**INDUSTRIAL COURT OF MALAYSIA**

**CASE NO. : 3/4-2210/19**

**BETWEEN**

**MUHTAR BIN HASHIM**

**AND**

**ICE PETROLEUM ENGINEERING SDN. BHD.**

# AWARD NO. : 1178 OF 2021

| | | |
|---|---|---|
| **Before** | : | **PUAN ANNA NG FUI CHOO - Chairman**<br>(Sitting Alone) |
| **Venue** | : | Industrial Court Malaysia, Kuala Lumpur |
| **Date of Reference** | : | 06.11.2019 |
| **Dates of Mention** | : | 04.12.2019, 09.01.2020, 08.03.2021 |
| **Dates of Hearing** | : | 24.09.2020, 25.09.2020, 17.03.2021, 23.04.2021 |
| **Claimant's Written Submission** | : | 07.04.2021, 20.04.2021 |
| **Company's Written Submission** | : | 14.04.2021, 21.04.2021 |
| **Representation** | : | Mr. Kitson Foong and Mr. Nicholas Poon Qianfan<br>Messrs Kit & Associates<br>Counsels for the Claimant<br><br>Mr. Dinesh Praven Nair<br>Messrs Dinesh Praveen Nair<br>Counsel for the Company |

**Reference**

This is a reference made under section 20(3) of the Industrial Relations Act 1967 (the Act) arising out of the alleged dismissal of **MUHTAR BIN HASHIM** (hereinafter referred to as "the Claimant") by **ICE PETROLEUM ENGINEERING SDN. BHD.** (hereinafter referred to as "the Company") on 26 July 2019.

## AWARD

**[1]** The Ministerial reference in this case required the court to hear and determine the Claimant's complaint of alleged dismissal by the Company on 26 July 2019.

**Facts**

**[2]** The Claimant commenced employment with the Company as a Chief Executive Officer (CEO) on 1 April 2015 via a letter of appointment dated 31 March 2015 (pages 1 to 3 of the Claimant's Bundle of Documents 1 (CLB1)). He was paid a basic monthly salary of RM30,000 but this salary was later increased to RM50,000.00 *vide* the Company's letter dated 1 April 2016. In or around June 2018, the Claimant averred that the other director of the Company (J Abd Jalil) had proposed that the senior management personnel of the Company including the Claimant, to take a temporary 50% cut in their salary. The Claimant alleged that it was with the understanding that the 50% would be reimbursed to the Claimant in the future.

**[3]** The Claimant received a letter from the Company on 11 June 2019 and it was dated 21 May 2019. The Claimant alleged that *vide* the

said letter, the Company unilaterally reduced his salary to RM10,000.00 and other benefits which were stated in the 1 April 2016 letter were withdrawn (pages 84 to 85 of CLB1). The Claimant contended that he never agreed to such a unilateral reduction of salary and withdrawal of benefits nor was such matter discussed with him. Subsequently, the Claimant sent a letter to the Company on 16 July 2019 stating that he was not agreeable to the terms and conditions of the 21 May 2019 letter. The Claimant took the view that such a unilateral decision in revising his salary and benefits tantamount to a breach of his contract of employment. The Claimant then demanded the Company to maintain, reinstate his remuneration and benefits and in the event of such failure by the Company within seven days, the Claimant shall consider the legal remedies available including constructive dismissal. The Company did not respond to the Claimant's letter which led the Claimant to send the 26 July 2019 letter (page 91 of CLB1), considering himself constructively dismissed.

**Preliminary Issue – Issues and documents not pleaded in the Company's Statement in Reply**

**[4]** The Claimant raised three preliminary issues and objections before hearing commenced that the court should not allow the Company to produce 12 volumes of the Company's bundle of documents (BOD) totalling over 3000 pages which were filed on the eve of the hearing day. The relevancy of the documents in the voluminous bundles and the matters raised in the Company's witness statements were also objected to by the Claimant's counsel on the ground that the matters had not been pleaded. The court insisted to proceed with the hearing on 24 September 2020 as this case had been postponed before due to the Movement Control Order 1.0.

