

IN THE INDUSTRIAL COURT OF MALAYSIA

CASE NO.: 22/4-1639/19

BETWEEN

SARAH SYAMIMI BINTI MOHAMAD RODZI

AND

AERODARAT SERVICES SDN. BHD.

AWARD NO. : 1262 OF 2021

Before : **Y.A. TUAN PARAMALINGAM A/L J. DORAISAMY**
- Chairman (Sitting Alone)

Venue : Industrial Court Malaysia, Kuala Lumpur

Date of Reference : 23.08.2019

Date of Mention : 07.10.2019; 14.11.2019; 22.01.2020; 14.12.2020; 28.04.2021
& 20.05.2021

Date of Hearing : 07.02.2020; 07.08.2020; 25.09.2020 & 24.03.2021

Representation : Pn. Masturina Binti Mohd. Rodzi together with Ms. Annesha
Mary Koshy
Messrs. Edwin Lim & Suren
Counsel for the Claimant

Ms. Wong Keat Ching together with Cik Syazwani Binti
Suhaimy & Ms. Teh Jovaynne
Messrs. Zul Rafique & Partners
Counsel for the Company

REFERENCE :

This is a reference made under Section 20 (3) of the Industrial Relations Act 1967 (Act 177), arising out of the dismissal of **Sarah Syamimi Binti Mohamad Rodzi** (hereinafter referred to as "*the Claimant*") by **Aerodarat Services Sdn. Bhd.** (hereinafter referred to as "*the Company*") on 1 March 2019.

AWARD

[1] The Ministerial reference in this case required the Court to hear and determine the Claimant's complaint of dismissal by the Company on 1 March 2019.

I. Procedural History

[2] The Court received the letter pertaining to the Ministerial reference under Section 20(3) of the Industrial Relations Act 1967 on 27 August 2019.

[3] The case came up for mention on 7 October 2019, 14 November 2019 and 22 January 2020.

[4] The trial proceeded on 7 February 2020, 7 August 2020, 25 September 2020 and concluded on 24 March 2021.

II. Parties Position On The Merits

(a) The Claimant

[5] The Claimant commenced employment with the Company on 1 December 2016 as a Senior Officer stationed at Sultan Abdul Halim Airport, Alor Setar, Kedah with a salary of RM2,000.00 per month. She was also entitled to productivity incentive of up to RM500.00 per month under the Contract of Employment. The Claimant was later confirmed in her employment on 29 May 2017.

[6] The Claimant contends that throughout her employment with the Company:-

- i. she never took a single sick leave and/or emergency leave from work; and
- ii. the Company in return had been paying the full productivity incentive of RM500.00 per month to the Claimant.

[7] On 1 March 2019, the Company unlawfully, illegally and without just cause or excuse dismissed the Claimant from her employment with the Company.

[8] The events leading to her termination are as follows:-

- i. On 7 October 2019, the Claimant was instructed by the Company to attend a meeting with the Head Passenger Services and Operations Management on 11 February 2019 at ADS Office, located at FMB Kuala Lumpur International Airport;

- ii. The Claimant attended the meeting on 11 February 2019, however there was actually no meeting with the Head Passenger Services and Operations Management. Instead, and to the Claimant's surprise, the alleged meeting on 11 February 2019 was attended by 3 of the Company's representative from the Business Integrity Department, wherein the meeting was in actual fact an investigation by the Business Integrity Department team against the Claimant. It was only brought up to the Claimant's attention for the first time during the said meeting on 11 February 2019 that the Claimant was accused of misconduct of selling the Claimant's entitled Family Travel Program (FTP) slots to a third party without proper authorisation or justification;
- iii. The Claimant believes that the Company purposely issued out the fake invitation to her to attend the meeting/investigation on 11 February 2019 with the intention of wrongfully forcing the Claimant to make admissions to the allegations made against her by the Company;
- iv. During the meeting/investigation on 11 February 2019, the Claimant was put under severe duress by the Company's representatives to the extent that the Claimant admitted to several untrue facts proposed by the Company's representatives, which admissions were extremely prejudicial to the Claimant;
- v. Subsequent to the meeting/investigation on 11 February 2019, the Claimant wrote an email dated 13 February 2019 to the Company's representative who attended the said meeting/investigation to request that all wrongful admissions made by the Claimant during the said

meeting be withdrawn and also requested that the allegations made against the Claimant to be investigated in a just and fair manner. The Company's representative merely responded by saying that the case had been referred to the Industrial Relations Department;

