

**INDUSTRIAL COURT OF MALAYSIA**

**CASE NO. 14/4-985/10**

**BETWEEN**

**JAYA BALAN @ SUNDRA RAJ A/L SUPPIAH**

**AND**

**TEXAS INSTRUMENT (M) SDN. BHD.**

**AWARD NO : 1203 OF 2013**

- Before** : **TAY LEE LY - CHAIRMAN**
- Venue** : Industrial Court of Malaysia, Kuala Lumpur
- Date of Reference** : 25.8.2010
- Dates of Mention** : 9.11.2010, 13.12.2010, 10.2.2011, 8.9.2011, 14.3.2012  
and 3.4.2013
- Dates of Hearing** : 7.9.2011, 8.9.2011, 30.7.2012, 31.7.2012 and 28.9.2012
- Dates of Written Submission** : 31.12.2012 & 21.1.2013 (Claimant's submission)  
15.1.2013 & 30.1.2013 (Company's submission)
- Representation** : Mr. R. Devadason of Messrs Devadason & Devadason,  
learned counsel for the Claimant  
  
Ms. Suganti Singam of Messrs Shearn Delamore & Co.,  
learned counsel for the Company

**Reference** : This is a reference under section 20(3) of the Industrial Relations Act 1967 on 25.8.2010 arising out of the dismissal of **Jaya Balan @ Sundra Raj a/l Suppiah** ("Claimant") by **Texas Instrument (M) Sdn. Bhd.** ("Company").

## **AWARD**

### **A. Introduction**

1. The dispute in this case concerns the dismissal of Mr. Jaya Balan a/l Suppiah ("Claimant") by Texas Instrument (M) Sdn. Bhd. ("Company") on 15.10.2008. The dispute was referred to the Industrial Court ("IC") by the Honourable Minister of Human Resources under section 20(3) of the Industrial Relations Act 1967 [Act 177] ("IRA") *vide* letter dated 22.9.2010.

### **B. Brief Facts**

2. The Claimant commenced employment with the Company on 9.8.1984 as a Production Operator. By letter dated 5.9.2008 (p. 2 COB1), the Claimant was informed that it was reported that he had committed two (2) kinds of misconduct and he was placed on suspension with half pay from 5.9.2008. Subsequently, by letter dated 15.9.2008 (p. 3 COB1), the Company informed the Claimant that the first alleged offence against him was not proven but the Company found that his explanation on the second charge was unsatisfactory. The Claimant was also informed that the Company would proceed with a domestic inquiry ("DI") on 18.9.2008 with the second charge ("Charge"), as follows:

*"1. That between January 2008 and July 2008, you had breached the IT Acceptable Use Policy by inappropriately using the Company's computer, internet and/or email resources and assets to receive, view and transmit pornographic material on the following dates and times:-*

<i>Date</i>	<i>Time</i>	<i>Email Title</i>
<i>July 10, 2008</i>	<i>4:01PM</i>	<i>FW: MRS SARKOZY, THE FRENCH PRESIDENT'S WIFE</i>
<i>July 10, 2008</i>	<i>7:51AM</i>	<i>FW: Malay schoolgirl loves to be oiled</i>
<i>July 9, 2008</i>	<i>3:16PM</i>	<i>FW: Fwd: FW: Horseplay</i>
<i>July 9, 2008</i>	<i>3:14PM</i>	<i>FW: Fwd: FW: Camera in the storeroom</i>

<i>July 9, 2008</i>	<i>3:13PM</i>	<i>FW: Fwd: FW: Nice restaurant! U will like it...</i>
<i>July 4, 2008</i>	<i>2:04PM</i>	<i>FW: How about having this ?</i>
<i>July 4, 2008</i>	<i>2:02PM</i>	<i>FW: Mumbai Office Girl -</i>
<i>July 4, 2008</i>	<i>2:02PM</i>	<i>FW: Indian Scandal-From Mumbai to Brickfield</i>
<i>July 3, 2008</i>	<i>12:09PM</i>	<i>FW: Near Fatal Crash</i>
<i>July 2, 2008</i>	<i>10:24AM</i>	<i>FW: HOW ENGINES WORK</i>
<i>July 2, 2008</i>	<i>10:21AM</i>	<i>FW: Lucky Haircut!</i>
<i>June 10, 2008</i>	<i>9:29AM</i>	<i>FW: Wow...</i>
<i>May 16, 2008</i>	<i>3:36PM</i>	<i>FW: Fwd: FW: Negro Oswaldo</i>
<i>May 5, 2008</i>	<i>11:08AM</i>	<i>FW: Pulau Perhentian.....rugi kalau tak pergi</i>
<i>April 29, 2008</i>	<i>3:39PM</i>	<i>FW: My kinda airline! (only in Japan)</i>
<i>February 8, 2008</i>	<i>2.10PM</i>	<i>FW: Fwd: FW: Breasts Power! MUST SEE</i>
<i>January 29, 2008</i>	<i>8:22AM</i>	<i>FW: Fwd: suatu masa dahulu....LAGI SEKSI...</i>
<i>January 18, 2008</i>	<i>9:59AM</i>	<i>FW: Rape Sentence...in the middle east."</i>

3. By letter dated 24.9.2008 (p. 14 COB1) the Claimant was informed that the DI panel found him guilty of the Charge but was given a final opportunity to mitigate for a lesser punishment by 30.9.2008. The Claimant submitted his letter of mitigation dated 25.9.2008 (p. 15-16 COB1) ("Letter of Mitigation"). By letter dated 14.10.2008 (p.17 COB1), the Claimant was informed that after careful consideration, the Company was unable to mete any lesser punishment for his misconduct and his services was therefore terminated on 15.10.2008. The Claimant's last position involved taking care of the peripherals and ensuring good housekeeping at the work area. His drawn salary was RM1,424.35.

### **C. Parties' Pleaded Case**

4. The Claimant averred in his Statement of Case ("SOC") that the termination of his employment was unlawful and therefore amounted to dismissal without just

cause or excuse. He averred *inter alia* the following:

- (a) everyone had the Claimant's password, and it was therefore not conclusive that he had received, viewed and transmitted pornographic images;
- (b) the Human Resources ("HR") department, Facilities department, Security department and Manufacturing department had his password;
- (c) all his colleagues had access to his computer because the printer was attached to his computer and they had to use the printer;
- (d) the Company had violated Article 8(2) of the Federal Constitution wherein three (3) other staff were charged for the same charge but two (2) were later reinstated after being terminated; and
- (e) he furnished a letter of mitigation as requested but he was wrongly advised to do so. Later, his services was terminated via letter dated 14.10.2008. As such, he had suffered irreparable loss and damage.

