

INDUSTRIAL COURT MALAYSIA

CASE NO: 14/4-530/20

BETWEEN

CHANDRAMOGAN A/L M BEEMAN

AND

AFFIN BANK BERHAD

AWARD NO: 990 OF 2021

BEFORE : **Y.A. TUAN TEOH CHIN CHONG
CHAIRMAN**

VENUE : Industrial Court Malaysia, Kuala Lumpur.

DATE OF REFERENCE : 21.02.2020.

DATE OF RECEIVED : 27.02.2020.

DATES OF MENTION : 02.04.2020, 27.07.2020, 18.08.2020, 06.10.2020.

DATES OF HEARING : 17.03.2021.

REPRESENTATION : Mr. V. Kumaraval of Messrs Hasif Kumar & Co,
Counsel for the Claimant.

Mr. Sharifullah Majeed & Cik Nurul Aisyah Hassan
of Messrs Lee Hishammuddin Allen & Gledhil,
Counsel for the Company.

REFERENCE:

[1] This is an order of reference dated 24.02.2020 by the Honourable Minister of Human Resources pursuant to section 20(3) of the Industrial Relations Act 1967 (“IRA”) arising out of the dismissal of **Chandramogan A/L M Beeman** (“the Claimant”) by **Affin Bank Berhad** (“the Bank”) on 27.08.2019.

AWARD

[2] The Claimant commenced his employment with the Bank on 02.04.2001 as a Special Grade Clerk, vide a letter of offer of employment dated 24.02.2001.

[3] The Claimant's employment with the Bank was also subject to the terms of the Collective Agreement between the Malayan Commercial Bank's Collection and the Association of Bank Officers, Peninsular Malaysia ("CA"). in accordance with Article 26 (1) of the CA, the Claimant was entitled to 30 days of Sick leave in a year.

[4] Throughout the Claimant's employment with the Bank, all Bank employees were reminded accordingly vide a Human Resource Circular dated 30th May 2012 to produce medical leave certificates if they are absent on medical leave.

[5] Subsequent reminders were also circulated to the Bank's employees vide Human Resource Circulars dated 12.10.2015, 01.06.2016, 30.06.2017 and 04.12.2018.

[6] Vide email dated 16.07.2019, it was brought to the bank's management's attention by the Claimant's superior, one Ms. Evon Loh Swet Keen ("Ms . Evon") that the Claimant had been absent without prior notice or approval since 03.06.2019.

[7] Concerned by the Claimant's whereabouts and in view of the disruption to the Bank's Kepong branch operations due to lack of manpower, the Claimant's immediate superior Ms. Evon tried several times to reach the Claimant but to no avail.

[8] The Claimant had remained uncontactable by Ms. Evon until 15.07.2019 whereupon despite being asked to return to work by the latter, the Claimant continued to remain absent without approval or justification.

[9] Accordingly, a Show Cause Letter dated 16.07.2019 was issued to the Claimant to provide him the opportunity to explain why disciplinary action should not be taken against him.

[10] The Show Cause Letter was sent to the Claimant's last known given address by way of courier through the courier service, GDEX. However, the Show Cause Letter was returned to the Bank as it was unable to be delivered to the Claimant and he also did not answer call made to him.

[11] On 07.08.2019, the Bank again attempted to serve the Show Cause Letter to the Claimant by way of A.R. Registered Post to his last known given address. However, the Show Cause Letter was again unable to be delivered to the Claimant and calls made to him were left unanswered.

[12] The Bank accordingly issued a Letter of Termination of Service date 27.08.2019 (“Termination Letter”) to the Claimant which was sent to his last known given address by way of courier through the courier service, GDEX. The Claimant was dismissed for his failure to provide an explanation for his absenteeism since 03.06.2019.

[13] However, the Termination Letter was also unable to be delivered to the Claimant and calls made to him were again unanswered. The Claimant himself never made any efforts to reach out to the management to explain his prolonged absence. It was only on 28.08.2019, that the Claimant’s wife had reached out to the Bank vide a phone call to enquire on the status of the Claimant’s salary which had been withheld since 08.05.2019.

[14] The Bank, through its Industrial Relations Executive COW-3 had explained to the Claimant’s wife that his salary had been withheld since 08.05.2019, in accordance with Article 26 (3) of the CA, as he had exceeded his medical leave entitlement for the year. At the same time, COW-3 requested for the Claimant’s email from his wife in order to serve the Termination Letter on him. However, rather than providing the Claimant’s email, COW-3 was given the email belonging to the Claimant’s wife.