- vi. On 15 February 2019, the Claimant received a Show Cause letter dated 13 February 2019 from the Company. The allegation against the Claimant is as follows:-

“That you as a Deputy Supervisor of the Company between 16 January 2019 until 31 January 2019 were found to have participated in an unauthorised trading activities involving the Company's flight tickets under the Family Travel Program (Relatives and Friends) where you have sold the entitled slots to a third party without proper authorisation or justification and registered the 05 following names in the Company's iJourney system:-

- 1) Nizamuddin Nazhan Bin Muhammad Nizam;*
- 2) Muhammad Nizam Bin Rahman;*
- 3) Che Roziana Binti Mohd. Roni;*
- 4) Nizamuddin Hafiz Bin Muhammad Nizam;*
- 5) Nur Aesya Naura Binti Muhammad Nizam*

The alleged act of misconduct committed by you tantamount to a breach of the Company's policies which includes but not limited to the Malaysia Aviation Group – Industrial Relations Handbook”.

- vii. On 16 February 2019, the Claimant responded to the Show Cause letter dated 13 February 2019 *via* her email to the Company's representative, En. Nor Azuan Ismail, wherein the Claimant explained, *inter alia*, as follows:-
- a. denied selling the Claimant's entitled slots or receiving any monies for the nomination of the 5 names listed in the Show Cause letter and further denied any involvement and/or participation in any unauthorised trading activities involving the Company's flight tickets;
 - b. the 5 names listed in the Show Cause letter are in fact the Claimant's family friends;
 - c. the nomination of the 5 names in the Show Cause letter was done pursuant to the Company's policy; and
 - d. reiterated the Claimant's position over the 11 February 2019 meeting/investigation as stated in the Claimant's email dated 13 February 2019.
- viii. The Company did not respond to the Claimant's written explanation or call the Claimant for further clarification and/or explanation after 16 February 2019;
- ix. On 1 March 2019, merely 13 days after the Claimant issued her written explanation dated 16 February 2019, the Company issued a

Punishment Order dated 1 March 2019 dismissing the Claimant from her employment with immediate effect.

[9] The Claimant appealed against her dismissal but the Company however did not respond to the said appeal.

[10] The Claimant contends that her dismissal was done without just cause or excuse and in breach of the principles of natural justice. The Company had also wrongfully and unlawfully deducted the Claimant's full salary for February 2019 and withheld and/or deducted the Claimant's entitlement to overtime pay for the month of January 2019 and February 2019 in the sum of RM615.36, i.e. RM153.84 x 4 days of overtime during public holiday in January and February 2019. The Claimant's last drawn salary with the Company thus was only RM1,766.35 for the month of February 2019.

[11] The Claimant prays, *inter alia*, for reinstatement to her former position as a Duty Supervisor at the Sultan Abdul Halim Airport, Alor Setar, Kedah.

b. The Company

[12] The Company is a subsidiary of the Malaysia Aviation Group (MAG). The other subsidiary under MAG includes Malaysia Airlines Berhad.

[13] The Claimant was initially employed by the Company (previously known as “MAB Ground Handling Services Sdn. Bhd.”) as a Customer Services Agent under the Skim Latihan 1Malaysia (“SL1M”). MH Apprentice Programme with effect from 1 April 2016 to 31 March 2017.

[14] The Claimant’s last held position was as a Duty Supervisor with effect from 1 March 2017 and her last drawn basic salary was RM2,000.00 per month.