5. The Company in its Statement of Reply ("SIR") denied the Claimant's allegation. The Company averred *inter alia* that -

- (a) investigations revealed that the Claimant not only received and viewed pornographic materials but had also transmitted such material to other employees in the Company;
- (b) the Claimant had given a signed a statement dated 20.8.2008 (p. 1 COB1) ("Statement") that contained *inter alia* that, "*I have received, transmitted and saved pornographic emails. People send them to me and I forward to my friends. I do this with my TI account. I am aware that this is against TI policy.*";

- (c) each computer user in the Company would have his own personal "user ID and password". Even though computers might be shared by employees, the user ID and password were specific to each employee who was a computer user. The passwords were assigned on a regular basis by a computer generated random generator and the employee would choose one password from an array of passwords. The password was confidential to each employee and it was incumbent on the Claimant to ensure that he did not share or reveal his password to other employees. Besides that, all the employees were also required to update passwords every 90 days through the same system in order to maintain the strictest level of privacy and security;
- (d) the Company had dismissed other employees prior to Claimant's dismissal for the same type of misconduct;
- (e) the Company had conducted prior training and communication sessions for all computer users relating to the Company's Acceptable Use Policy ("AUP") in respect of usage of Company's computer, internet, email resources, information technology facilities and guidelines under which such resources and facilities were to be utilized; and
- (f) the Claimant attended the DI and pleaded guilty to the Charge. He also confirmed that he understood the consequences of his guilty plea;
- (g) after the DI proceedings, the Claimant was informed by letter of 24.9.2008 that the DI panel had found him guilty of the Charge which had been leveled against him and he was accorded the opportunity to enter a plea of mitigation before the Company determined the punishment to be meted out;
- (h) the Claimant in his Letter of Mitigation stated *inter alia* "I would like to apologize for profusely violating TI regulations in terms of usage of TI

*property in an improper manner. I thoroughly admit that it was an inexcusable offence of which I am very regretful."*; and

- (i) upon due consideration of all evidence adduced, including his admission, explanation and plea of mitigation, the management was of the view that the Claimant's dismissal was warranted due to the seriousness of his misconduct despite his 25 years of service with the Company.

6. The Claimant subsequently in his Rejoinder replied *inter alia* the following:

- (a) the emails mentioned in the Charge were all received without exception from the Company's employees;
- (b) the Claimant has no collection of the Statement and if the Statement was signed, it was signed on the instruction of the Company's Manager, Employees and Communications;
- (c) his password was not confidential because his superior, one Mr Gunaratnam, had instructed him to give his password to various people, including the section manager's log clerk so that they could print their material;
- (d) the printer for HR department, Security department, Assembly department, Finnish department, Facility department and Test department was situated in his cubicle and everyone from those departments had access to the printer through his computer. In order to have access to the printer, the employees had to email the material to his computer and would use the Claimant's password to have access to his computer to operate the printer (which was a long machine);
- (e) the Claimant was an obedient servant of his superior; and

- (f) the Claimant denied that he knew the consequences of his plea and his plea was not unequivocal because he was advised by the HR department manager to do so and he would only be given a written warning (known as Guidance Report).

#### **D. Law**

##### Functions of IC

7. The functions of IC in a reference under s 20 IRA have been clearly stated by the Federal Court in the case of ***Goon Kwee Phoy v J & P Coats (M) Bhd.*** [1981] 1 LNS 30, where Raja Azlan Shah, CJ (Malaya) (as his Royal Highness then was) held as follows:

*"Where representations are made and are referred to the [IC] for enquiry, it is the duty of the court to determine whether the termination or dismissal is with or without just cause or excuse. If the employer chooses to give a reason for the action taken by him, the duty of the [IC] will be to inquire 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 inquiry 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."*

[emphasis added].

##### Burden and Standard of Proof

8. It is trite law that the Company bears the legal burden to prove its reason for the Claimant's termination of employment [see e.g. ***Ireka Construction Berhad v Chantiravathan A/L Subramaniam James*** [1995] 2 ILR 11). The Company needs to prove its reason for the termination of services of its employee on a balance of probabilities [see Court of Appeal case of ***Telekom Malaysia Kawasan Utara v. Krishnan Kutty Sanguni Nair & Anor*** [2002] 3 CLJ 314 ("***Krishnan Kutty***")].

**E. Company's Case**

9. The Company called 4 witnesses to testify in Court, namely –

- (a) Mr. Timothy Ingersoll (COW1);
- (b) Ms. Lisa Hallmark (COW2);
- (c) Encik Badrul Hisham bin Md Yusof (COW3); and
- (d) Puan Norrita binti Mohd. Rani (COW4).

10. COW1 was the Managing Director of the Company since mid September 2008. He testified that he was involved in the decision to terminate the Claimant's employment. COW1 in his evidence in chief *vide* WS-COW1 explained the basis for the Company's decision to terminate the Claimant's employment. According to COW1, the Claimant was found guilty of the Charge by the DI panel. He also admitted to the Charge at the outset of the DI and conceded that it was an inexcusable offence as shown in p. 15 COB1. COW1 said that although the Claimant had served over 24 years, the Company could not mete a lesser punishment because the offence was serious. The Company had carried out trainings on AUP and usage of Company's IT facilities and hence, it was unacceptable for the Claimant to be engaged in such conduct. COW1 said that he had also reviewed the evidence, the Statement (p. 1 COB1), the DI findings and Claimant's Letter of Mitigation. COW1 said that he found "*The misconduct was sufficiently grave to warrant termination of employment and in my understanding the severity of such conduct is also viewed with penal consequences in Malaysia.*"

11. COW1 in answer to the supplemental questions, further testified that –

- (a) the Company did not charge the 3 other employees, namely, Kamariah, Wahid and Mohd Nazri for the same charge as the Claimant. The 3

other employees were not found guilty of the charge that had been levelled against them; and

- (b) one Zainuddin Mohd ("Zainuddin") was charged and found guilty for sending out one e-mail containing violent and sexual contents. Zainuddin was not dismissed but demoted because his offence was lesser as it was only one occurrence.