[15] Vide letter dated 28.08.2019, the Bank served the Termination Letter where the Claimant was informed of his dismissal following his failure to provide any explanation as to why he had been absent from work without prior approval since 03.06.2019. in the same email, the Claimant was informed that the Termination Letter had also been sent to him by way of courier through the courier service, GDEX.

The Law

[16] The function of the Industrial Court in a reference under section 20 of the IRA has been clearly laid down by the Federal Court in the case **GOON KWEE PHOY v J & P COATS (M) BHD [1981] 1 LNS 3**; where Raja Azlan Shah, CJ (as his Royal Highness then was) held as follows:

“Where representations are made and are referred to the Industrial Court 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 Industrial Court will be to enquire whether that excuse or reason has or has not been made out. If it finds as a fact that it has not been proved, then the inevitable conclusion must be that the termination or dismissal was without just cause or excuse. The proper enquiry of the court is the reason advanced by it and that the court or the High Court cannot go into another reason not relied on by the employer or find one for it.”

[emphasis is ours]

[17] In the instance case, the burden is on the Bank to establish the facts of dismissal on a balance of probabilities (**Weltex Knitwear Industries Sdn. Bhd. v Low Kar Toy & Anor [1998] 1 LNS 258**).

The Bank's Case

[18] The Bank called the following witnesses to testify before this court:

COW-1: Nor Rozita Nordin

(Bank's former Chief Human Resource Officer)

COW-2: Noorimah Mohd Mustaffa

(Bank's Assistant Manager,
Industrial Relations Department)

COW-3: Muhammad Izzul Naim Muhammad Nadzeri

(Bank's Assistant Manager,
Industrial Relations Department)

[19] As the Bank's former Chief Human Resource Officer, COW-1 illuminated before this court that the Claimant was dismissed with effect from 27.08.2019 on the ground of his absence since 03.06.2019 without notice or approval by his superior and for his failure to provide any explanation for the said absence.

[20] According to COW-1, the Claimant did not at any time pass any medical certificates to his superior, Ms. Evon to justify his absence from work since 03.06.2019. COW-1 went on further to highlight that:

- 20.1 The Claimant had failed to produce any medical certificates despite all Bank staff being reminded accordingly vide the Human Resource Circular date 30.05.2012 to produce medical certificates if they are absent on medical leave;
- 20.2 Throughout the Claimant's employment with the Bank, subsequent reminders were also issued to the Bank's employees vide Human Resource Circulars dated 12.10.2015, 01.06.2016, 30.06.2017 and 04.12.2018;
- 20.3 The Claimant did not contact, explain or justify to his immediate superior of his absenteeism from 03.06.2019;
- 20.4 On 16.07.2019, the Show Cause Letter was issued to the Claimant to provide him the opportunity to explain why disciplinary action should not be taken against him for his prolonged absence without approval;
- 20.5 The Show Cause Letter was sent to the Claimant's last known given address by way of courier through the courier service, GDEX. However, the Show Cause Letter was returned to the Bank as it could not be delivered to the Claimant and he did not respond to the calls made to him by the courier company (as evident from the GDEX Courier slip);
- 20.6 On 07.08.2019, the Bank again attempted to serve the Show Cause Letter to the Claimant by way of A.R. Registered Post to his last known

given address. However, the Show Cause Letter again could not be delivered as evident from the item tracking page;

20.7 The Show Cause Letter was sent to the exact address which the Claimant had provided to the Bank, as recorded in his Employee Profile. In fact, it was also the same address which the Claimant had provided to the Industrial Relations Department;

20.8 By virtue of the Claimant's absence from work for 85 days without prior notice or approval since 3rd June 2019, he had committed a willful breach of his contract of service and his prolonged absence had cause disruption in the Bank's Kepong Branch operations;

20.9 Noting the gravity of the Claimant's misconduct, the Bank decided that it could no longer repose the necessary trust and confidence in the Claimant to continue his employment with the Bank;

2.10 The Bank issued the Termination Letter to the Claimant which was sent to his last known given address by way of courier through the courier service, GDEX. The Termination Letter also could not be delivered to the Claimant and calls made to him were again unanswered; and

20.11 The Bank had clearly exhausted its efforts to give the Claimant adequate opportunity to explain his absenteeism. The Claimant had failed to

provide any reasonable excuse for his absence or inform the Bank of his whereabouts.