[15] The events leading to the Claimant’s dismissal from her services are as follows:-

- i. Sometime in January 2019, the Company, *via* screenshots of Facebook posting screenshots of the iJourney (myIDTravel) system, found out that the Company’s Family Travel Programme (“FTP”) slots were being offered to the public for a fee ranging between RM1,000.00 and RM3,000.00;
- ii. The Company conducted an investigation based on the said Facebook posting and discovered that the advertiser of the Facebook posting with the user name “Bijen Mohd” was actually the Claimant’s brother-in-law, Hafiz Jamaludin (“Hafiz”) and the screenshot of iJourney (myID Travel) system was for ticket booking of one Iylia Ayuni Binti Mohamad Rodzi (“Iylia”) who is the Claimant’s sister;

- iii. The Company then assigned a staff, one Khairulnisa Munirah Binti Khudzri ("*Nisa*") to approach Hafiz through WhatsApp to express her interest in purchasing the FTP slots, in which the Claimant's sister, who was also Hafiz's wife, lylia replied to Nisa *via* WhatsApp messages;
- iv. By WhatsApp, lylia told Nisa that she was selling the FTP slots for her sister who was working at MAS (Malaysia Airlines Berhad) during that time and that her husband was the one who had advertised the FTP slots on Facebook;
- v. Subsequently, an Investigation Interview was held with the Claimant by En. Syed Zafarullah Abdul Jaafar (COW-3; Head of Business Integrity Department) and Pn. Anis Izzaty Binti Razman (COW-2; Executive Business Integrity Department) on 11 February 2019 in relation to the sale of the FTP slots advertised on Facebook. The following transpired during the Investigation Interview:-
 - a. The Claimant confirmed that lylia is her sister and that Hafiz is lylia's husband, who is also her brother-in-law;
 - b. The Claimant admitted that she had agreed and allowed her brother-in-law Hafiz to sell her FTP slots to third party in which she would receive a commission of RM2,000.00 per slot in return;

- c. The Claimant further admitted that she had sold all of the 5 FTP slots to the public through Hafiz and had received a cash amount of RM3,000.00 so far from Hafiz in which there were still balances yet to be received from Hafiz;
 - d. The Claimant had also admitted during the said Investigation Interview that she was aware that her conduct of selling her FTP slots to third party without proper authorisation and justification was in breach of the Company's Code of Conduct Guidelines.
- vi. Vide Show Cause Letter dated 28 November 2018, the Company required the Claimant to explain on the allegations of misconduct preferred against her;
- vii. The charge in the Show Cause Letter was pursuant to the Claimant's action of participating in unauthorised trading activities involving the Company's flight tickets under the Family Travel Program (Family and Friends) where she had sold the entitled slots to a third party without proper authorisation and justification;
- viii. Vide email dated 16 February 2019, the Claimant submitted her explanations to the allegation of misconduct. However, after taking into consideration the said explanations and the gravity of the alleged acts of misconduct committed by the Claimant, the

Company decided to dismiss the Claimant from the services of the Company with effect from 1 March 2019;

- ix. Thereafter, the company issued the Punishment Letter dated 1 March 2019 to the Claimant. The Claimant was also informed of her right to appeal against the punishment imposed on her within 14 days;
- x. *Vide* letter dated 11 March 2019, the Claimant appealed to En. Nor Azuan Ismail, Manager of Industrial Relation Human Capital, against the punishment of dismissal imposed on her;
- xi. Subsequently, the Company had informed the Claimant on the decision of her appeal during the conciliation meeting at the Industrial Relations Department, Alor Setar on 16 May 2019. The Claimant was informed that after the Appeals Committee had deliberated and reviewed her case as well as her employment records with the Company, her appeal was rejected. As such, the Punishment Order dated 1 March 2019 was maintained.

III. The Function of the Industrial Court & The Burden Of Proof

[16] It is established law that the function of the Industrial Court in a Section 20(3) Industrial Relations Act 1967 reference is two-fold, i.e. to determine:-

- (i) whether the misconduct of the employee alleged by the employer has been established; and

- (ii) whether the proven misconduct constitute just cause or excuse for the dismissal.

[17] In the case of **Wong Yuen Hock v. Syarikat Hong Leong Assurance Sdn Bhd & Anor Appeal [1995] 3 CLJ 344; [1995] 1 MLRA 412** the Federal Court had held:-

“On the authorities, we were of the view that the main and only function of the Industrial Court in dealing with a reference under section 20 of the Act (unless otherwise lawfully provided by the terms of the reference), is to determine whether the misconduct or irregularities complained of by the Management as the grounds of dismissal were in fact committed by the workman, and if so, whether such grounds constitute just cause or excuse for the dismissal.”

