

IN THE INDUSTRIAL COURT MLAYSIA

AT KUALA LUMPUR

CASE NO: 15/4-248/19

BETWEEN

AU LAI CHAN

AND

MALAYSIAN MOSAICS SDN. BHD.

AWARD NO : 811 OF 2020

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

VENUE : Industrial Court, Kuala Lumpur

DATE OF REFERENCE: 05.03.2019

DATES OF MENTION : 08.04.2019, 25.04.2019, 17.06.2019,
24.06.2019, 08.07.2019, 15.07.2019,
26.07.2019, 09.08.2019, 16.08.2019,
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10.02.2020, 25.02.2020, 04.03.2020.

DATES OF HEARING : 17.09.2019,18.09.2019, 24.09.2019,
12.11.2019.

REPRESENTATION : Ms. Juanita Chua together with Mr.
Shanker Subbramaniam
Messrs Shanker, Arjunan & Chua
Counsels for Claimant

Dato' T. Thavalingam together with Ms.
Shivani Sothirachagan
Messrs Lee Hishammuddin Allen &
Gledhill
Counsel for Company

REFERENCE

This is a reference by the Minister of Human Resources pursuant to Section 20(3) of the Industrial Relations Act, 1967 arising out of the dismissal of **AU LAI CHAN** (The Claimant) by **MALAYSIAN MOSAICS SDN. BHD.** (The Company') on **10.10.2018**.

AWARD

BACKGROUND

[2] This case 15/4-248/19 was heard jointly together with case No 15/4-249 WONG MENG KOON and case no 15/4-253/19 LIM CHWEE HOON.

THE CLAIMANT'S CASE

[3] The Claimant's pleaded case was as in her Statement of Case listing her employment history with the Company and her job descriptions.

[4] The Claimant commenced employment with the Company on 1.3.1996 as a Human Resource Executive and held several positions within the Company.

[5] The Claimant avers that apart from dealing with human resource matters she had performed several other core duties for

the Company as listed in paragraph 7 and 8 of her Statement of Case.

[6] At the time of dismissal, she held the position of Senior General Manager, Manufacturing and Operational Support and her last drawn salary was RM44,151.00.

[7] The Claimant claimed that by a letter dated 10.10.2018; the Company terminates her employment on the ground of redundancy. The Company claimed that there was a downward trend in the market, problem with the yields and the closure of one of its plant.

[8] The Claimant asserts that the Company was never in any financial difficulties that would bring about the Company to retrench her.

[9] The Claimant contends that she was not redundant because her job functions continued to exist but the Company redistributed her functions to her superior and other employees including to some expatriates.

[10] The Claimant avers that the Company did not consider transferring her to other positions within the Company or put her back to the positions she previously held in the human resource department of the Company.

[11] The Claimant contends that the dismissal was without just cause or excuse.

THE COMPANY'S CASE

[12] The Company is in the business of manufacturing and distributing ceramic and porcelain tiles and accessories.

[13] It is the Company's contention that due to the downward trending of the market to cheaper products such as glazed porcelain and with the increase in raw material costs, the Company's Profit had dropped.

[14] The Company asserts that in view of the continued deterioration of profits due to the rising costs in production, the Company reviewed its operations and take measures to reorganize the organization to improve its effectiveness and efficiency.

[15] The Company contends that due to the weak market conditions its Plant 2 that was manufacturing products that generated more revenue than the products manufactured in Plant 1 and Plant 3, were operating at a loss.

[16] The company avers that as it was not sustainable as an on-going business concern, the management of the Company undertook the business decision to shut down Plant 2.

[17] It is the Company's contention that the Company then conducted a review of all the departments within the Company and identified certain roles ranged from senior management to administrative positions as surplus to the Company's work force requirements.

[18] The Company contended that pursuant to the reorganization certain employees across the all its 3 Plants as well as the Headquarters in Petaling Jaya were identified as surplus to the Company's manpower requirements.

[19] The Company denies the Claimant's contention about her core job functions contained in paragraphs 7 and 8 of the Statement of Case.