12. COW2 was the Special Investigator from Texas Instrument, Dallas, Texas, USA. She confirmed the Statement (p. 1 COB1) which she took from the Claimant was true and correct copy. According to COW2, she asked the Claimant questions and he responded. The Statement was thereafter given to the Claimant to read through, review and amend, if necessary. After the Claimant had finished reading through and agreed with the contents in the Statement, only then he signed the Statement in her presence. It was COW2's evidence that the Statement was given voluntarily by the Claimant. COW2 further explained as follows in Answer to Question No. 6 of her witness statement (WS-COW2):

- " 6. *Could you please explain with reference to page 3 – 4 CBOD Volume 1 where and how this information was obtained?*

*The investigation began due to allegations in Kuala Lumpur, Malaysia that alleged the Claimant had received money from a supplier as payment for purchasing her items and services for Texas Instruments. Although the owner of the company admitted to paying the Claimant money, the Claimant denied the allegations. In an attempt to review the emails of the claimant to either prove or disprove the allegations, I obtained his email file to determine if he had sent any emails to the supplier requesting payments or for evidence of wrongdoing in that regard. During the investigation, I requested from IT Security a copy of the Claimant's emails. IT Security pulled the entire belonging solely to the Claimant as referenced by the Claimant's exclusive identification number a0728328. IT Security's process is to extract email from the Outlook Exchange server. A Microsoft Outlook application is used to target an outlook account and copy all email that has not been removed from the account by the account owner and merge it into a pst file. Administrator privileges are required to access and execute this tool on the TI Exchange servers. Once the ExMerge process is complete, it is copied over to the Global Investigations*

server for review. I am an investigator with the Global Investigations group within Texas Instruments. While reviewing the emails in Claimant's Inbox, Sent, and Delete folders, I found emails Claimant sent to others containing pornographic images. The list of inappropriate I discovered is as follows :

<i>Date</i>	<i>Time</i>	<i>Email Title</i>
<i>July 10, 2008</i>	<i>4:01PM</i>	<i>FW: Mrs Sarkozy, The French President's Wife</i>
<i>July 10, 2008</i>	<i>7:51AM</i>	<i>FW: Malay schoolgirl loves to be oiled</i>
<i>July 9, 2008</i>	<i>3:16PM</i>	<i>FW: Fwd: FW: Horseplay</i>
<i>July 9, 2008</i>	<i>3:14PM</i>	<i>FW: Fwd: FW: Camera in the storeroom</i>
<i>July 9, 2008</i>	<i>3:13PM</i>	<i>FW: Fwd: FW: Nice restaurant! U will like it...</i>
<i>July 4, 2008</i>	<i>2:04PM</i>	<i>FW: How about having this ?</i>
<i>July 4, 2008</i>	<i>2:02PM</i>	<i>FW: Mumbai Office Girl -</i>
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<i>May 5, 2008</i>	<i>11:08AM</i>	<i>FW: Pulau Perhentian.....rugi kalau tak pergi</i>
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<i>January 29, 2008</i>	<i>8:22AM</i>	<i>FW: Fwd: suatu masa dululu....LAGI SEKSI...</i>
<i>January 18, 2008</i>	<i>9:59AM</i>	<i>FW: Rape Sentence...in the middle east.";</i>

*[see pages 5-32 CBOD Volume 2]"*

13. As regards the Claimant's averment that everyone in the Company had his password, COW2 testified as follows:

" 7. *Do you have access to the Claimant's password?*

*I do not and have never had access to the Claimant's password and neither do the departments alleged in the Claimant's Statement of Case. Passwords are generated and assigned by an authentication server and require a series of personal information as selected by the Claimant to modify. An employee cannot even view his or her own password as they can only change it.*

*Unless the Claimant himself gave his assigned password to other individual, no one would have access the Claimant's email account. Further, it is the Company's policy that no employee is to ever share his or her password with anyone. The TI password policy (see pages 1-4 CBOD Volume 2) states in part :-*

*" User Accountability : Never share your password with ANYONE! Never ask for anyone's password.*

- 1. Regardless of the circumstances, you must never share or reveal your password(s) to anyone.*
- 2. You must never log-on a system to let an individual work under you user ID and password.*
- 3. giving your account/password, or system access to someone else exposes you to being held accountable for the actions that person takes with your password of system access."*

14. In answer to supplemental questions, COW2 further testified that -

- (a) emails were shown to the Claimant during the interview when the Statement was taken. The Claimant however did not share with COW2 that his password was shared with other employees or was released to other employees; and
- (b) the Claimant confirmed the list of movies and that all the movies were stored in the compact disc ("CD") marked COB3.

15. COW3 was the Company's Cost & Planning Manager. He joined the Company on 2.5.2006 and was the Chairman of the DI's panel which concerned the Claimant. COW3 confirmed the DI notes and findings at p. 5-13 COB1. He further confirmed that the Claimant at the outset of the proceedings said he understood the Charge

read to him and thereafter gave his plea of guilt at p. 6 COB1.

16. COW4 testified that she joined the Company on 16.6.1994. At the time of hearing, COW4 was the Employee Relations and Communications Manager. COW4 confirmed that she issued the suspension letter dated 5.9.2008 (p. 2 COB1) to the Claimant pending investigation on the allegation of his misconduct. She further confirmed the DI's notice dated 15.9.2008 (p.3-4 COB1) and the Charge proffered against the Claimant. COW4 testified that the investigation revealed that the Claimant not only received and viewed pornographic materials but had also transmitted the said material to other employees in the Company (p. 5-32 COB1). She also confirmed the Statement given by the Claimant and that the Claimant pleaded guilty to the Charge during the DI.

17. It was COW4's evidence that each computer user in the Company would have his own personal "*user ID and password*". Even though computers might be shared by employees, the user ID and password were specific to each employee who was a computer user. The passwords were assigned on a regular basis by a computer generated random generator and the employee chose a password out of an array of passwords. These passwords were confidential to each employee and it was incumbent on the Claimant to ensure that he did not share or reveal the same to other employees. The employees were also required to update passwords every 90 days through the same system in order to maintain the strictest level of privacy and security.

