the purpose of utilizing the office wifi and to access certain files in the finance server to prepare for the Q1 2017 financial results and report.
2. - This statement is very ambiguous. Why is there a need to draw notice to me that it is an offence to disclose company trade secrets unless I have committed the offence? Is this an accusation on me that I have disclosed company trade secrets or information? Please provide evidence of such accusation OR retract back this baseless allegation.

3. - What are the certain land titles that you are referring to? Please be specific. I assume that you are referring to the land titles for office building located at No. 4, Jalan Astaka U8/83, Bukit Jelutong, Seksyen U8, 40150 Shah Alam and property located at No. 19, Jalan Kemboja, 4C/12 Section BS8, Bukit Sentosa III, 48300 Rawang. In fact, these titles were instructed by you to our despatch to collect from the land office without my knowledge. This was advised to me by the officer in charge at the land office regarding the personnel from our office who collected the land titles. Subsequently when I found out about it 1 week later, I requested it to be kept in Finance Department and handed these titles to Yu Shen for safekeeping.
4. - I was not made aware that I was still required to submit monthly financial reports while I am on leave of absence. This duty should be clearly handed down to my immediate subordinate, Yu Shen, as already mentioned in your Memo that Yu Shen will assume responsibility of the Finance Department in my absence.
- As for the quarterly report, I have already explained clearly in point 1 above that it was submitted and emailed to the Board more than 1 week before the Board meeting. The email was sent from my personal email on 22 May 2017 at 5.46 pm. This is

clearly wrongful and baseless accusation by you, of which I have proof.

5. - I have been coming late to office, and such lateness refers to my usual clock-in time of approximately between 9.30 am to 10.00 am everyday, as this was the practice since I joined the company, and there was no official letter issued to me on my late coming in to office requiring my clock-in on time. I have the understanding that all HODs are given flexibility of clock-in. On top of that, I have even covered back such lateness by voluntarily working after office hours almost everyday which more than compensates for my late clock-in time.”

## **THE FINDINGS OF THIS COURT**

### **1<sup>st</sup> allegation of Misconduct**

[16] On the charge of misconduct of entering the office premises after working hours during the compulsory leave of absence this Court rules that this charge is baseless for the following grounds:-

The 2 letters requiring the Claimant to be on the leave of absence dated 04.05.2017 and 29.06.2017 does not in any way prohibit the Claimant from being in the office. The alleged

misconduct of the Claimant in particular only mentions about the Claimant entering office premises after working hours without even particularising the time and date when the misconduct took place to give the Claimant sufficient opportunity to explain the ingredients of the alleged misconduct contain in the show cause letter.

Further it was the Management through the Executive Director Ric Koh Wai Chee (the potential witness who did not appear in Court to testify) who had on the 12.05.2017 had directed the Claimant to finalise and close 1Q17 management account by 19.05.2017 whilst the Claimant was on leave of absence. The tone of the email sent, suggests that the Claimant must complete the task on an urgent basis. One wonders how the Claimant is to carried out this instruction if he is not given free access to his office premises to do his work. The sender of this email did not even attend this Court to answer this issue. The Court also accepts the evidence of the Claimant that if indeed the management was absolutely strict about prohibiting the Claimant from entering the office premises during the leave of absence, they could have simply denied access by deactivating his access card, a simple process that

was never undertaken by the Company. In this regard this Court finds the evidence of the Company's witness COW1 unacceptable and not plausible.

## **2<sup>nd</sup> allegation of Misconduct**

[17] On the second charge of disclosing the Company trade secrets or any information without prior sanction of lawful authority of his superiors, this Court finds this charge baseless and without any merits. What trade secret and Company information did the Claimant disclose is not at all mentioned in the show cause letter. Surely the Claimant cannot be kept in the dark without giving him precise details of the offensive disclosures. To whom did the Claimant disclose these information and trade secrets is also not mentioned in the show cause letter. The evidence of COW1 to the questions posed during cross examination on these alleged disclosure of information to third party is vague and non-committal and at some point the witness even answered as no comments to the questions posed. The breach was purportedly in contravention of the rules in the employee handbook and this witness could not even state what were the exact clauses that the Claimant acted in contravention and what were the breaches therein. The answers given by this witness on this alleged misconduct by the Claimant is very unsatisfactory to say the least.

### **3<sup>rd</sup> Allegation of Misconduct**

[18] The Claimant was faulted for the purported missing land titles which were for safe keeping in his room. What land titles that went missing? Surely the framer of the charge can in all reasonable mind offer some details of the land titles which went missing. To suggest certain land titles that went missing without even giving particulars of the titles raises serious questions as to the very existence of these land titles and how many of those titles that were found to be missing. COW1 could not even recall with precise details of the land titles to say the least. This Court finds that this alleged misconduct levelled against the Claimant remains unproven.