[21] During cross-examination, COW-1 steadfastly maintained that since the Claimant's absent from 03.06.2019, there was no communication between the Claimant and Ms. Evon until 15.07.2019 despite the latter's efforts to contact the former. The witness then went on to confirm during cross-examination and re-examination that:

21.1 The Claimant had never given any medical certificates to his superior, Ms. Evon to justify his absence from 03.06.2019;

21.2 The Bank has no records of the alleged "medical certificates" which the Claimant had purportedly passed to Ms. Evon;

21.3 There is no record of any "WhatsApp message" or "WhatsApp Group" which show that the Claimant was purportedly in constant contact with Ms. Evon; and

21.4 The medical assessment by KPJ Rawang Specialist Hospital dated 12.02.2019 was not in any way a medical certificate to justify his absence from 03.06.2019.

[22] When questioned on the Claimant's request to return to his former position as a Teller, COW-1 explained to this Court that the Bank's reasoning for declining his request as follows:

22.1 The Claimant was not the only Cash Officer at the Bank's Kepong Branch and therefore the workload was not borne solely by himself;

22.2 Given that the Claimant had 18 years of experience as a Teller, the Bank deemed him competent and familiar with handling of cash and other duties as Cash Officer;

22.3 The Claimant was sent for a one-day classroom training at the Head Office where his roles and responsibilities were explained to him and other participants. Meanwhile, on-the-job training was conducted at the Kepong Branch;

22.4 The Bank had reviewed the medical assessment on the Claimant conducted by KPJ Rawang Specialist Hospital and subsequently monitored the Claimant's health, ensure he had medical care and the presence of other Bank officers to provide the necessary support for him to carry out his duties; and

22.5 Furthermore, no other Cash Officers made any complaints to the Bank in relation to their workload.

[23] COW-2, an Assistant manager in the Bank' Industrial Relations Department who was notified by the Claimant's immediate superior, Ms. Evon of the former's absence from 3rd June 2019, had testified as follows:

- 23.1 Vide email dated 16.07.2019, Ms. Evon complained to her that the Claimant had been absent without prior notice or approval since 03.06.2019, in order for her to escalate the matter for further action of the Bank's management;
- 23.2 Concerned by the Claimant's whereabouts and in view of the disruption to the Bank's operation at the Kepong Branch due to lack of manpower, Ms. Evon informed her that she tried several times to reach the Claimant but to no avail;
- 23.3 The Claimant had remained uncontactable by Ms. Evon until 15.07.2019 whereupon despite being asked to return to work by the latter, the Claimant continued to remain absent without approval or justification;
- 23.4 In reference to the Claimant's averments that he had passed his "medical certificates" to Ms. Evon and was told that he had been placed on unpaid leave, this is plainly untrue and without basis;
- 23.5 Nowhere is Ms. Evon's email dated 16.07.2019 did she mention that she had visited the Claimant and obtained his "medical certificates"; and

23.6 It is also illogical for the Claimant to say that Ms. Evon informed him he was on “unpaid leave” as according to COW-3, the Claimant’s wife had called him on 28.08.2019 to enquire on the status of his salary.

[24] During cross-examination and re-examination, COW-2 had steadfastly maintained that the Claimant was only contactable by Ms. Evon on 15.07.2019. in relation to the Claimant’s request to return to his position as a Teller, COW-2 explained that the Claimant’s request had been rejected since the Teller position had been occupied following his promotion to the position of Cash Officer. The witness went on further to state as follows:

24.1 As a Cash Officer, the Claimant was given a higher salary of the sum of RM5,828.00; and

24.2 The Claimant was promoted as a Cash Officer in view of the Bank’s operational requirements.

[25] COW-3 had explained before this Court that the Claimant had never attempted to contact the Bank to explain his prolonged absence and instead, it was his wife who had called the Bank to enquire on the status of his salary which had been withheld since 08.05.2019. The witness explained further that:

25.1 In line with Article 26 (1) (a) of the CA, the Claimant was entitled to 30 days of Sick Leave. The Claimant’s salary was withheld in accordance

with Article 26 (3) of the CA, as he had exceeded his medical leave entitlement for the year;