18. Besides that, COW4 -

- (a) testified that the Company had in the past faced with situations wherein employees were involved with inappropriate use of Company's computer, internet, email resources and assets. The Company had dismissed other employees prior to the Claimant's dismissal for the same type of misconduct as that committed by the Claimant (p. 33-35 COB2);

- (b) testified that the Claimant was aware of the Company's Acceptable Use Policy ("AUP") (p. 1-4 COB2) and prior training had been conducted for all computer users relating to AUP and the guidelines (p. 18 COB1);
- (c) confirmed that she issued letter dated 24.9.2008 informing the Claimant that the findings of DI panel and he was accorded the opportunity to enter a plea of mitigation before punishment was meted out;
- (d) testified that the Claimant responded by letter dated 25.9.2008 (p. 15-16 COB1) stating *inter alia* "I would like to apologize for profusely violating TI regulations in terms of usage of TI property in an improper manner. I thoroughly admit that it was an inexcusable offence of which I am very regretful.";
- (e) confirmed that she issued letter of termination (p. 17 COB1) to the Claimant but did not participate in the decision to dismiss the Claimant;
- (f) testified that the decision was made by COW1, in consultation with the former HR director, one Puan Reha Abdul Razak; and
- (g) denied the allegation of instructing the Claimant to sign the Statement or made any promise to the Claimant.

**F. Claimant's Case**

19. The following witnesses testified during the Claimant's case:

- (a) the Claimant himself ("CLW1"); and
- (b) Puan Darishah binti Othman, who was the log clerk at the material time ("CLW2").

20. The Claimant gave evidence in chief *vide* witness statement (WS-CLW1). He testified that he was promoted to H2 Material Handler and at the time of dismissal he was House Keeping Co-ordinator (5S) and H2 Material Handler. His job function was at p. 2 CLB1 and Mr. CT Tham was his HR director, who had complimented him for his honesty. When he and his colleague found RM1,000 in a ladies waist bag, he handed it over to the owner and had informed his bosses (Mr. Gunaratnam and Mr. Indran Nair). Mr. Indran Nair was his immediate superior and Mr Gunaratnam was his manager at that time. The Claimant said he was happy working with the Company and had received merit bonuses. The Claimant confirmed letters of appreciation from Texas Instrument and American Malaysian Chamber of Commerce (p. 4-8 CLB1), excellent team work and dedication from the managing director of the Company and he was awarded various certificates for courses which he had attended (p. 9-14 CLB1).

21. The Claimant testified that around September 2008, he was working in the Manufacturing Floor and had his own table with a computer. He used the computer for sending reports to his bosses through e-mails, store inventories, peripheral inventories, printing and etc. He also printed his reports and notices for the Notice Boards. It was also the Claimant's evidence that the other staff (about 20 people) of the Company (about 6 to 7 departments) also used his computer to print, *i.e.*, HR department, Facilities department, Security department, Test department, Assembly department and Finnish department. According to the Claimant, 20 people had his password and ID number.

22. The Claimant further testified that he only had a Company's Handbook which was published in 1994 (CLB3). He had never seen or been given p. 1-3 COB2 (which according the Claimant was printed on 25.4.2011 when he no longer worked for the Company). Hence, he was not aware that he could not share his password or ask for someone's password. As regards the Charge, the Claimant testified that he was charged because he was asked to give his password and ID number to his colleagues from 6 to 7 departments so that they could use his computer to print. It was the Claimant's evidence that he was directed by his immediate bosses, (*i.e.*, Mr.

Indran Nair and Mr Gunaratnam) to reveal or share his password and ID number to other staff members, especially to the log clerk (CLW2) and if he was not at his desk, CLW2 would give his password and ID number to the people who needed it. It was also the Claimant's evidence that other staff members could not use their ID number and password to use his printer and they could only print using his password and ID number.

23. As regards the Charge proffered against him, the Claimant testified that -

- (a) some of his colleagues who had his password and ID number, sent him the pornographic materials;
- (b) anyone who had his password and ID number, could open his email and transmit pornographic or other literature to others;
- (c) anyone who had his email address could send to him pornographic literature. The Company would know who were the senders of pornographic materials;
- (d) other staff who had his password and ID number had used before his email and forward pornographic pictures to others and his name appeared as the sender;
- (e) during the DI, he told the DI panel but the DI panel did not understand or did not bother to understand him;
- (f) he had transmitted pornographic material using his computer in the Company because he was asked by his colleagues and superiors (Mr. Gunaratnam, Encik Ahmad Shafie, Mr. Gunasingam, Mr. Ponnudurai and Mr. Kalaichalvan). He transmitted the material when he was asked to do so because he did not want to offend them;

- (g) he did not understand the questions asked of him during the DI and “*he pleaded guilty*” as stated in the notes of proceedings (p. 6 COB1) because COW4 had promised him that he would not be dismissed as that was a normal procedure. The Letter of Mitigation dated 25.9.2008 (p. 15 COB1) was written for him by COW4. Besides that, COW4 also told him not to tell anyone that she would help him so that he would not be dismissed but only be put on guidance; and
- (h) his dismissal was harsh because there were other employees (*i.e.*, Puan Kamsiah Wahid, Mohd Nazri and Zainuddin ) who were charged for similar offence and found guilty but were not dismissed by the Company. Only the Claimant and another employee were dismissed.

24. It was also the evidence of the Claimant that he was a hardworking employee with very good record when he was working with the Company. He had never received any warning letter for any wrong doing. He worked for the Company for 24 years when his employment was terminated on 15.10.2008. His last drawn salary was RM1,424 and his overtime pay was between RM2,000 to RM2,100. At the time of hearing, he was working as a taxi driver and he earned between RM800-RM900 per month. He was not able to get a similar job and he has a wife and 4 sons to support.