### **4<sup>th</sup> Allegation of Misconduct**

[19] The Claimant is also charged with the misconduct of failing to submit financial monthly reports and quarterly reports on time. The charge lacks particulars on which monthly and quarterly report that the Claimant had failed to submit on time. Be that as it may but when the Company's sole witness was crossed examined on which report that is the subject matter of the complaint, she gave evidence that the report in question is for the month of May 2017. It must be borne in mind that the Claimant was on leave of absence for the greater part of the month of May 2017 and this can be seen from the 2 letters

from the Company requesting the Claimant to go leave of absence namely letters dated 04.05.2017 and 29.06.2017. Now the question arises as to how the Claimant can be made to prepare monthly reports on time when he was not even permitted to carry out his regular duties for which he was employed. The Claimant was on the one hand told to go on leave of absence and on the other hand he is accused of not preparing the monthly report for the month of May 2017 promptly. Certainly the Company is scraping the bottom of the barrel to fault the Claimant with no apparent reason whatsoever. This alleged misconduct to this Court is a baseless allegation against the Claimant.

#### **5<sup>th</sup> Allegation of Misconduct**

**[20]** The Claimant is also alleged to have committed misconduct of habitually coming late to office without valid reason given or prior management's approval.

**[21]** Certainly this allegation of misconduct by the Company against the Claimant is still born. By the wording of this allegation in itself it is clear that the Company is finding all ways and means to dismiss the Claimant albeit in an unfair and unreasonable manner. This Court had perused the evidence given by the Claimant on this matter and

finds no reason to disbelieve him when he said in his explanation to the Company through his letter of explanation that:-

*“I have been coming late to office, and such lateness refers to my usual clock-in time of approximately between 9.30 am to 10.00 am everyday, as this was the practice since I joined the company, and there was no official letter issued to me on my late coming in to office requiring my clock-in on time. I have the understanding that all HODs are given flexibility of clock-in. On top of that, I have even covered back such lateness by voluntarily working after office hours almost everyday which more than compensates for my late clock-in time.”*

**[22]** This Court further finds that despite the Claimant having given explanation for all the allegations of misconducts levelled against him through his email dated 01.07.2017, the Company proceeded to terminate him vide letter dated 11.07.2017 with such haste and venom and this can be seen from the letter of termination wherein this letter does not even make reference to the Claimant's explanation given. Whether the Company took into account the Claimant explanation remains unresolved and unanswered by the plain reading of this letter of termination.

[23] This Court is unable to accept the submissions of the learned Counsel for the Company that the summary dismissal of the Claimant in the circumstances of this case is a justified. The Company's Counsel relied on the case of **Menon v. The Brooklands (Selangor) Rubber Company Ltd [1967] 1 LNS 100**. With respect this Court is unable to see the relevant of the case cited to the peculiar nature of this case where the summary dismissal was carried out without proper and due inquiry into all the allegations of misconduct levelled against the Claimant. The facts of this case show that the Company had embarked on a course of action in the most unjustified manner in dismissing the Claimant on allegation of misconducts which are vague and unsubstantiated.

[24] Having considered the totality of the facts of the case, the evidence adduced and by reasons of the established principles of industrial relations and disputes as stated above, this Court finds that the Company had failed to prove on the balance of probabilities the alleged misconducts of the Claimant. And it follows that the Company had failed to prove on the balance of probabilities that the dismissal of the Claimant is with just cause or excuse.

## **REMEDY**

**[25]** This Court will now deal with the remedy that is suitable for the Claimant in this case.

**[26]** The Claimant's employment with the Company commenced on 15.10.2015 and the Claimant had served the Company until his dismissal from employment on 11.07.2017. Thus the Claimant had served the Company for a period of more than 1 year but less than 2 years. The Claimant is a confirmed employee of the Company.

**[27]** The Claimant, in stating that the dismissal from the employment with the Company is without just cause or excuse, prays to this Court for reinstatement to his former position. This Court had considered the factual matrix of this case and had further considered all other factors including the time that had lapsed from the date of his dismissal to the date of this Award. This Court is of the view that reinstatement of the Claimant to the position from which he was dismissed by the Company is not a suitable remedy in this case.