**[5]** The court informed the parties that this court will rule on these preliminary objections in the final award, which the court proceeds to do so now. Nevertheless, the court had marked all the bundles filed by the Company which the court opined was merely for ease of reference. This court also stated that the court shall act according to equity and good conscience according to section 30 (5) of the Act. Contrary to what the learned Company's counsel had submitted that the "bundles of documents had been accepted and marked for reference during the trial", it is the court's decision that the marking of those bundles by the court had not meant in any way that all the documents had been proven to be relevant and admissible.

**[6]** It was never denied that there were no documents annexed to the Company's Statement in Reply (SIR) dated 8 January 2020 and which were filed in court. There was also no reference whatsoever to any document in the SIR. The Company's learned counsel had argued that the emails exhibited in the Company's Bundle of Documents 1 (COB1) to COB12 as contained in pages 1700 to 3757 of those bundles are part of the Company's pleaded case under paragraph 7 of the SIR which reads,

> "The Company pleads that the reason behind the reduction of the Claimant's salary is due to the Claimant's failure to contribute and to assist the Company regarding several issues, especially operational and financial matters."

**[7]** Rule 10(3) of the Industrial Court Rules 1967 (the Rules) provides for the matters that can be raised in a SIR and parties should at best, adhere to the Rules so that the opposite party (and the court)

will not be taken by surprise, as in this case. It is trite law that parties are bound by their pleadings - see the Federal Court decision in the case of *Ranjit Kaur Gopal Singh v. Hotel Excelsior (M) Sdn. Bhd* [2010] 8 CLJ 629. It was also decided in the aforementioned case that section 30(5) of the Act cannot be used to override or circumvent the basic rules of pleading. In addition, the Federal Court stated, "The appellant must plead its case and the Industrial Court must decide on the appellant's pleaded case. This is important in order to prevent element of surprise and provide room for the other party to adduce evidence once the fact or an issue is pleaded."

**[8]** The court agrees with the learned Claimant's counsel's submission that it was absurd and unfounded how a total of 2057 pages of the Company's 12 bundles of documents could be used to substantiate a single paragraph 7 of the SIR, especially when there was no reference made to any emails in paragraph 7 of the SIR. Clearly it was an after thought of the Company to justify the deduction of the Claimant's salary due to his alleged failure to contribute and to assist the Company regarding several issues, especially operational and financial matters, by filing the 12 bundles of documents. In fact, it was the Company's attempt, through these 12 bundles, to prove the Claimant's inaction or omissions getting work done as alleged. The court and the Claimant cannot be expected to comb through 12 bundles of documents which the Company had found fit to plead only in one sentence under paragraph 7 of the SIR.

**[9]** Having considered the authorities cited and the submissions of the parties, this court rules that COB1 to COB12 could not be used to form part of the Company's pleaded case in the SIR. Hence, they are to be disregarded by this court and will not be used to substantiate the

Company's case in issues which had not been pleaded.

**The Function of the Industrial Court**

**[10]** The Industrial Court's function was stated by his Lordship Salleh Abbas LP in the case of *Wong Chee Hong v. Cathay Organisation (M) Sdn. Bhd* [1988] 1 CLJ (Rep) 298 at page 302:

> "When the Industrial Court is dealing with a reference under section 20, the first thing that the Court will have to do is to ask itself a question whether there was a dismissal, and if so, whether it was with or without just cause or excuse.".

**The Claimant's Case**

**[11]** The Claimant was the only witness in the Claimant's case. He told the court that the basic salary he received when he commenced employment on 1 April 2015 was RM30,000. On 1 April 2016 it was adjusted to RM50,000.00 and he was also paid other benefits. In June 2018, the Claimant alleged that Jalil (COW1), the Claimant and a few others had to take a temporary 50% cut in their salaries with the understanding that the 50% will be reimbursed in the future. The reason given by COW1 was that the Company was purportedly not doing well. The Claimant said he did not question COW1 as such an adjustment was only temporary. However, the Claimant said the Company's audited accounts ending 31 March 2018 showed that the Company's profit after tax was RM3,596,514.00.

**[12]** It was on 11 June 2019 that the Claimant discovered that a letter dated 21 May 2019 had been left on his desk. The contents of the said letter sought to reduce the Claimant's salary to RM10,000.00 and other benefits he had been given. The Claimant acknowledged the fact that on 20 May 2019, he had received an email from COW1 (page 83 of CLB1) who was then in Kuwait. The email stated that the Company had to revise his salary package due to the circumstances the Company was in and hoped for the Claimant's understanding in the matter. The email also attached the unsigned copy of the letter dated 21 May 2019.