25. The Claimant testified further in answer to supplementary questions as follows:

- (a) after the DI, he met COW4 in her office because he wanted to ask her on the next step. He was told by COW4 that he had to give a letter of mitigation;
- (b) he testified that p.15-16 COB1 was written by COW4 as he could not write in English in that manner. The mitigation letter was typed by his son;

- (c) he knew he was charged for pornography;
- (d) COW4 was also on the same floor as him (level 4B1) although COW4 was from a different department;
- (e) as regards his password and ID, the Claimant said he shared his password and ID with his colleagues. He did not know that his password and ID were confidential because nobody told him so. He was instructed by his boss to share his password with CLW2 and other colleagues who came to ask for it. According to the Claimant, if he did not do so, he would be in trouble;
- (f) there were about 20 staff from 7 to 8 departments sharing the big printer. According to the Claimant, in order to use his computer and printer, they would need his password and ID. Hence, he had to give his password and ID to about 20 people. The staff could not use their password on his computer and hence he had to give his password to 20 people. When messages were sent through his computer, his name would appear. COW4 had also asked his permission to use his computer but it was Ashraf who came to use his computer to print. All HR staff had his ID number and password. The Claimant said he got into trouble because he always obliged his superiors and colleagues.
- (g) COW4 did not ask him any question during the DI. Instead it was Wan Azli who asked him questions and Wan Azli would not be able to testify in this case as he had left the Company. Based on the documents in p. 1-14 CLB1, he had a good record with the Company.
- (h) there were other people in the Company who were charged with similar offence but still kept their jobs; and
- (i) the Claimant identified his signature on the Statement (p. 1 COB1) but

denied anything in the Statement. With reference to paragraph 1 of the Statement which stated "*I, Jaya Balan Suppiah, employee number A0728328, work telephone number extension is 3135, furnish the following free and voluntary statement to Liza R. Hallmark and Ng Kit Hong ..... No force, threats, or promises have been made to me regarding the provision of this statement*", the Claimant denied that he made the Statement voluntarily. It was also the Claimant's evidence that after the interview with COW2, Ng Kit Hong ("Ng") banged the table and asked him to sign the Statement.

26. CLW2 testified that she had retired from the Company. She knew the Claimant as they were working in the same department. CLW2 gave evidence in support of the Claimant's evidence concerning Claimant's computer which was attached to a big printer. The staff of the Company (including herself) had the Claimant's password and ID number and the Claimant was required by the manufacturing manager to share his password and ID number with other staff who required to use the printer. CLW2 also testified *inter alia* as follows:

- (a) the staff of other department could not use the centralised printer without the Claimant's password and ID number. The other staff from other departments used the printer for about 1 to 4 hours. While the printer was being used, the staff could use his computer for surfing the net, sending e-mail, etc.;
- (b) the staff could use his password and ID number at his computer to send messages and pictures to others and the Claimant's name would appear as the sender;
- (c) the Claimant took about 1 to 2 hours updating his daily report before he did other work in the manufacturing line;
- (d) it is common for staff in the Company including the managers to view

pornographic materials. There were other staff charged for similar offence and 2 were sacked but others were retained; and

- (e) the Claimant's dismissal was harsh as the offence was not serious and he could be put under guidance as provided in the Company's handbook.

## **G. Evaluation and Findings**

### G.1 Preliminary Issues

#### (a) DI

27. In this case, the Company conducted the DI on 18.9.2008. It is trite law that whenever a DI was conducted, the court should first consider whether or not the DI was valid and the inquiry notes were accurate [see the decision of Raus Sharif J (as his Lordship then was) in the High Court case of ***Bumiputra Commerce Bank Bhd. v. Mahkamah Perusahaan Malaysia & Anor*** [2004] 7 CLJ 77 ("***Bumiputra Commerce***")]. Subsequently, Raus Sharif J (as his Lordship then was) in another High Court case of ***Plaintree Wood Products Sdn. Bhd v. Mahkamah Perusahaan Malaysia & Anor*** [2005] 1 LNS 283 [R1-25-42 Tahun 2005] ("***Plaintree***"), clarified as follows:

*"Di dalam kes Bumiputra Commerce, apa yang saya putuskan adalah mengenai kegagalan Mahkamah Perusahaan untuk mengambilkira nota keterangan domestic inquiry yang telah dikemukakan sebagai keterangan. Mahkamah Perusahaan di dalam kes itu tidak langsung merujuk kepada nota keterangan domestic inquiry dalam membuat penilaian fakta dan kegagalan itu telah saya putuskan sebagai suatu kesilapan undang-undang. Di dalam kes pemohon ini, keadaan adalah berbeza. Kes pemohon di Mahkamah Perusahaan adalah masih diperingkat pembicaraan. Pada saya, responden kedua adalah bebas untuk membentangkan kesnya ini dan untuk menyokong dakwaan bahawa beliau telah dibuang kerja tanpa alasan yang munasabah. Di pihak pemohon pula, jika terdapat keterangan mengenai domestic inquiry, terpulanglah kepada pemohon untuk mengemukakannya. Tugas Mahkamah Perusahaan ialah untuk membuat keputusan berpandukan keseluruhan keterangan yang dikemukakan melalui keterangan-*

keterangan saksi yang dikemukakan oleh kedua-dua pihak. Sudah tentu Mahkamah Perusahaan tidak semata-mata terikat kepada nota prosiding di dalam domestic inquiry."

[emphasis added].

28. Bearing in mind the principle in **Bumiputra Commerce** and **Plaintree**, my observations concerning the DI in the present case are as follows:

- (a) the Claimant in his written submission dated 21.1.2013 submitted that the DI was a farce as it did not comply with the rules of natural justice. It was also submitted that the entire DI proceedings should be disregarded based on *inter alia* the following:
  - (i) COW4 was not the prosecutrix during the DI but one Wan Azli; and
  - (ii) s 114(g) Evidence Act 1950 should be invoked against the Company for its failure to furnish the tape recording of the DI proceedings;
- (b) it is pertinent to note that the Claimant did not plead in his pleadings the above issues concerning the DI. It is trite law that parties are bound by pleadings (see FC cases of **R. Rama Chandran v Industrial Court of Malaysia & Anor** [1997] 1 CLJ 147 and **Ranjit Kaur S. Gopal Singh v Hotel Excelsior (M) Sdn. Bhd.** [2010] 3 CLJ 310). Thus, this Court cannot consider any suggestion that the conduct of the DI did not comply with the rules of natural justice;
- (c) COW4 had explained that the tape recording was no longer in possession of the Company as it had been recycled. The DI minutes did not state the name of the prosecutor;