**[28]** As such the appropriate remedy in the circumstances of this case must be compensation in lieu of reinstatement. The Claimant is also

entitled for back wages in line with Section 30(6A) Industrial Relations Act 1967 and the factors specified in the Second Schedule therein which states:-

*“1. In the event that backwages are to be given, such backwages shall not exceed twenty-four months' backwages from the date of dismissal based on the last-drawn salary of the person who has been dismissed without just cause or excuse;”*

**[29]** Equity, good conscience and substantial merits without regard to technicalities and forms remains the central feature and focal point of this Court in arriving at its decision and final order and this principle will be adhered by this Court at all times leading to the final order of this Court.

**[30]** The Claimant last drawn salary was RM10,000.00. In considering the compensation to be awarded to the Claimant, this Court will disregard the Claimant's transport allowance and petrol allowance which are not permanent in nature.

**[31]** This Court is further bound by the principle laid down in the case of ***Dr James Alfred (Sabah) v. Koperasi Serbaguna Sanya Bhd (Sabah)***

**& Anor [2001] 3 CLJ 541** where his Lordship Justice Tan Sri Steve Shim CJ (Sabah & Sarawak) in delivering the judgment of the Federal Court opined:-

*“In our view, it is in line with equity and good conscience that the Industrial Court, in assessing quantum of backwages, should take into account the fact, if established by evidence or admitted, that the workman has been gainfully employed elsewhere after his dismissal. Failure to do so constitutes a jurisdictional error of law. Certiorari will therefore lie to rectify it. **Of course, taking into account of such employment after dismissal does not necessarily mean that the Industrial Court has to conduct a mathematical exercise in deduction.** What is important is that the Industrial Court, in the exercise of its discretion in assessing the quantum of backwages, should take into account all relevant matters including the fact, where it exists, that the workman has been gainfully employed elsewhere after his dismissal. This discretion is in the nature of a decision-making process”.*

**(emphasis is this Court’s)**

[32] This Court must take into account the post dismissal earnings of the Claimant in order to make an appropriate deduction from the back wages to be awarded. This Court noted that there is no evidence of the Claimant’s post dismissal earnings in Court. It is unfortunate that the

Claimant was not asked neither did he give any evidence on his post dismissal earnings. In view of this Court had taken into account the proposition in the case of **DTS Trading Sdn. Bhd. v. Wong Weng Kit [2008] 1 ILR 548** where the chairman opined that:-

*“In a society such as ours where a person would invariably have to work in order to sustain day to day living, the court is of the view that even if no evidence is adduced as regards post dismissal earnings, the court is entitled nevertheless to make a deduction for post dismissal earnings. As such, a claimant who has not been gainfully employed since his dismissal, or who has been gainfully employed but on a woefully small salary, should clearly say so to the court. To remain silent is to risk the court making a deduction deemed reasonable by the court.”*

**[33]** Based on the above case of **DTS Trading Sdn. Bhd.** (supra), this Court is now called upon to make an appropriate deduction deemed reasonable on any sum awarded as back wages. Thus this Court will make a deduction of 30% from the maximum back wages that can be awarded.

**[34]** Having considered all the facts of case on the appropriate sum to be awarded and after taking into account that the Claimant had not given any particulars of his post dismissal earnings, this Court now orders that

the Claimant be paid 1 month salary of the last drawn salary of RM10,000.00 for every year of service completed which is only 1 year and back wages of the last drawn salary of RM10,000.00 for 24 months wherein deduction of 30% from the maximum back wages that can be awarded. This will amount to:-

(i) Backwages ordered:

$$\text{RM10,000.00} \times 24 \text{ months} = \text{RM240,000.00}$$

$$\text{-less 30\% deduction} = \text{RM72,000.00}$$

Total amount of backwages minus 30% deduction:

$$\text{RM240,000.00} - \text{RM72,000.00} = \text{RM168,000.00}$$

(ii) Compensation in lieu of Reinstatement:

$$\text{RM10,000.00} \times 1 = \text{RM10,000.00}$$

**Total amount ordered by this Court:**

$$\text{RM168,000.00} + \text{RM10,000.00} = \underline{\underline{\text{RM178,000.00.}}}$$

**FINAL ORDER OF THIS COURT**

[35] It is this Court's order that the Company pays the Claimant a sum of **Ringgit Malaysia One Hundred Seventy Eight Thousand (RM178,000.00)** only less statutory deduction (if any) within 30 days from the date of this Award.

**HANDED DOWN AND DATED THIS 29<sup>TH</sup> DAY OF JANUARY 2019**

**-signed-**

**(AUGUSTINE ANTHONY)  
CHAIRMAN  
INDUSTRIAL COURT OF MALAYSIA  
KUALA LUMPUR**