**[13]** The Claimant testified that he disagreed with the unilateral revision of his salary and benefits so on 21 May 2019, he replied to COW1's email asking if the monthly salary could be adjusted to RM20,000 instead, stating that he had commitments. The Claimant said no one replied this email of his and neither was there any request for his reply or feedback to the email dated 21 May 2019. The Claimant further alleged that the Company had not been paying his salary regularly since June 2018 and the Company was also owing him unpaid expenses' claim and allowances. In that regard, the Claimant was of the view that the letter dated 21 May 2019 had been left on his desk by mistake. However, around 2 July 2019, the Claimant noticed that the Company had on 1 July 2019 deposited a sum of RM8,574.94 into his bank account, showing that the salary reduction had taken place.

**[14]** The Claimant then proceeded to consult a lawyer on 11 July 2019 regarding the salary reduction. After obtaining legal advice, the Claimant sent a letter to the Company on 16 July 2019 *vide* email and by hand (pages 86 to 90 of CLB1). On 24 July 2019, the Claimant and COW1 had a meeting to discuss among others, the alleged unilateral variation

of the Claimant's contract of employment but there was no positive outcome from the said meeting. The Company also did not reply to his letter dated 16 July 2019. Therefore, the Claimant sent his letter dated 26 July 2019 (pages 91 and 92 of CLB1) informing the Company that he was constrained to consider himself constructively dismissed as he took it that the Company no longer had any intention to be bound by the original terms of his employment contract.

**[15]** The next day on 27 July 2019, the Claimant discovered that he was denied access to the Company's premises. The Claimant alleged that the access codes had been changed by the Company. Subsequently on 29 July 2019, the Claimant received a letter from the Company which accused him for purportedly failing to perform as the CEO of the Company. The Claimant was also asked to report for work immediately (pages 93 to 96 of CLB1). The Claimant said he was very surprised to receive the Company's letter titled "Re: Your Non Performance as Appointed Chief Executive Officer" as there had been no previous complaints against him by the Company.

**[16]** On 1 August 2019, the Claimant sent his representation to the Industrial Relations Department (IRD) for wrongful dismissal. On 24 August 2019, the Claimant received a letter from the Company (pages 111 to 117 of CLB1) as a reply to his letter dated 30 July 2019 (pages 97 to 99 of CLB1). In the said letter which was dated 22 August 2019, the Claimant testified that the Company continued to accuse him for failing to perform as the CEO. The Claimant said the issue regarding his constructive dismissal was ignored or denied completely. Instead, the Company deemed that the Claimant had purportedly resigned from his position as the CEO. The Claimant highlighted the fact that the

Company's letter dated 22 August 2019 was only sent to him almost a month after he had sent the letter dated 30 July 2019 and after the reconciliation meeting in the IRD on 17 September 2019 had been fixed.

**[17]** The Claimant also gave evidence regarding his last drawn salary. He claimed that there was a temporary reduction in salary of the RM25,000 since June 2018. Therefore, it did not constitute a waiver or permanent variation of his contract of employment. The Claimant was last paid the salary of RM50,000.00 in May 2018 and he considered that as his last drawn monthly salary. The Claimant also refuted the Company's allegations that he had refused to show up for work, evaded the Company and refused to attend meetings and to sign the Company's documents required of a director of the Company. The Claimant also testified that he was no longer a Company director from 18 November 2019.

**[18]** The Claimant denied that the reduction of his salary was due to his failure to contribute and to assist the Company in several issues, especially operational and financial matters. The Claimant also stated that there was no verbal communication from the Company that he had been advised on his irresponsibility. The Claimant had filed a High Court civil suit against the Company pursuant to section 346 of the Companies Act 2016 in his capacity as a shareholder of ICE Petroleum Ventures Sdn Bhd, the parent company of the Company. Hence, the Claimant disagreed it was an insinuation that he was no longer interested to work for the Company.

**The Company's Case**

**[19]** The Company called three witnesses in the hearing comprising of Mr. J Abd Jalil Maraicar (COW1) the Group Managing Director, Mr. Mohd Asmadi (COW2) the Company's advisor and Mr. Choo Thin Chee (COW3) the Technical Advisor. It is the Company's pleaded case that the reason behind the reduction of the Claimant's salary was due to the Claimant's failure to contribute and to assist the Company in several issues, especially operational and financial matters. These matters were elaborated in COW1's witness statement.