25.2 After explaining the reason the Claimant's salary was withheld to his wife, COW-3 requested for the Claimant's email address in order to serve the Termination Letter on him but was unfortunately only given the wife's email address instead;

25.3 As evident from the Claimant's Biographical Details, the Bank was never given any email address by the Claimant throughout his employment for the purpose of contacting him;

25.4 The Show Cause Letter was sent to the Claimant's last known given address by way of courier through the courier service, GDEX. However, the Show Cause Letter was returned to the Bank as it could not be delivered to the Claimant and he also did not respond to the calls made to him by the courier company (as evident from the GDEX Courier slip);

25.5 On 07.08.2019, the Bank again attempted to serve the Show Cause Letter to the Claimant by way of A.R Registered Post to his last known given address. However, the Show Cause Letter again could not be delivered as evident from the item-tracking page;

25.6 The Show Cause Letter was sent to the exact address which the Claimant had provided to the bank, as recorded in his Employee Profile.

In fact, it was also the same address which the Claimant had provided to the Industrial Relations Department;

25.7 Vide email dated 28.08.2019, the Termination Letter was served on the Claimant where the Bank informed him of his dismissal following his failure to provide any explanation as to why he had been absent from work without justification since 03.06.2019; and

25.8 The Claimant also did not reply to the email or at any other time thereafter raise any protest or appeal against his dismissal from the Bank.

[26] In relation to the Specialist Report from KPJ Sentosa KL Specialist Hospital dated 24.05.2019, COW-3 explained that it was only received by the Bank on 13.06.2019 which was 10 days after the Claimant had been absent from work without any explanation given to the management. The witness elaborated further as follows:

26.1 It is true that it was the Bank which sent the Claimant for assessment at KPJ Sentosa KL Specialist Hospital (“Specialist Hospital”) in view of the management’s concern of the welfare of its officer;

26.2 However, eve before the management could consider the Claimant’s condition as highlighted in the Specialist Report, the Claimant had already been absent from work and was unreachable despite many attempts by his immediate superior Ms. Evon;

26.3 The Claimant had never at any time requested for the Specialist Report. Furthermore, it does not make sense for the Claimant to say that he required the Specialist Report to seek treatment;

26.4 The Specialist Report is merely a notification for the Bank's attention of the Claimant's condition and not even a referral letter to any other hospitals or an appointment card; and

26.5 Logically and by practice, the Claimant would only need to produce his appointment card to the said Hospital for any treatment purposes and a copy of the Specialist Report would be in the Claimant's personal file at the Hospital.

[27] Further, under cross-examination, COW-3 confirmed that the Bank did in fact send the Show Cause Letter to the Claimant's last known given address by way of A.R. Registered Post. The witness highlighted further:

27.1 Ms. Evon had attempted to contact the Claimant since his absence from 03.06.2019 and was only able to do so on 15.07.2019; and

27.2 The Bank has no record of any "WhatsApp Group" which shows that the Claimant was in constant contact with Ms. Evon during his absence.

The Claimant's Case

[28] The Claimant avers that he was on medical leave for his illness of chronic-headache-tension headache / migraine, vertigo and sinusitis and he had passed the medical certificates to Ms. Evon.

[29] The Bank had appointed some 30 staffs from various branches including the Claimant for the new post of Cash Officer without first providing any training or courses before they started their works.

[30] That Ms. Evon had visited his house to collect the medical certificates and was constantly in contact with him.

[31] The Claimant never received the Show Cause Letter or any slips form either the post office or the courier service company.

[32] The Claimant only aware of the Show Cause Letter after he received the Termination Letter dated 27.08.2019 from the Bank.

Evaluation And Findings

[33] The Claimant had been absent form work for 43 days since 03.06.2019.

[34] Vide letter dated 16.07.2019, the Bank issued a Show Cause Letter where the Claimant was asked to give his explanation as to why he had been absent from work

without approval since 03.06.2019. The contents of the Show Cause Letter states as follows:-

“SHOW CAUSE”

It has been reported that you have been absent from work without prior approval since 3 June 2019 until today.

Your absence from work for more than 2 consecutive days without approval is a serious misconduct. You have breached the implied and express terms and conditions of your employment.

In view of the above, you are hereby required to submit your written explanation as to why disciplinary action should not be taken against you. Your reply should reach us by 23 July 2019 failing which, we shall presume that you have no explanation to offer in which event the Bank reserves the right to take disciplinary action against you as deemed fit including termination of service.