- (d) having said the above, the Court is also mindful of the legal position that a defective DI or failure to hold a DI is not fatal as it can be cured by way hearing before the IC (see ***Dreamland Corporation (M) Sdn. Bhd. v. Choong Chin Sooi & Industrial Court of Malaysia*** [1988] 1 CLJ 1; [1988] 1 CLJ (Rep) 39 and ***Wong Yuen Hock v. Syarikat Hong Leong Assurance Sdn. Bhd. & Anor Appeal*** [1995] 3 CLJ 344);
- (e) in this case, even if the Court finds that the DI had been validly held and the notes of the DI proceedings were accurate, the Court should still proceed to hear evidence of all the witnesses for both parties in determining whether the Claimant's dismissal was with or without just cause or excuse;
- (f) the Claimant was given the notice of DI (p. 3 and 4 COB1) with particulars of the Charges. He was also informed that he was allowed to bring his witness (if any) or any document to assist him in his defence;
- (g) the Charge was read to the Claimant. The Claimant replied that he understood the Charge. During the DI, the Claimant did not raise the issue that the Statement was not given voluntarily to COW2 or Ng had banged the table during the interview; and
- (h) under cross-examination, the Claimant admitted that –
- (i) he did not see the record of proceedings of DI being transferred to a CD;
  - (ii) he was aware the CD which was given to the Industrial Relations Department, only contained the pictures or email in question as in p. 5-32 COB2;

- (iii) he was the sender of some of the emails in p. 5-32 COB2;
- (iv) the Charge against him was at p. 3 and 4 COB1; and
- (v) the DI notes is at p. 5-11 COB1.

29. After perusing the minutes of the DI proceeding, Claimant's reply in respect of the DI and the manner in which the DI was conducted as well as the submission of both parties, it is my considered view that rules of natural justice had been complied with. The Claimant had been given an opportunity to be heard. Hence, the DI was valid and the notes were accurate.

30. This Court is mindful of the decision of the Court of Appeal case of ***Hong Leong Equipment Sdn. Bhd. v. Liew Fook Chuan & Other Appeals*** [1997] 1 CLJ 665 at p. 671, wherein the court held, inter alia, that –

*"The fact that an employer has conducted a domestic inquiry against his workman is an entirely irrelevant consideration to the issue whether the latter had been dismissed without just cause or excuse. The findings of a domestic inquiry are not binding upon the [IC] which rehears the matter afresh. However the [IC] may take into account the fact that a domestic inquiry has been held when determining whether the particular workman was dismissed."*

[emphasis added].

- (b) admissibility of statutory declaration ("SD") of Mr. Gunaratnam

31. At the onset of the hearing of this case, the Company's learned counsel had objected to the admissibility of the SD (IDCLB2) on the ground that the maker of the SD, *i.e.*, Mr. Gunaratnam A/l Suppiah ought to be called as a witness. It was further submitted that the SD was therefore hearsay evidence and could not be relied upon by this Court. In ***Encik Jacob Jayaraj A/L M. David v Premier Lubricants (M) Sdn. Bhd.*** [Award No. 149 of 2012], this Court held the SD of one Ranjer could not be admitted as evidence because Ranjer was not called for cross-

examination. Likewise for this case, since Gunaratnam was not called for cross-examination, I am inclined to hold that the SD is inadmissible as evidence.

G2. Main Issues

32. It is to be noted that there is no dispute with regard to the Claimant's dismissal. Thus, the sole issue to be determined is whether the Claimant's dismissal by the Company is with just cause or excuse.

33. Based on Claimant's termination letter (p. 17 COB1), pleadings, evidence and submissions made by both parties, the Claimant's service was dismissed on ground that he was guilty of the misconduct as stated in the Charge. I shall now determine if the Company has established this ground and if proven, whether this proven ground constitutes a just cause or excuse for dismissal.

(a) whether Company has established Claimant's misconduct?

34. It was submitted by the Company's learned counsel that the Company has established the Charge against the Claimant based on the following:

- (a) the Claimant had signed a voluntary Statement dated 20.8.2008 (p. 1 COB1);
- (b) Claimant's admission of the Charge and the Statement during the DI (on 18.9.2008);
- (c) Claimant's admission in his Letter of Mitigation dated 25.9.2008; and
- (d) Claimant's admission during the proceedings in Court.

35. Firstly, it is pertinent to note that the Claimant's voluntary Statement stated at paragraph 3 as follows:

*"I have received, transmitted and saved pornographic emails. People send them to me and I forward them to my friends. I do this with my TI account. I am aware that this is against TI policy."*

36. In relation to the Statement, it was submitted by the Claimant's learned counsel the Statement is inadmissible based on the following reasons:

- (a) COW2 and Ng were foreigners and did not have the *locus standi* to carry out any investigation pertaining to the laws of this country and were not entitled to record statement from the Claimant as they were not employees of the Company, but instead were employees of Company's parent company. Besides that, COW2 and Ng did not have employment visa to interview the Claimant. In the circumstances, the evidence of COW2 ought to be disregarded;
- (b) the Statement was not voluntary. The procedure adopted was unfair and irregular because the purported confession was not voluntary and the punishment was disproportionate to the purported misconduct;
- (c) the Claimant was not well versed in English and could not have understood the meaning of words "*force, threats or promise*";
- (d) an admission must be voluntary and unequivocal. The Claimant's learned counsel cited cases, such as ***Public Prosecutor v Leng Chow Ten*** [1985] MLJ 229 and ***Director of Public Prosecutor v Ping Lin*** [1975] 3 All ER 175 in support of his submission that the burden is on the employer to prove voluntariness of the admission beyond reasonable doubt; and
- (e) the Claimant had no recollection of signing the Statement before COW2 and the Rejoinder was drafted before COB1 (which contained the Statement) was filed.

37. As regards the Claimant's submission concerning COW2 and Ng, the Court agrees with the submission of the Company. COW2 and Ng need not be employees of the Company to be involved in the investigation in this case. It is open to the Company to direct whoever it chooses to undertake investigation.

38. As regards the standard required, it is observed that the cases cited by the Claimant concerns the standard adopted in criminal cases. In relation to the standard of proof required for cases in IC, the Court is mindful of the decision of the Court of Appeal in **Krishnan Kutty** (supra), wherein Abdul Hamid JCA (as his Lordship then was) stated as follows at p. 141 (paragraph B):

*"Thus we can see that the preponderant view is that the [IC], 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. "*

[emphasis added].

39. Abdul Hamid JCA in **Krishnan Kutty** (supra), at p 138 also made reference to the Indian Supreme Court case of **Management of Balipara Tea Estate v Its Workmen** AIR 1960 SC 191, which held:

*"In making an award in an industrial dispute referred to it, the tribunal has not to decide for itself whether the charge framed against the workman concerned (in this case falsification of accounts and misappropriation in funds) has been established to its satisfaction; it has only to be satisfied that the management of a business concern was justified in coming to the conclusion that the charge against its workman was well founded.*

*The tribunal misdirects itself in so far as it insists upon conclusive proof of guilt to be adduced by the management in the inquiry before it. It is well settled that a tribunal has to find only whether there is justification for the management to dismiss an employee and whether a case of misconduct has been made out at the inquiry held by it.*

[emphasis added].