[20] The Company avers that the Claimant's job was merely as the liaison between the Company's Chief Operating Officer [COO] and the production teams on production and administration matters of the operations.

[21] The Company contends that the Claimant was in charge of general administration of the operations of the 3 Plants in Kluang, Johor where she represents the interest of the 3 Plants in matters relating to sales and customers, and performed assigned ad hoc assignments from the COO when it is required from her.

[22] The Company avers that the Claimant's job functions were absorbed by her superior, the COO of the Company one Mr Dickson Yong, who was all the material time in charge of the Company's overall day to day functions.

[23] It was the Company's contention that with the taking over of the Claimant's job by the COO, there was no longer any requirement for a position of Senior General Manager Manufacturing & Operational Support in the Company to be in charge of general administration of the reduced operations of the 3 Plants.

[24] The Company avers that there was no position available within the Company that would commensurate with the Claimant's existing job functions and seniority and salary scale.

[25] The Company further avers that as the Claimant's job ceased to exist, there was no new employee employed by the Company to replace the Claimant.

[26] The Company avers that though the Claimant was not entitled to any retrenchment benefits, the Company on a goodwill basis paid the Claimant a severance package in the sum of RM380,002.30 which the Claimant accepted without any protest or complaint over the sum she received from the Company.

[27] The Company contended that there was a genuine redundancy situation had arisen where the Claimant's position was surplus to the Company's requirement and it was the prerogative of the Company to reorganize its business in the manner it deems fit.

[28] The Claimant's position was redundant and the Claimant's termination is with just cause and excuse.

THE LAW ON REDUNDANCY

[29] It is trite law that the right to reorganize is a managerial prerogative as was firmly in the case of **WILLIAM JACKS & CO. (M) SDN. BHD. V S. BALASINGAM [1997] 3 CLJ 235** where the Court of Appeal define the term "retrenchment" as follows:-

"Retrenchment" has been defined as the discharge of surplus labour or staff by an employer for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action. Whether the retrenchment exercise in a particular case is bona fide or otherwise is a question of fact and of degree depending on the peculiar circumstances of the case.

It is well settled that the employer is entitled to organize his business in the manner he considers best. So long as the managerial power is exercised bona fide, the decision is immune from examination even by the Industrial Court. However, the Industrial Court is empowered, and indeed duty-bound, to investigate the facts and circumstances of the case to determine whether the exercise of power is in fact bona fide".

[30] In the case of **HARRIS SOLID STATE (M) SDN. BHD & ORS V. BRUNO GENTLL PEREIRA & ORS [1996] 4 CLJ 747**, Gopal Sri Ram JCA at p. 767 held as follows

An employer may organise his commercial undertaking for any legitimate reason, such as promoting better economic viability. But he must not do so for a collateral purpose, for example, to victimize his workmen for their legitimate participation in union activities. Whether the particular exercise of managerial power was exercised bona fide or for collateral reasons is a question of fact that necessarily falls to be decided upon the peculiar circumstances of each case."

[31] In **PENKALEN HOLDINGS BHD. V. JAMES LIM HEE MENG [2000] 2 ILR 252** the Court summarizes the proposition on redundancy as follows:

"The existence of surplus or supernumerary staff or a redundancy situation can arise due to a number of situations. A business entity facing a severe cutback in business volume or which is attempting to rationalise its business may have to reorganise and/or downsize. Where a whole production line or business unit is discontinued, the need for employees to work on that line or unit no longer exists. Both the job functions and the jobs of the employee in the said line or unit have ceased to exist. The business entity with such a problem of surplus workers would have to consider the painful option of retrenchment of its surplus staff who were previously holding posts which have since become redundant and are abolished accordingly."