**[20]** COW1 alleged that the Claimant was never constructively dismissed as the Claimant was a director and the CEO/Managing Director of the Company and he was given the benefits and the authority to manage the Company. He said it was within the knowledge of the Claimant that the Company was not financially stable. Furthermore, the Claimant was aware that the reduction of salary was inevitable as the Claimant had failed to carry out his duties and responsibilities under his scope of work. COW1 also alleged that the Company had requested for the Claimant to return to work after the reduction in salary but the Claimant had refused to do so. The Claimant also refused to communicate with any of the Company's staff regarding work. Therefore, COW1 alleged that the Claimant was never constructively dismissed but the Claimant had refused to go to work which had then led to the termination of his contract with the Company.

**[21]** COW1 said the Company's decision for the reduction of salary in June 2018 due to the Company's financial instability was genuine as the demands by third parties could easily be accumulated and estimated to

be around RM4.2 million. COW1 alleged that the Claimant had failed to deliver and carry out his works as the CEO/MD of the Company. COW1 also claimed that the Claimant is now out on a personal vendetta against the Company and the staff. Moreover, the Claimant had commenced a civil suit against COW1 and other directors of the Company and had also lodged a police report against COW1 for allegedly misappropriating the Company's monies.

**[22]** COW2 testified on the Claimant's action for signing a letter of termination for a staff whose contract of employment was terminated with immediate effect and without proper ground. Subsequently, the dismissal case was referred to the Industrial Court and the case was settled after the Company made an *ex gratia* payment to the former staff. It was alleged that the Claimant had failed to act in the best interest of the Company.

**[23]** COW3 told the court that the Claimant was rarely involved or participated in technical and operational matters. The Claimant was alleged that in meetings, he was passive and merely an audience/bystander and did not contribute by talking or presenting.

**The Law Relating to Constructive Dismissal**

**[24]** The Claimant has pleaded that he was constructively dismissed by the Company and the burden is on him to prove that there were indeed grounds for him to walk out of his employment. In these circumstances, it is important to refer to the law relating to constructive dismissal and what has been applied by the Malaysian courts. It has been firmly established by the Supreme Court in the case of *Wong Chee Hong v. Cathay Organisation (Malaysia) Sdn Bhd* [1988] 1 CLJ (rep) 298

when Salleh Abas LP referred to the case of *Western [E.C.G] Ltd. v. Sharp* [1978] IRLR 27 and said:

> "According to the Court of Appeal in *Western Excavating (E.C.G.) Ltd. v. Sharp* [1978] IRLR 27, it means no more than the common law right of an employee to repudiate his contract of service where the conduct of his employer is such that the latter is guilty of a breach going to the root of the contract or where he has evinced an intention no longer to be bound by the contract. In such situation the employee is entitled to regard himself as being dismissed and walk out of his employment.".

**[25]** Lord Denning MR in the landmark English case of *Western Excavating (ECC) Ltd v. Sharp* [1978] 1 QB 761 decided that,

> "If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates his contract by reason of the employer's conduct. He is constructively dismissed. The employee is entitled in those circumstances to leave at the instant without giving any notice at all or alternatively he may give notice and say he is leaving at the end of the notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once. Moreover he must make up his mind soon after the conduct of which he complains for if he continues for any length of time without leaving, he will lose his right to treat himself as

discharged. He will be regarded as having elected to affirm the contract.".

**[26]** In the case of *Quah Swee Khoon v. Sime Darby Bhd* [2000] 1 CLJ 9 at page 20 his Lordship Gopal Sri Ram JCA explained the duty of the Industrial Court in constructive dismissal cases:

> "In the normal case, an employer either dismisses the servant for cause or terminates the employment under a contractual provision that provides for notice of termination. As a matter of law, the Industrial Court is unconcerned with labels. It does not matter that the parties refer to the particular severance of the relationship as a termination or a dismissal. It is for the Industrial Court to make the determination. Having found that there was in fact a dismissal or the *bona fide* exercise of the contractual power to terminate, the Industrial Court must, in the former case, decide whether the dismissal was for just cause or excuse. If, on the other hand, it comes to the conclusion that there was a *bona fide* termination, then *cadit quaestio*...
>
> The task is no different where a case of constructive dismissal is alleged. The Industrial Court must in such a case also determine firstly whether there was a dismissal. And secondly, whether that dismissal was with just cause or excuse. That is a statutory formula employed by S.20(1) of the Act...".