[18] And in the case of **Goon Kwee Phoy v. J & P Coats (M) Bhd [1981] 2 MLJ 129; [1981] 1 MLRA 415** the Federal Court (*vide* the judgment of Raja Azlan Shah CJ) held:-

“Where representations are made and are referred to the Industrial Court for enquiry, it is the duty of that 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 court or the High Court cannot go into another reason not relied on by the employer or find one for it".

[19] The burden of proof in an unfair dismissal claim lies on the employer to prove on a balance of probabilities that the employee had committed the misconduct complained of (**Stamford Executive Centre v. Dharsini Ganeson [1986] ILR 101; [1985] 2 MELR 245**).

IV. Issues To Be Decided

[20] The issues to be determined in this case are:-

- (i) whether the Claimant was guilty of the charge of misconduct levelled against her by the Company; and
- (ii) whether the charge of misconduct constitutes just cause or excuse for the Claimant's dismissal.

V. The Court's Findings And Reasons

(i) Whether the Claimant was guilty of the charge of misconduct

[21] The Charge against the Claimant in the Show Cause Letter dated 13 February 2019 (*at pp. 8 - 9 of COB-1*) is worded as follows:-

“That you as a Deputy Supervisor of the Company between 16 January 2019 until 31 January 2019 were found to have participated in an unauthorised trading activities involving the Company’s flight tickets under the Family Travel Program (Relatives and Friends) where you have sold the entitled slots to a third party without proper authorisation or justification and registered the 05 following names in the Company’s iJourney system:-

- 1) *Nizamuddin Nazhan Bin Muhammad Nizam;*
- 2) *Muhammad Nizam Bin Rahman;*
- 3) *Che Roziana Binti Mohd. Roni;*
- 4) *Nizamuddin Hafiz Bin Muhammad Nizam;*
- 5) *Nur Aesya Naura Binti Muhammad Nizam*

The alleged act of misconduct committed by you tantamount to a breach of the Company’s policies which includes but not limited to the Malaysia Aviation Group – Industrial Relations Handbook”.

[22] Several incidents had occurred, the evidence of which the Company contends incontrovertibly points to the Claimant’s guilt.

[23] Firstly, the evidence is overwhelming that the Claimant had registered the 5 names into the Company’s FTP system and sold the FTP slots. It is not disputed that the FTP is a program in which special travel fares are offered to the Company’s employees and their extended family members and friends for travel on the Malaysia Airlines flights, wherein the price of Malaysia Airlines flight tickets purchased under

the FTP slots are cheaper than the normal flight ticket price. However, each employee are only allowed to nominate a maximum of 5 names of family members or extended family members and friends, wherein the nominations (which is done annually) will be made *via* the Company's Human Resource system known as Pulsera.

[24] The Claimant admits nominating the 5 names stated in the Charge, i.e. Nizamuddin Nazhan Bin Muhammad Nizam, Muhammad Nizam Bin Rahman, Che Roziana Binti Mohd Roni, Nizamuddin Hafiz Bin Muhammad Nizam and Nur Aesya Naura Binti Muhammad Nizam in the Pulsera system on 26 January 2019.

[25] The nominations would have gone under the radar if not for the Company chancing on some Facebook postings of screenshots of the iJourney (myID Travel) system (*at pp. 6-9 of COB-4*) which showed that FTP slots were being offered to the public for a fee ranging between RM1,000.00 and RM3,000.00. Upon investigation, the Company found that the advertiser of the Facebook posting with the username "Bijen Mohd" was actually the Claimant's brother-in-law, Hafiz (*at pp. 3-5 of COB-4*).

[26] Secondly, the Company also produced some screenshots of WhatsApp text messaging conversation between the whistleblower, i.e. Nisa, and the Claimant's sister, i.e. Iylia (*at pp. 14-19 of COB-2*), wherein Iylia had admitted to Nisa that the Facebook post advertising the FTP slots were on her husband's (Hafiz) page (*at p. 16 of COB-2; Screenshot No. 11*).