[32] A genuine redundancy may also arise when the business requires fewer employees. In the case of **STEPHEN BONG V. FCB**

(M) SDN. BHD. & ANOR [1999] 1 LNS 131 the High Court Judge stated as follows:-

"...Redundancy situations arise where the business requires fewer employees of whatever kind ('Harvey on Industrial Disputes '). In the case before me, it is the Company's case that there was reduced work and reduced business, which made the applicant's position as an executive director in charge of one group redundant. The Industrial Court is right when it held that the applicant was redundant."

[33] The burden of proof of is on the employer to prove actual redundancy with concrete proof which eventually leads to the retrenchment of the employee. Merely to show evidence of re-organization by the Company is not sufficient. The Court of Appeal in **BAYER (M) SDN BHD V. NG HONG PAU [1999] 1 MELR** stated as follows:-

On redundancy it cannot be gain said that the appellant must come to the Court with concrete proof. The burden is on the appellant to prove actual redundancy on which the dismissal was grounded.

[34] In the case of **SISTEM TELEVISYEN MALAYSIA BHD. & ANOR V. SUZANA ZAKARIA [2005] 1 ILR 853 AT P.856**, held as follows:

"..... Hence to justify the retrenchment, there must first be redundancy. To prove redundancy, the company must prove that there is surplus of labour or that the requirement of the job functions of the

employee has ceased or has greatly diminished to the extent that the job no longer exists or that the business requires fewer employees of whatever kind resulting from a reorganization exercise or due to whatever other legitimate reasons”.

[35] In determining whether the Claimant was dismissed with just cause or excuse by the retrenchment exercise undertaken by the Company, this Court will have to determine whether there was genuine redundancy situation had arisen which requires a need for the reorganization exercise by the Company.

EVALUATION AND FINDINGS

[36] The Company called Simon Sin the Hap Seng Group Human Resource Director [COW-1] and Ng Boon Kong, the Company's General Manager of Finance [COW-2] while the Claimant was the sole witness for her case.

[37] The Claimant contends that the losses shown in the Company's Financial Statement for year end 31 December 2018 [COB-1 pages 1-83] were only paper losses and that the Group had a profit guarantee from the former owner of the Company [Gek Poh] which does not require the Company to close its Plant 2 and retrench the Claimant.

[38] The Claimant further contended that the Company's reasoning that it was making losses did not justify her dismissal because most of the losses incurred by the Company were directly due to the closure of Plant 2.

[39] The Claimant contended that Plant 2 which was closed in September 2018, if it continued to operate, there would have been no reduction of production and no loss to the Company.

[40] The Claimant contended there was no evidence to justify the closure of Plant 2 as the Company did not produce evidence for the need to close Plant 2 and the need to restructure the Company's work force.

[41] The Claimant alleged that most of the losses incurred by the Company were cause by the wrong decision of the Company to close Plant 2 and where the Company made payment of compensation to hundreds of employees based at Plant 2 on a voluntary separation scheme. The Claimant also alleged that the intent for the closure of Plant 2 was to start a new joint venture with the Chinese.

[42] The Claimant claims that her retrenchment exercise was *mala fide* on the ground that the Company has not produced any evidence to show what are other steps was taken to reduce the alleged high operating costs and losses before closing down Plant

2 and reorganizing the Company's work force structure which led to the Claimant's terminating.

[43] The Claimant avers that she is not merely a liaison between COO Dickson Yong and the 3 Head of Plants or performing general administrative functions as alleged by the Company. The Claimant asserts that she was performing managerial functions and that the functions still exist.

[44] The Claimant asserts that her function still exists but the Company redistributed her functions and duties to other employees of the Company to one Wong Chun Keong, two Deputy General Managers and to her superior the COO of the Company Mr. Dickson Yong.

[45] The Claimant claimed she is not redundant and that her termination was with ulterior intention because the Company did not consider placing her in any other positions within the Company or transferring her back to her position in the human resource, which she had held previously.

[46] The Claimant submits that COW-1 who is the Group Human Resource Director of the Hap Seng Group is not an employee of the Company therefore could not be a material witness of the Company.

[47] The Claimant avers that COW-1 who is the employee of the Group does not have knowledge of the Company's affairs and the Company's employees job functions.