Please acknowledge receipt of this letter by signing and returning the duplicate to us.”

[35] Attempts were made to serve the Show Cause Letter to the Claimant’s last known given address. However, the Show Cause Letter was unable to be delivered to the Claimant.

[36] Learned counsel for the Claimant submits that in the Show Cause Letter dated 16.07.2019 signed by Puan Rozita, there was no indication as how the letter was sent. The return shipment from GD Express Sdn. Bhd. did not indicate which number the sender called and no indication of the Claimant's mobile number on the return shipment.

[37] Order 10 of the Rules of courts 2012 is in reference to the service of a writ and an originating summons by prepaid AR Registered post and not Show Cause Letter. Under the rule, a writ and an originating summons has to be sent to the defendant's last known address. In the instance case, the Show Cause Letter was also sent to the Claimant last known given address by way of courier service and A.R. Registered post.

[38] It is the duty and responsibility of the Claimant to inform the Bank of his absence from work. If the Claimant was sick and on medical leave, it is for the Claimant to inform the Bank and produce the necessary medical leave certificates. The Claimant did not have to wait for the Bank to issue him with a Show Cause Letter then only explains his absence to the Bank.

[39] The Claimant had all the avenues to reach out to the Bank either by calling the Bank himself or through his wife to inform the Bank the reasons of his absence from work, and if the Claimant was sick to produce the necessary medical leave certificates to the Bank.

[40] Although the Claimant's request to the Bank to revert him to his previous position as Teller had been rejected, as an officer of the Bank it is the responsibility of the Claimant to discharge his duties to the best of his ability, and in the course of his official duties, the Claimant is expected to conduct himself in a professional manner that will not bring the Bank's operation into disrupt.

[41] By virtue of the Claimant's absence from work without prior approval since 03.06.2019, the Claimant was deemed to have committed a willful breach of his contract of service. The Bank accordingly issued a Letter of Termination of Service dated 27.08.2019 to the Claimant at his last known given address. However, the Letter of Termination was again unable to be delivered to the Claimant.

[42] It was only on 28.08.2019 when the Claimant's wife reached out to the Bank to enquire on the status of Claimant's salary which had been withheld since 08.05.2019, then only the Bank managed to serve the Letter of Termination to the Claimant through his wife's email.

[43] As long serving officer of the Bank, the Claimant was well aware of the Bank's Human Resource Circulars requiring employees to produce medical leave certificates if they are absent on medical leave.

[44] The Claimant had been absent from work for 43 days and as the time of Letter of Termination was issued, he had been absent from work for 15 days. During cross-examination, the Claimant conceded that he in fact did not have any medical leave

certificates before the court to justify his absence between 03.06.2019 and 27.08.2019.

[45] The Claimant had failed to subpoena Mr. Evon to attend court to prove that Ms. Evon had visited the Claimant's house to collect his Medical Leave Certificated and told him that he was on "unpaid leave" and was on constant contact with him via WhatsApp.

[46] In the case of ***Kejuruteraan Superskill Sdn. Bhd. Perak v. Kesatuan Pekerja-Pekerja Perusahaan Alat-Alat Pengangkutan Dan Sekutu [1994] 2 CLJ 779***, it was held that:-

[1] In appraising ss. 15(2) and 60F(2) (b) of the Employment Act 1955 respectively, the Industrial Court had rightly put the burden of proof on the Employee. The Employee successfully discharged burden by having tendered in evidence the medical certificates supported by his wife's evidence that attempts were made to inform the applicants of the reasons for his absence.

[47] Therefore, in the instant case the burden is on the Claimant to subpoena Ms. Evon to prove his averments.

[48] There is no evidence before the court that the Claimant had been receiving medical treatment between 03.06.2019 and 27.08.2019.

[49] The Claimant had not attempted to inform the Bank of such excuse prior to or at the earliest opportunity during such absence.

[50] The Claimant's had exceeded his medical leave entitlement for the year 2019 and at such, the Bank has the absolute right to stop paying his salary from 08.05.2019.

[51] Vide letter dated 27.08.2019, the Claimant was dismissed by the Bank for his failure to provide a reason to justify his absence since 03.06.2019 as per the Show Cause Letter.

[52] The Claimant did not appeal to the Bank against his dismissed.

[53] The Claimant had failed to rebut the presumption under section 15(2) of the Employment Act 1955 by providing that he had a reasonable excuse for his absence and had informed or attempted to inform the Bank of his whereabouts.