**Evaluation of Evidence and Findings**

**[27]** This court must reiterate that it is trite law in constructive dismissal cases that the burden is on the Claimant, on the standard required which

is on a balance of probabilities, to prove that he was entitled to treat himself constructively dismissed and the following need to be established:

a) that the Company had by its conduct breached the contract in respect of one or more of the obligations owed to the Claimant; the obligations breached may be in respect of either express terms or implied terms, or of both;

b) that the terms which had been breached go to the foundation of the contract; or, stated in other words, the Company had breached one or more of the essential terms of the contract;

c) that the Claimant, pursuant to and by reason of the aforesaid breach, had left the employment of the Company; that is, that he had elected to treat the contract as terminated; and

d) that the Claimant had left at an appropriate time soon after the breach complained of; that is, that he did not stay on in such circumstances as to amount to an affirmation of the contract, notwithstanding the breach of the same by the employer.

**[28]** The central issue in this case is the reduction of the Claimant's salary which the Claimant alleged was unilaterally reduced by the Company *vide* the Company's letter dated 21 May 2019. It was contended that the Claimant had never agreed to such a reduction of salary and the withdrawal of benefits nor was such a matter discussed with him. The Claimant then sent his letter of protest dated 16 July 2019 to COW1 and Dato' Rahim, another director of the Company. The Company failed to respond to the Claimant so *vide* the next letter dated 26 July 2019, the Claimant informed the Company that he considered himself constructively dismissed.

**[29]** It is evident from the documentary evidence adduced that the Company had effected a reduction in the Claimant's salary and this fact is not disputed by the Company. In the High Court decision in the case of *Kejuruteraan Samudra Timur Sdn. Bhd. v. Seli Mandoh & Anor* [2004] 1CLJ 393, the High Court held that a unilateral reduction of the claimant's salary amounted to a repudiation of his contract of employment and was thus a fundamental breach. In this case, the Company had committed a breach of a fundamental term of the Claimant's contract by reducing his salary. The pivotal issue left to be decided in this case hinges on whether the Claimant had left at an appropriate time soon after the breach complained of; that is, that he did not stay on in such circumstances as to amount to an affirmation of the unilateral variation of the term of his contract of employment.

**[30]** The Claimant argued that he had immediately responded and indicated his disagreement when he first received the email on 20 May 2019 from the Company via COW1 attaching the unsigned copy of the 21 May 2019 letter. The Claimant said he had disagreed with the unilateral revision of his salary and benefits. The court has perused the

Claimant's said reply on 21 May 2019 to COW1's email in which the Claimant briefly wrote, “I have commitments. Can the monthly salary be adjusted to RM20,000 per month please?” The court observes that the Claimant had asked for the salary to be revised to RM20,000 but he had not expressed objection to a reduction of the salary. Furthermore, it is clear to the court that the Claimant was already put on alert that the Company was going to reduce his salary. As for the quantum, the Claimant had requested the salary revision to be adjusted upwards instead of putting his objection when COW1 emailed him the Company's decision on 20 May 2019. The Claimant proceeded to doubt if the Company had obliged on his request as the Company had not responded to his request on 21 May 2019.

**[31]** The next set of events unfolded in the office on 11 June 2019 when the Claimant discovered that the 21 May 2019 letter which had been signed by COW1 and Dato' Rahim, was left on the Claimant's desk. In the hearing, the Claimant made an issue out of the fact that the Claimant was not asked to acknowledge receipt of the 21 May 2019 letter and neither did the letter contain a column for acknowledgement. Interestingly, the Claimant had viewed at that time that the letter dated 21 May 2019 had been left on his desk by mistake. On or around 2 July 2019 which was three (3) weeks later, it finally dawned upon the Claimant that the Company had deposited a lesser amount into his bank account. After that, the Claimant sought legal consultation on 11 July 2019 and subsequently issued the letter on 16 July 2019 to the Company to indicate his disagreement on the variation of his salary.