[27] Iylia also stated in the WhatsApp conversation with Nisa that she was selling the slots for Malaysian Airlines staff and that she was initially helping her sister but later went on to sell her sister's friends' slots too. The Claimant admitted during cross-examination she is the only sister of Iylia who works with Malaysia Aviation Group and in fact confirmed the telephone number of the person texting with Nisa in the WhatsApp conversation, i.e. "HafizTipu", as that belonging to her sister Iylia.

[28] COW-3 testified that based on the WhatsApp conversation between Nisa and Iylia, Iylia was selling each FTP slot for the price of RM2,500.00. The interested buyer will need to bank in the deposit of RM1,000.00 and when the name has been confirmed in the iJourney system, the buyer will then have to make the balance payment of RM1,500.00.

[29] Thirdly, during the Investigation Interview conducted by COW-3 and COW-2, the Claimant admitted *vide* her Witness Statement ("*Rakaman Percakapan Saksi*") made during the said Investigation Interview (*at pp. 21-23 of COB-2*) that she had allowed her brother-in-law, Hafiz, to use her FTP slots and that she was to be paid a commission of RM2,000.00 per slot. She went on to further admit that she had sold all her 5 slots to the public *via* Hafiz, and that as at the time of the Investigation Interview she had already been paid RM3,000.00 by Hafiz and she was awaiting the balance payments.

[30] It is also pertinent to note that in the Witness Statement made during the Investigation Interview, the Claimant admitted that Iylia Ayuni Binti Mohamed Rodzi

("Iylia Ayuni") is her sister. Iylia Ayuni was married to Hafiz. The Claimant also admitted that she knew that the Facebook account holder with the username "Bijen Mohd" was her brother-in-law, Hafiz. The screenshots of the iJourney (myID Travel) system (*at pp. 6-9 of COB-4*) that was posted by this Bijen Mohd showed the name of the Claimant's sister, Iylia Ayuni.

[31] During the Investigation Interview and also during the trial before this Court, the Claimant admitted knowing all along of the said Facebook posting by her brother-in-law as "Bijen Mohd" wherein he had advertised the 5 FTP slots to the public.

[32] The Claimant contends that she had been caught by surprise by the Investigation Interview and that she was treated unfairly. In fact she was under the impression that she was attending a meeting with the Head Passenger Services and Operations Management. COW-3 explained during his testimony before the Court that the Company could not afford to divulge the Investigation Interview beforehand as there was a real risk the Claimant may attempt to avoid the said meeting as had been the case with such interviews with other personnel in the past.

[33] The Claimant alleges that she was put under severe duress by COW-3 and COW-2 during the said Investigation Interview to the extent that the Claimant admitted to several untrue facts proposed by COW-3 and COW-2. COW-3, on the other hand, testified that all the questions put to the Claimant had been in a very calm and non-threatening manner. The Claimant was shown all the evidence that the Business Integrity Department had received from the whistleblower, i.e. Nisa,

wherein the Claimant had admitted to these documents. The Claimant further testified before the Court that she did not lodge any police report nor did she make a formal complaint to the higher management of the Company regarding COW-3's conduct during the Investigation Interview.

[34] Based on the entirety of the evidence produced, this Court is satisfied that the Company has succeeded in proving that the Claimant is guilty of the Charge as laid out in the Show Cause Letter. The Investigation Interview cannot be taken in isolation as seems to be suggested by the Claimant. In fact, her admissions in her Witness Statement during the Investigation Interview tallies with and corroborates the events that transpired, in particular Hafiz's Facebook postings and the WhatsApp text messages between Nisa and Iylia. As such, the Claimant's retraction of her admission to COW-3 is nothing more than an afterthought designed to hide her culpability.

(ii) Whether the charge of misconduct constitute just cause or excuse for the Claimant's dismissal

[35] As can be seen from the findings above, the Company has succeeded to prove on a balance of probabilities that the Claimant is guilty of the charge levelled against her.