40. Further at p. 139 and 140 of **Krishnan Kutty** (supra), the CA also referred to

HWR Wade and CF Forsyth, 7<sup>th</sup> Ed of "Administrative Law" which discussed the "standard and burden of proof" under a sub-heading. On the standard of proof, the learned authors stated -

*" Nearly all the cases which concern administrative law are civil, as opposed to criminal proceedings. The standard of proof of facts, accordingly, is the civil standard, based on the balance of probabilities, as contrasted with the criminal standard which requires proof beyond reasonable doubt. Even where, as sometimes in disciplinary proceedings, the language of the Act or regulations has a criminal flavour, speaking of 'offences', 'charges' and 'punishments', the standard of proof remains the civil standard.*

[emphasis added].

41. The Claimant's testimony during cross-examination concerning the Statement however reveals as follows:

*" Q21: Refer 1st paragraph - "I, Jaya Balan Suppiah, employee number A0728328, work telephone number extension is 3135, furnish the following free and voluntary statement to Lisa R. Hallmark and Ng Kit-Hong, who have been identified to me as World Wide Security Special Investigator and Security Manager, Asia/Japan Region respectfully. No force, threats, or promises have been made to me regarding the provision of this statement.". True or untrue?*

*A : True.*

*Q27: Refer to p.1 COB1 and p.15 and 16 your signature. You agree this statement given by you to Lisa and Ng during their investigation?*

*A : Yes.*

*Q28: You agree – in statement not mention or reference to your allegation or answer about your password and ID being used by other employees – correct?*

*A : They never asked me.*

*Q : Repeats Q28.*

*A : Correct.*

*Q29: Refer to Statement of Case. You said the statement – you agree no contain about your password and ID. Agree – this statement is accurate reflect of what you told the investigator that day?*

*A : Yes. I told only the 1st part.*

*Q : You are qualifying?*

A : *Some parts yes and some are no.*

Q30: *Which part is true?*

A : *1 right, e-mail yes. They questioned me.*

Q31: *1st and 2nd paragraph?*

A : *The 1st and 2nd paragraph correct. "My job ...".*

Q32: *3rd paragraph, "I have an e-mail ....", true?*

A : *True – yes.*

Q33: *4th paragraph?*

A : *That part – not true. They banged the table.*

Q34: *Based on your testimony, paragraph 1, 2, 3 – true. Put to you - 4th paragraph – this is also true?*

A : *No.*

Q35: *You alleged 1st time in Court Ng Kit-Hong alleged banged the table and you don't know what to do and you signed it. See Statement of Case and Rejoinder. You agree this allegation that you state "Ng Kit Hong banged table" - not mention in Statement of Case or Rejoinder, agree?*

A : *No reference."*

42. Based on the above, the Court finds that it is apparent that the Statement, on a balance of probabilities, was given voluntarily by the Claimant.

43. Secondly, it is also important to note that during the DI on 18.9.2008, the Claimant -

- (a) had pleaded guilty to the Charge; and
- (b) admitted that he understood the consequences of his guilty plea. Besides that, he also admitted that he had forwarded the email to one or two of his friends who were not the Company's staff; and
- (c) never challenged the authenticity or the voluntariness of the Statement.

44. Thirdly, the Claimant had stated in his Letter of Mitigation dated 25.9.2008 (p.

15 COB1) *inter alia* that –

*"I, Jayabalan A/L Suppiah (Emp # 728328) would like to apologize for profusely violating TI regulations in terms of usage of TI property in an improper manner. I thoroughly admit that it was an inexcusable offence of which I am very regretful. Will NOT view/distribute prohibited material on IT's property hence forth."*

45. It was submitted by the Claimant's learned counsel that the purported Letter of Mitigation was null and void because it was not voluntary and the Claimant is not capable of stringing sentences in English because he left school after Form 3 and did not pursue his education. It was also the submission and the testimony of the Claimant that the Letter of Mitigation was drafted by COW4 and it was COW4 who told him that he would not be dismissed and he would be placed on guidance.

46. It is observed that the Claimant under cross-examination had testified as follows:

*" Q13: Paragraph 1 p.15, "I am just an operator and this is my first offence hence I request that I should be given a second chance to reform.", not true?*

*A : The statement is true.*

*Q14: Paragraph 2 - "I remorse this doing. I was not aware of the negative consequence plus I was nor warned by my Supervisors on this strict and tight TI regulation.". Is the statement true?*

*A : True.*

*Q15: Paragraph 3 - "I have been a very loyal employee as I have served TIM for over 24+ years and my wife who was an X-Tier (MH in EOL) served for 25 years. During all these years of service, I have had a clean record until this incident which I regret with pain. I have also been a very dedicated employee and served my bosses to their highest expectation. You can check with all my bosses viz Fazir and Rozali.". True or untrue?*

*A : True.*

*Q16: Paragraph 4 – p.16 COB1. True or untrue?*

*A : True.*

*Q17: "Please consider my appeal based on the above mentioned reasons. I have learnt my lesson well & promise to obey ALL TI rules and regulation in the future, as well as help to correct other*

*errant Tier's who I might know disobeying the rules.”, p.16 COB1.  
True or untrue?*

*A : True.*

*Q18: "Thanking you in anticipation I beg to remain," True?*

*A : True.*

*Q23: Put to you – based on your answer content on p.15 and 16 are true?*

*A : True.”.*

47. In addition to the above, the Claimant during re-examination again admitted that he signed Letter of Mitigation with reference to p. 15 and 16 COB1.

48. Based on the above, the Court finds, on a balance of probabilities the Claimant had signed the Letter of Mitigation voluntarily.