[54] In the case of *Milan Auto Sdn. Bhd. v. Wong Seh Yen* [1995] 4 CLJ 449, it was decided that the functions of the Industrial Court is as follows:

“As pointed out by the Court recently in Wong Yuen Hock v. Syarikat Hong Leong Assurance Sdn. Bhd. [1995] 2 MLJ 753, the function of the Industrial Court in dismissal cases on a reference under s. 20 is twofold, first 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”.

Absenteeism is a serious misconduct as it goes to the root of the contract of employment between an employee and the employer. An employee is employed to carry out certain jobs that he is hired to do in return for a salary earned from the work that he does for the employer. In ***Zainudin Bin Kassim v. Johan Ceramic Berhad*** [2008] 2 LNS 1446, the Industrial Court had stated the following:

“the right to control employees is a distinguishing feature of a contract of employment. The right to control implies the right to ask the employee what work to do. It is a dominant characteristic in the relationship of employer and employee, which marks off the employee from an independent character. As such, the employee must subject himself to the said control and behave accordingly. (Misconduct in Employment by B.R. Ghaiye at p. 42)”

[55] Further, in the case of ***Serangan Kuppusamy v. Maju Jutabina Sdn. Bhd.*** [2017] 1 ILR 509 Industrial Court stated the following:

“[54] In this regard, the case of Guna Ratnam S. Subramaniam v. Shin-Etsu Polymer (Malaysia) Sdn. Bhd. [2011] 3 ILR 578 (Award No. 992 of 2011) where the Industrial Court held that the dismissal had been with just cause and excuse when the claimant had shouted at, used vulgar words on and threatened some people working with him and also been absent from the workplace without leave.

[emphasis added]

[56] It is trite law that absenteeism from work without reasonable justification or approval from the employer amounts to serious misconduct which would have justified the summary dismissal of an employee. (**Crowne Plaza Riverside Kuching v. Mohamad Zulkarnaen Suhaili [2000] 2 ILR 148**).

[57] In the case of **Syarikat Sistem Penerbangan Malaysia Bhd v. Harbanas Singh S. Natha Singh [1994] 2 ILR 1172**, the employee therein had been absent on various days purportedly on medical grounds although no medical certificates were produce. It was held that the dismissal was with just cause.

Domestic Inquiry (DI)

[58] In the present case, a DI was not conducted before the Claimant was dismissed. In the case of **Wong Yuen Hock v Syarikat Hong Leong Assurance Sdn. Bhd. & Another Appeal [1995] 3 CLJ 344** which followed the decision of the Supreme Court in **Dreamland Corporation (M) Sdn. Bhd. v Chong Chin Sooi & Industrial Court of Malaysia [1988] 1 CLJ 1; [1988] 1 CLJ (Rep) 39**, a defective inquiry or failure to hold a DI is not a fatality but only an irregularity curable by de novo proceedings before the Industrial Court.

[59] In considering the dismissal of the Claimant by the Company, the Court has also applied the principle of proportionality of punishment as stated in the case of **Norizan Bakar v. Panzana Enterprise Sdn. Bhd. [2013] 4 ILR 477**. The Claimant's dismissal was upheld by the Federal Court due to the gravity of the misconduct committed which had destroyed the trust and confidence that the Company in that

case would have placed on him. In the instant case, the Claimant had violated the confidence and trust that the Bank had reposed on him due to his absenteeism.

[60] In *Pearce v. Foster [1886] 17 CEED 536*, Lord Esher MR succinctly stated the following in relation to the duty of a servant to his master.

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

Conclusion

[61] Based on the factual matrix and circumstances of this case, this court finds that the punishment of dismissal was appropriate in this case and was indeed commensurate with the Claimant’s misconduct. The court is satisfied that the Bank has proven, on the balance of probabilities that the Claimant’s dismissal was with just cause or excuse. Accordingly, the Claimant’s claim is hereby dismissed.

In arriving at this decision, this court has acted with equity and good consciences and the substantial merits of the case without regard to technicalities and legal form as stated under section 30 (5) of the IRA.

HANDED DOWN AND DATES THIS 06TH DAY OF MAY 2021

-signed-

**(TEOH CHIN CHONG)
CHAIRMAN
INDUSTRIAL COURT, MALAYSIA
KUALA LUMPUR**