[36] The FTP programme was designed to benefit the employees of Malaysian Aviation Group as well as their extended family members and friends. They were prohibited from selling the said FTP slots for personal gain or trading/business

purposes. This was clearly set out by the Chief Human Capital Officer, Dato' Mohd Khalis Abdul Rahim in his email of 15 January 2018 (*at pp. 6-7 of COB-3*) to all the employees:-

*“As a reminder, it is the employee’s responsibility to make the travel bookings and to advice traveling family or friends that their ticket is subject to Terms & Conditions of the FTP. **Employees are prohibited from selling the FTP tickets for personal gain or trading/business purposes. If an employee is found to have sold tickets or abused his or her benefits under this travel programme, the Company will not hesitate to take the necessary disciplinary action, which may include dismissal**”.*

(Emphasis added)

[37] The Claimant does not dispute receiving the said email from the Chief Human Capital Officer, Dato' Mohd Khalis Abdul Rahim, and thus was fully aware that she was forbidden, as a staff of MAG, from selling her FTP slots for personal gain or trading/business purposes.

[38] To compound matters, the Claimant had shared her confidential username and password for the iJourney (myID Travel) system with her sister, which was a breach of the Company’s Guidelines And Procedures On Sub-Load Family Travel Program For Extended Family Members And Friends (*at pp. 1-5 of COB-3*), wherein Clause 3.4 provides that it is the employee’s responsibility to make bookings for their family and friends. Despite this, the Claimant not only shared her username and

password for the iJourney system with her sister, i.e. Iylia, but also allowed Iylia to enter the system and make the bookings for the FTP slots. COW-2 in fact testified that employees cannot share their username and password as they are similar to their work email.

[39] Paragraph 4.0 of the Guidelines And Procedures On Sub-Load Family Travel Program For Extended Family Members And Friends further provides that abusing the travel facility provided may result in disciplinary action, including summary dismissal.

[40] The Claimant, acting in concert with her sister Iylia and brother-in-law Hafiz, in selling her FTP slots to the public for personal gain had clearly committed an act of unauthorised trading of the said FTP slots and ticket flights and thus had breached the Company's Guidelines and Procedures, giving rise to her dismissal. There had been a clear act of dishonesty on the Claimant's part.

[41] In the case of **Zulkifli Abdul Latif v. Sistem Penerbangan Malaysia Berhad** **[2006] 3 ILR 1923** it was held by the learned Industrial Court Chairman, P. Iruthayaraj D. Pappusamy:-

"In the instant case looking at the nature of the company's business which is the National Carrier in the aviation industry and also being a public listed company, with a large workforce, any act of dishonesty such as that displayed by the claimant and was

found guilty of, should not be treated lightly. Hence it is reasonable to take into account the business nature of the company as one of the factors when deciding the type of punishment to be imposed on a dishonest employee like in the instant case.

Honesty and integrity are virtues that cannot be compromised in an employee no matter what position he holds in an organization.

In the instant case the claimant had, by his acts of misconduct, not only acted against the interests of the company, compromised the said virtues and further betrayed the trust and confidence reposed in him by the company. Since the claimant's misconduct marred the trust and confidence that the company had in him, the company was right in taking the said virtues into account besides the nature and gravity of the misconduct committed when imposing appropriate punishment on the claimant in the circumstances of the instant case”.

(Emphasis added)

[42] The Claimant contends that there had been a breach of the principles of natural justice in that she was not provided an opportunity to explain and furthermore no domestic inquiry was held. Firstly, the Company did provide the Claimant an opportunity to explain and she did in fact give her explanation *vide* her email of 16 February 2019 (*at pp. 19-32 of CLB-1*). Secondly, the absence of a Domestic Inquiry does not *ipso facto* vitiate the Claimant's dismissal as the Industrial Court proceeds

to hear the case *de novo* (**Wong Yuen Hock v. Syarikat Hong Leong Assurance Sdn Bhd & Another Appeal** [*supra*]).

[43] Upon analysing the evidence and facts of the case in its entirety, the Court is satisfied and do hereby find that the Claimant's dismissal by the Company was done with just cause and excuse.

VI. Conclusion

[44] The Company's action in terminating the Claimant's services was done with just cause and excuse.

[45] The Claimant's case is hereby dismissed.

HANDED DOWN AND DATED THIS 26TH DAY OF AUGUST 2021

-Signed-

(PARAMALINGAM A/L J. DORAISAMY)
CHAIRMAN
INDUSTRIAL COURT MALAYSIA
KUALA LUMPUR