[48] The Claimant contended that the Company should had called the Chief Operating Officer [COO] of the Company Mr. Dickson Yong as its material witness because he has direct knowledge of the whole Company's situation and the job functions of the Company's employees.

[49] It was the Company's contention that the losses were due to the downward trend of the market to cheaper products, significant cost pressures, increase in raw material costs, and the continued poor yields of the manufacturing operations causing the yield to deteriorate from 91.8% in 2015 to 88.2% in July 2018.

[50] The Company avers that Plant 2 that manufactured products generating higher revenue than products manufactured in Plant 1 and Plant 3 due to the weak market conditions, the demand for Plant 2's products had dampened and this condition resulted in the Company operating Plant 2 at a loss.

[51] The Company asserts that the deterioration of profits of the Company started in 2017 and continued into 2018 sphere where the Company's loss was 129 million with its operating losses.

[52] The Company's states that with the profits continued to deteriorate, e the compressed margins coupled with rising costs in productions, and the Company's business was unsustainable. The Company reviewed its operations to improve the organisation's effectiveness and efficiency and took drastic measures to stop the decline.

[53] As the Company's business was unable to sustain, the Group made the decision to close Plant 2, which was operating at a loss and with the closure of Plant 2, 54% of the total production capacity of Plant 2 that was operating at a loss was removed.

[54] The Company avers that with the closure of Plant 2, the management also reviewed the Company's work force structure by removing any kind of duplicity of work and the Company identified the Claimant's position as redundant to the Company's work force requirement.

[55] The Company avers that there was no longer any requirement for a Senior General Manager-manufacturing and Operational Support in the Company since the COO was to liaise directly with the Heads of Plants in relation to the manufacturing and operations of the plants.

[56] The Company submits that the Claimant's position ceased to exist and no new employee hired to replace the Claimant neither was there any position available within the Company that would

commensurate with the Claimant's existing job functions and seniority.

[57] In the Letter of Redundancy dated 10.10.2018, the Company informed the Claimant that the Company was facing challenges in the form of deteriorating profits, downward trending of the market to cheaper products such as glazed porcelain, high cost pressures brought about by the increase in raw material costs especially natural gas, continued poor yields of the manufacturing operations and the deteriorating yield from 91.8% in 2015 to 88.2% in July 2018.

[58] It was undisputed that prior to the reorganization exercise, the Company had shut down Plant 2 where the management's decision to shut down Plant 2 was due to deterioration of profits and that Plant 2 was running as a loss.

[59] COW-1's gave evidence explaining the financial status of the Company making reference to the Company's Financial Statement ending on 31.12.2018 in COB-1 pages 1-83. COW-1 states that the Company continued deterioration of profits where the Company's Profit after Tax ("PAT") had dropped from RM23.7 million to negative Rm20.7 million from 2015 as at end of July 2018. COW-1 also states that for the year 2018, the overall performance of the Company PAT was at a loss of RM129,072.000.00 and the Company's production Yield had declined from 91.8% in 2015 to 88.2% as at July 2018.

[60] COW-2 the General Manager of Finance of the Company states that the Company's losses started in 2017 and continued into 2018 with its operating losses. COW-2 explained about COB-4 a document relating to the information about the Company's Porcelain Products sold from 2015 to 2018 as in COB-4 which shows analysis on output reduction and yield decline from the year 2015- 2018.

[61] COW-2 confirmed that the deterioration of profits where he clarified that COB-4 page 5 shows a yield decline from 91% to 88% in 2015 and 2018 and confirm that in the year 2018, the Company's losses were 129 million.

[62] The Court is satisfied that both COW-1 and COW-2 provided a clear and consistent evidence of the Company's losses and financial status making reference to COB-1 page 1-83 the audited financial statement of 2018 and the production yield analysis from the year 2015-2018 [COB-4 page 5].

[63] The Court is of the view that the audited accounts are a true indication of the financial status of the Company; which clearly showed that the company incurred losses since 2017. There is no reason for the Court to doubt the contentment of those documents.