49. It was also the submission of the Claimant's learned counsel that there is no conclusive evidence that the Claimant was personally responsible for receiving, viewing and transmitting the pornographic material. This submission however is inconsistent with the following evidence:

(a) the evidence of the Claimant under cross-examination as follows:

*“ Q41: You agree – in respect of e-mail (p.5 – 32 COB2), the e-mail in question – **you agree you in fact the sender and the e-mail in question?***

***A : Some – yes. Some – no.***

*Q42: Which you said no?*

*A : I don't know which in particular.*

*Q54: Put to you – based on e-mail at p.5 – 32 COB2 whether it reflected from Suppiah. Your statement at p.1 COB1, the e-mail, your letter of mitigation (p.16 – 16 COB1) and your admission at domestic inquiry. Put to you – based on all of these you have received and transmitted pornography material on date and time stated in charge?*

*A : A few only.”;*

(b) the Claimant's evidence under re-examination as follows:

*Q36: Were you shown when you were in IT?*

*A : Only a few picture.*

*Q37: Who showed to you?*

*A : The panel showed to me. They showed me only I send from my computer but not when I received. **I send a few and other people send. I received a lot.** They came and see in my computer.”; and*

(c) under cross-examination, CLW2 admitted that she was aware that the Claimant sent out pornography material as well.

50. As regards the Company's AUP, the Claimant denied that the policy was in place during the tenure of his employment with the Company. He admitted that at his work station he had his own computer which had been assigned to him but denied that the password was to be kept confidential. This evidence was however inconsistent with the testimony of CLW2, who testified that password should be kept confidential. Concerning the AUP, COW1 under cross-examination had testified that the AUP came into effect 1.7.2003 (p.1 COB2). COW4 had testified that prior training sessions and communication sessions had been conducted for all computer users relating to Company's AUP in respect of usage of computer, internet, email resources, information technology facilities of the Company and the guidelines under which such resources were to be utilized. This is consistent with the training the Claimant had attended on 22.12.2005 (p.18 COB1).

51. This Court, after considering the pleadings, the totality of the evidence (both oral and documentary) as well as the submissions of both parties, finds that the Company has established the Charge against the Claimant on a balance of probabilities. The Court agrees with the findings of the DI and finds that the Claimant has committed the misconduct as stated in the Charge.

(b) whether Claimant's proven misconduct warranted a dismissal?

52. The Claimant in paragraph 7 of SOC contended that the termination of his services was an unlawful dismissal without just cause of excuse, and was oppressive thereby causing him to suffer irreparable loss. Hence, he prays for an order of reinstatement together *with inter alia* -

- (a) back-wages from 15.10.2008 to date of award and continuing to the date of realization;
- (b) compensation from date of termination (15.10.2008) till date of Claimant's retirement; and
- (c) contractual bonus from 15.10.2008 to 2.1.2022.

53. In this case, it is undisputed that the Company had dismissed other employees prior to the Claimant's dismissal for the same type of misconduct as that committed by the Claimant (see p. 33 COB2). COW1 had also given his explanation that he viewed the Claimant's case as a gross violation with 18 occasions of pornographic mails being viewed or transmitted. Apart from that, this Court had also considered the fact it was Claimant's first offence, his record and certificates up to 1998 (-.1 1-14 CLB1) and his long service in the Company. In the case of ***Esso Malaysia v. Chiang Lick Teck*** [2003] 2 ILR 716, IC has this to say as regards a long serving employee:

*"The court endeavours very hard to consider the long service and unblemished track record of the claimant. Notwithstanding that, the court is of the opinion that the claimant's long years of unblemished service do not immunise the claimant from dismissal (see **Malaysia Smelting Corporation Bhd. v. Abu Bakar Muhamad** [2002] 2 ILR 128).*

*In fact, as submitted by counsel for the company, the very fact that the claimant had served the company for such a long time shows that the claimant has to be aware of the company's policies and its need for strict compliance and adherence thereto. If all employees are allowed to*

*merely fall back on their past clean record to vindicate themselves then this would seriously undermine the enforcement of discipline and proper conduct within the company's establishment."*

(see also ***Lim Boon Kok v Kuari Pati Sdn. Bhd.*** [2013] 1 ILR 655).

54. In ***Subramaniam a/l AJ Karuppiah v Bank Negara Malaysia*** [2011] 3 MLJ 454, the learned Chairman of IC states:

*"... The correct test is: Was it reasonable for the employers to dismiss him? If no reasonable employer would have dismissed him, then the dismissal was unfair. But if a reasonable employer might reasonably have dismissed him, then the dismissal was fair. It must be remembered that in all these cases there is a band of reasonableness, within which one employer might 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.";* and

55. In ***Utusan Melayu (M) Bhd. v National Union of Journalists Malaysia*** [1992] 2 ILR 840, the IC observed that:

*"It must be remembered that in dismissing an employee including a dismissal where the reason is criminal conduct, the employer need only satisfy himself that at the time of the dismissal, there were reasonable grounds for believing the offence put against the employee was committed. The test is not whether the employee did it but whether the employer acted reasonably in thinking the employee did it and whether the employer acted reasonably in subsequently dismissing him."*

56. In ***Hasbullah Abd. Jalil v KUB Power Sdn. Bhd.*** [2011] 1 ILR 629, the learned Chairman of IC at p. 641 stated as follows:

*"The remaining issue is whether these proven acts of misconduct are just cause and excuse for the claimant's dismissal. His counsel submits that the respondent should have considered his past good service. The court, while not denying the past good service is a mitigating factor to be taken into account, must ask whether in making the decision to dismiss the claimant, the respondent had*

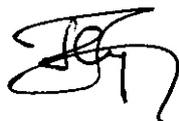
*acted reasonably. In light of the totality of the evidence before it and with due regard to equity and good conscience, the court is of the view that the decision to terminate the claimant's employment was reasonable."*

57. Likewise for this case, taking into account the totality of the evidence and with due regard to equity and good conscience, the Court is of the view that the decision to terminate the Claimant's employment was reasonable.

#### **H. Conclusion**

58. As an epilogue, based on totality of evidence adduced by both parties as well as submissions made and also having regard to equity and good conscience as well as substantial merits of the case without regard to technicalities and legal form, this Court finds that the Company has proven on a balance of probabilities the reason for the dismissal against the Claimant and the proven reason warranted the Claimant's dismissal. Accordingly, this Court holds that the dismissal of the Claimant by the Company was with just cause or excuse. Hence, the Claimant's claim is hereby dismissed.

**HANDED DOWN AND DATED THIS 2 JULY 2013**



**( TAY LEE LY )  
CHAIRMAN  
INDUSTRIAL COURT  
KUALA LUMPUR**