**[32]** The Claimant contended that he only obtained confirmation of the reduction of his salary on 2 July 2019. He claimed that he had acted promptly by seeking legal advice on 11 July 2019 and thereafter sent the

16 July 2019 letter. The learned Claimant's counsel therefore submitted that the Claimant had acted during the appropriate time of around 14 days after the confirmation of the unilateral reduction of salary by sending the 16 July 2019 letter. In support of this argument, the Claimant's counsel relied on the case of *Heffiyanti Abdul Sukor v. NZ New Image Sdn. Bhd* [2014] 2 LNS 1439 in which the Industrial Court had taken into account the festive season of Chinese New Year and a shorter month of 28 days and ruled that a mere three weeks did not constitute a delay in her walking out of her employment. The facts in *Heffiyanti Abdul Sukor's* case can be distinguished from the present case. The claimant in that case had repeatedly appealed against the company's decision to reduce her salary but there was no reply from the company. The claimant only realized that her salary had been deducted after receiving her pay and thereafter she immediately protested and walked out of her employment.

**[33]** The Claimant contended that the Company did not revert to him after the 21 May 2019 email. The court also observed that the Claimant had not taken any initiative to check what the Company was going to do next. The Claimant only acted after obtaining confirmation of the reduction of his salary on 2 July 2019. Such inaction was to the extent that on 11 June 2019 when the Claimant discovered the 21 May 2019 letter (which had been signed by COW1 and Dato' Rahim) had been left on his desk, the Claimant said he still thought it was put there by mistake. The court is unable to believe that the Claimant could have such a perception, more so when he had been notified on 20 May 2019 about the salary cut and the same letter albeit bearing two signatures, was on his desk. In the court's opinion, the Claimant was merely choosing to ignore what was obvious. He was adopting the "waiting and see" approach on the next step the Company was going to take.

**[34]** The Claimant did not do anything despite receiving the signed letter left on his desk on 11 June 2019 until 2 July 2019 when the reduction of his salary was confirmed when he saw the lesser amount credited into his account. The Claimant then sought legal advice and it was only two weeks later on 16 July 2019 that he sent his written protest letter to the Company (page 86 of CLB1). The period from the day he was first notified of the Company's intention to reduce his salary on 20 May 2019 to 16 July 2019 was almost two months. The Claimant walked out of the Company on 26 July 2019 and that exceeded two months from the day the Company conveyed its intention to reduce the Claimant's salary.

**[35]** The court agrees with the Company's submission that the Claimant could consider himself constructively dismissed on 21 May 2019 when he was first informed of the salary reduction but he had continued working in the whole month of June till 26 July 2019. It is hard to believe that the Claimant could still think that the Company was still reconsidering his proposal. After all, it was not the first time in the Claimant's experience in the Company that the Company had gone on a salary reduction.

**[36]** Having heard and considered the Claimant's evidence which were not much in dispute, the court finds that there was an inordinate delay on the part of the Claimant for walking out of his employment. He could have raised his objections on 21 May 2019 itself but he had asked the Company for the quantum of reduction to be decreased. Subsequently, he did not do anything to show his objection until 16 July 2019. Clearly by then, the Claimant had lost his right to treat himself constructively dismissed. The Claimant's failure to make up his mind soon after the alleged breach of the fundamental term of his contract, as he had

continued working for another two months without leaving the Company, had lost him the right to treat himself as dismissed. From the set of facts presented, the court regards the Claimant as having elected to affirm the breach of his contract.

**[37]** The burden of proof was on the Claimant to prove that there was a fundamental breach of terms in his contract of employment and he was entitled to treat himself constructively dismissed. Having considered the law, the facts and the evidence adduced by the Company and the Claimant, the court finds that the Claimant has failed to discharge the burden as the Claimant had stayed on in the Company after the breach, thus affirming the breach of the contract.

**Decision**

**[38]** This court rules that there was no dismissal as the Claimant has failed to prove that he was entitled to treat himself constructively dismissed. Hence, there is no necessity to delve further to decide if the Claimant's dismissal was with just cause or excuse. Accordingly, the Claimant's claim against the Company is dismissed.

**[39]** In arriving at this decision, the court has acted in equity, good conscience and considered the substantial merits of the case without regard to legal technicalities and legal form.

**HANDED DOWN AND DATED THIS 19th DAY OF JULY 2021**

***-signed-***

**( ANNA NG FUI CHOO )**
**CHAIRMAN**
**INDUSTRIAL COURT, MALAYSIA**
**KUALA LUMPUR**