[64] It was also evidence in the Court that the Company's deterioration of profits was also public knowledge where in an

article published in the STAR tendered as evidence by the Claimant as reflected in CLB-1 pg 53, which reads as follows:

"according to the group's filing to the stock exchange, Gek Poh Holdings Sdn Bhd is obliged to pay a profit shortfall of RM175.31mil to Hap Seng under the terms of the share sale agreement for the latter's acquisition of Malaysian Mosaics Sdn Bhd in 2016."

[65] The Claimant contends that the losses shown in the Company's Financial Statement for year end 31 December 2018 [COB-1 pages 1-83] were only paper losses and that the Group had a profit guarantee from the former owner of the Company [Gek Poh] which does not require the Company to close its Plant 2 and retrench her.

[66] Based on CLB-1 pg 53, the existence of a profit guarantees the former owner of the Company [Gek Poh] is not disputed, however that profit guarantee would only be paid to Hap Seng and not to the Company when it faces a profit shortfall.

[67] There was no evidence adduce to show that the profit guarantee from the former owner of the Company [Gek Poh] was intended to be paid to the Company when it faces a profit shortfall. The Claimant misconstrued that merely the profit guarantee from the former owner of the Company is to back up the Company in the event of a profit shortfall.

[68] The Claimant somehow during cross-examination admitted that she was aware of the Company suffering a profit shortfall of RM175.31 million and losses of RM129,072,00.00 in the year 2018.

[69] The Claimant at all material time was aware of the losses suffered by the Company where she in a "*Whatsapp*" conversation with her superior, Dickson Yong as in COB-6 were they were communicating about the Company losses. The Claimant never deny having such conversation with her superior the COO of the Company.

[70] It is the Court's finding that there is nothing to doubt about the content of the audited financial statement of 2018 [COB1 page 1-83], production yield analysis from the year 2015- 2018 [COB-4 page 5], the Claimant's *Whatsapps* conversation with her superior [CLB-1 pg 53] which all shows that the Company was going through financial difficulties. The fact that the Company was not performing and that there were poor yields of the manufacturing operations, this situation had contributed to the deterioration of the profits. The Claimant's contention that the Company was not in any financial difficulty is therefore unsubstantiated.

[71] The Claimant asserts that the trend of the production yield from 2015 and 2018 of Plant 2 were stable, however no proof to show that the trend was stable. The Claimant eventually agreed that the production yield is one of the most important indicators of how efficiently and effectively a plant is operating.

[72] The Court is of the view that that in view of the continued deterioration of profits due to the rising costs in production, the Company's financial performance was unsustainable, and as such, it is justified for the Company to review its operations and take drastic measures to improve the Company's effectiveness and efficiency in all its affairs.

[73] It is clear that due to unsustainable of the Company's business; the Company's decision to shut down Plant 2 is bona fide. The Company exercised its managerial prerogative to review its operational requirements by shutting down Plant 2 and subsequently carried out a reorganization exercise.

[74] It was undisputed that Plant 2 was running at a loss at that material time. The Company's decision to close Plant 2 that was running at a loss was within its prerogative and not manipulated with any ulterior motives.

[75] The Claimant claimed that most of the losses incurred by the Company were directly caused by the decision to close Plant 2 where she contended that Plant 2 that was closed in September 2018, if it continued to operate, there would have been no reduction of production.

[76] There was no evidence adduced by the Claimant to support her contention that the company's decision to close Plant 2 was

bad economic decision. Neither did the Claimant challenged COW-1 or COW-2 to make them agree with her that losses incurred by the Company were directly caused by the decision to close Plant 2.

[77] COW-2's evidence that the Company was facing operating at losses before the year 2018 and the Claimant conversation that the Company was incurring losses which was recorded in a WhatsApp message between her and her superior Mr. Dickson undoubtedly corroborates the Company was in fact facing challenges and suffered financial losses.

[78] In that situation, the decision to close Plant 2 is obviously a wise decision taken by the Company. In the absent of any evidence to the contrary, the Claimant's contention that the losses incurred by the Company were directly caused by the decision to close Plant 2 is baseless.

[79] COW-1 gave evidence that with the closure of Plant 2, the Management reviewed the Company's work force structure by removing any kind of duplicity of work in the Company.

[80] COW-1's explanation that with the closure of Plant 2- the largest Plant, 501 employees were let go and the manufacturing operation functions was very much reduced with the closure.

[81] The Claimant's function of overseeing the manufacturing operations of all the 3 plants in Kluang was definitely reduced with the closure of Plant 2.

[83] With the closure of Plant 2 and the with the reduced manufacturing operations functions, it is obvious that the Company no longer need such a senior person to oversee a very much reduced manufacturing operation. As such, it is obvious the Claimant's position is a surplus to the Company's requirement.

[84] COW-1's evidence that the management identified the Claimant's position as surplus because COO who was in charge of the Company's overall day to day running will liaise directly with the Heads of Plants in relation to the manufacturing and operations of the Company was not challenged. As such the reorganization of the Company's work force that ceased the Claimant's position as Senior General Manager-Manufacturing and Operational Support was a bona fide exercise.

[85] The Claimant denies COW-1's explanation that her role in the Company was merely as a liaison between the COO and the Heads of Plants. The Claimant in her evidence Q&A 9 of her Witness Statement listed an array of duties and responsibilities that she claimed she had performed.

[86] During cross-examined about her extensive duties and responsibilities as listed in Q&A 9 of her Witness Statement, the

Claimant conceded to having no evidence nor having any documentation before the Court to substantiate her claims or to show that what she listed was the duties and responsibilities she performed as the Senior General Manager-Manufacturing and Operational Support of the Company.

[87] With no evidence to support her contentions, the Court have no reason not to believe COW-1's explanation that the Claimant's role in the Company was as a liaison between the COO and the Heads of Plants to only oversees the manufacturing operations in Kluang plants

[88] COW-1's explanation cannot be his assumption about the Claimant's role in the Company because the Claimant's superior who was also the COO of the Company was made to absorbed the Claimant's functions. The COO would not be able to easily absorbed the Claimant's job functions if the Claimant's job functions comes heavy responsibilities.

[89] The Claimant admitted that she reports to the COO, take instructions from COO, and obtain approval from him too. No evidence adduced before this Court to show that the COO or the Company doesn't know anything about the plants activities without the Claimant's involvement. As the COO was easily made to absorbed the Claimant's job function, the Claimant's position was indeed redundant due to the reorganisation exercise and she is indeed a surplus to the Company's requirement.

[90] The Court is of the view that pursuant to the major reduction in the production capacity and operations, the Company's decision to look at its manpower requirement and identified the Claimant as surplus to the Company's manpower requirements was a bona fide decision and not motivated with any ulterior intention to victimize the Claimant.

[91] The Claimant also avers that her duties and functions continued to exist but were redistributed to other employees who were Adam Pandian (an expatriate), Wong Chun Keong, Gan Swee Ho, Chung Fock Yit and Frank Liu (an expatriate).

[92] During her cross-examination, when questioned whether she had any evidence to substantiate her contention, the Claimant referred to a "*Whatsapp* conversation" between her and her superior Dickson Yong on 6.4.2018 [CLB 10 page 14] where Dickson Yong was seen saying to her not to further discuss production issues until AP come back.

[93] The *Whatsapp* conversation was in April 2018 while she was still employed by the Company. Nothing in the *Whatsapp* can corroborate her contention that Adam Pandian had in fact taken over her duties after she had been retrenched as the conversation between her and Dickson Yong [COO] had taken place during her tenure in the Company.

[94] There was no documentary evidence either adduced that could show Adam Pandian, Wong Chun Keong, Gan Swee Ho, Chung Fock Yit and Frank Liu had been distributed with the Claimant's duties.

[95] It was also undisputed that in the Company's post review organisation chart COB-1 pages 133 and page 136, the Claimant's position Senior General Manager-Manufacturing and Operational Support ceased to exist and no new employee hired to replace the Claimant.

[96] It was undisputed that the Claimant was not the only employee retrenched but there were other employees too affected by the reorganisation exercise. The fact that no new employees employed to replace the Claimant, it goes to prove that the retrenchment was not motivated by bad faith.

[97] The Claimant claimed her retrenchment was motivated with bad faith because her job function still exists but the Company did not take steps to find alternative employment within the Company or redesignate her back to her previous Human Resource role in the Company.

[98] The Claimant however did not identify which position available within the Company that would be suitable with her existing job functions and seniority.

[99] Neither could the Company place the Claimant in any post within the Company as there was no position available within the Company that would commensurate with the Claimant's existing job functions and seniority

[100] On the Claimant's claim that the Company should have placed her back to her previous position of human resource role, it was undisputed that the Company could not place the Claimant back to her previous position of human resource role as it would constitute a demotion. The Claimant too during cross-examination confirmed that her previous position is been carried out by one Mr Wong Chun Keong who is a junior staff and for her to be placed to that position would constitute a demotion.

[101] The Court is also of the view that it is no obligation for the Company to look for alternative employment for the Claimant.

[102] About the Claimant's contention that COW-1's evidence was not relevant because he was not the employee of the Company and the non-calling of Mr. Dickson Yong the COO of the Company, the Company did not prove its case, the Court finds this contention is baseless.

[103] It was undisputed that COW-1 the Group Human Resource Director was a member of the decision-making committee in respect of the retrenchment and was also the signatory of the Claimant's Letter of Termination not Mr. Dickson.

[104] As the Group Human Resource Director, obviously COW-1 is the source of reference for human resources related issues of the entire business and will have knowledge of the subsidiaries affairs and employees under the Group. COW-1 is the relevant witness with material knowledge as to the rationale behind the Company's decision to retrench the Claimant.

[105] It was also undisputed that COW-1 was one of the members of the decision-making committee in respect of the retrenchment along with Mr Dickson Yong the COO of the Company. Mr Dickson's evidence would be the same with COW-1's evidence.

[106] The Claimant could have corroborated her claims through COW-1 and challenge COW-1 on the decision of the committee in retrenching her but she failed to do so.

[107] On the other hand, the Claimant herself could have applied for the production of Mr Dickson as a witness for her case. There was nothing to stop the Claimant to apply for a subpoena for the said Mr Dickson to testify for her case.

[108] The Court is of the view that the Claimant was unable to show anything that can demonstrate to this Court's satisfaction that the Company's decision to terminate her employment were actuated by ulterior motive that could be construed as an exercise in bad faith.

[109] In the present case, due to the downward trend of the market to cheaper products, significant cost pressures, increase in raw material costs, and the continued poor yields of the manufacturing operations causing the Company's yield to deteriorate leading to the closure of Plant 2, the Company rightfully reorganize its structure for economic purposes to sustain the business. There was surplus of the work including the works the Claimant was performing and obviously the Company requires fewer employees. Under these circumstances, the Claimant's position was excess to the requirements the Company, therefore the Company is entitled to discharge such excess.

[110] The Court is satisfied that the reasons in the dismissal letter were not a manipulative act on part of the Company to victimize the Claimant. The Company exercised its managerial powers *bona fide* and the Claimant's termination was with just cause or excuse.

[111] Given this facts, the Court is satisfied that the reorganization by the Company was a *bona fide* exercise of its managerial prerogative to run the business operations as it deemed fit in order to successfully continue the Company's overall business operations.

[112] Taking into account the totality of the evidence adduced by both parties and bearing in mind s. 30(5) of the Industrial Relations Act 1967 to act according to equity, good conscience and the substantial merits, the Court finds that the Company had

established on a balance of probabilities the reasons for the Claimant's termination on grounds of redundancy.

The Claimant's case is hereby dismissed.

HANDED DOWN AND DATED THIS 12 JUNE 2020

-Signed-

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