

IN THE INDUSTRIAL COURT OF MALAYSIA
AT KUALA LUMPUR, MALAYSIA

CASE NO: 5/4-427/21

BETWEEN

TADJUL MAULUD BIN ZOOR

AND

CRSM CONSTRUCTION (M) SDN BHD

AWARD NO: 260 OF 2022

Before : **Y.A TUAN ZULHELMI BIN HASAN – CHAIRMAN**

Venue : Industrial Court Malaysia, Kuala Lumpur

Date of Reference : 07/01/2021

Date of Mention : 25/02/2021 & 09/8/2021

Date of Hearing : 20/9/2021 & 07/10/2021

Representation : Nur Hidayah Bin Azmal @ Azman with Nur Jannah Shahinaz

Messrs Qutra & Co.
For the Claimant

Roeshan Celestine Gomez with Tan Hui Ru
Messrs Benjamin Dawson
For the Company

Reference:

This is a reference by the Honourable Minister of Human Resources pursuant to **section 20(3) of the Industrial Relations Act 1967** arising out of the alleged dismissal of **Tadjul Maulud Bin Zoor** (hereinafter referred to as “the Claimant”) by **CRSM Construction (M) Sdn Bhd** (hereinafter referred to as “the Company”) on 22/8/2020.

AWARD

1. The Ministerial reference in this case which was received by this Court on 02/02/2021 required the Court to hear and determine the Claimant's complaint of dismissal by the Company on 22 August 2020.
2. This case was fixed for mention on 25/02/2021 and 09/8/2021, and was fixed for hearing on 20/9/2021 and 07/10/2021.

Factual Backgrounds:

3. On or about 01/6/2020, the Company's authorized representative one Mr. Du Yin Tao (Mr. Du) had interviewed the Claimant for the position of Project Architect with the Company. According to the Letter of Offer dated 13/01/2020 (exhibited and marked as "TM-1"), the Claimant was offered as Project Architect at the Company with a starting salary of RM6,000/ per month commencing his employment on March 2020. The Claimant had requested that the Letter of Offer be issued to the Claimant to secure early release from his previous employment. Thereafter, the Company had issued the Letter of Offer to the Claimant which was signed on 13/01/2020. Pursuant to the Letter of Offer it was agreed that the Claimant would commence his employment with the Company on 03/02/2020.
4. On or about July 2020, the Company had issued an Employment Contract that intends to replace and supersede the Letter of Offer. However, the Claimant voices out his disagreement regarding a few terms in the Employment Contract are as follows;

- a) The Employee shall be employed in the above mentioned position for Ampang 3rd Avenue Project for a period which commence on 01/7/2020 and expire on 30/6/2021;
- b) After the expiration of this contract, Party A (the Company) may choose to extend the term of this contract according to the requirements of the project and the terms of this contract shall remain unchanged; and
- c) If the project is completed ahead of schedule or construction is suspended due to funding, the owner's order or government's order, this contract shall be automatically terminated from the date of completion or construction suspension. Party A is not responsible for Party B's employment and does not pay any compensation for the rest of the fixed term. Party B shall not make any compensation to Party A for any reason.

5. Nevertheless, no agreement was reached during the discussion. Without considering the Claimant's disagreement, the Company had unduly forced/compelled the Claimant to sign the Employment Contract without doing any amendment. The Claimant's justification for his refusal to sign the Employment Contract was that the Letter of Offer had already been signed by parties and that he had been blindsided by the Company's request for him to sign the Employment Contract.

6. This event precipitated the termination of the Claimant's employment with the Company. The Company had proceeded to issue a one (1) month Termination Notice dated 22/7/2020 (exhibited and marked as "TM-3") to the Claimant, which was effective on 21/8/2020 and the Company will only pay the Claimant his salary for August 2020

without any other compensations. The only ground of termination stated in the Termination Notice is that no agreement was reached between parties in regards to the Employment Contract.

7. The Claimant had only been employed with the Company for a period of four (4) months, of which he was only employed for just over 56 days due to the Movement Control Order (MCO) and had never been confirmed as an employee of the Company and was still in fact a probationer at the point of the termination of his employment.

8. Dissatisfied, the Claimant commenced the action herein that his dismissal is without just cause or excuse and therefore, the Claimant seek for his remedies from the Industrial Court to be reinstated to his former position without any loss of seniority, wages or benefits, monetary or otherwise. As an alternative, an award of compensation and back wages in lieu of reinstatement.

The Role and Function of the Industrial Court:

9. The role of the Industrial Court under **section 20 of the Industrial Relations Act 1967** is succinctly explained in the case ***Milan Auto Sdn. Bhd. v. Wong Seh Yen*** [1995] 4 CLJ 449. His lordship Justice *Mohd Azmi bin Kamaruddin* FCJ delivering the judgment of the Federal Court had the occasion to state the following;

*"As pointed out by this Court recently in **Wong Yuen Hock v. Syarikat Hong Leong Assurance Sdn. Bhd. & Another Appeal** [1995] 3 CLJ 344; [1995] 2 MLJ 753, the function of the Industrial Court in dismissal cases on a reference under s. 20 is two-fold firstly, 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. Failure to determine these issues on the merits would be a jurisdictional error..."

10. The above principle was further reiterated by the Court of Appeal in the case of **K A Sanduran Nehru Ratnam v. I-Berhad [2007] 1 CLJ 347** where his lordship Justice Mohd Ghazali Yusoff, JCA outlined the function of the Industrial Court:-

*"The learned judge of the High Court held that the Industrial Court had adopted and applied a wrong standard of proof in holding that the respondent has failed to prove dishonest intention and further stating that the respondent has not been able to discharge their evidential burden in failing to prove every element of the charge. He went on to say that the function of the Industrial Court is best described by the Federal Court in **Wong Yuen Hock v. Syarikat Hong Leong Assurance Sdn Bhd and Another Appeal [1995] 3 CLJ 344** where in delivering the judgment of the court Mohd Azmi FCJ said (at p. 352);*

"On the authorities, we were of the view that the main and only function of the Industrial Court in dealing with a reference under s. 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"

Burden Of Proof:

11. Whenever a Company had caused the dismissal of the workman, it is then incumbent on part of the Company to discharge the burden of proof that the dismissal was with just cause or excuse. This Court will now refer to the case of **Ireka**

Construction Berhad v. Chantiravathan a/l Subramaniam James [1995] 2 ILR 11 in

which case it was stated that:-

"It is a basic principle of industrial jurisprudence that in a dismissal case the employer must produce convincing evidence that the workman committed the offence or offences the workman is alleged to have committed for which he has been dismissed. The burden of proof lies on the employer to prove that he has just cause and excuse for taking the decision to impose the disciplinary measure of dismissal upon the employee. The just cause must be, either a misconduct, negligence or poor performance based on the facts of the case."

Standard Of Proof:

12. In the case of **Telekom Malaysia Kawasan Utara v. Krishnan Kutty Sanguni Nair & Anor [2002] 3 CLJ 314** the Court of Appeal had laid down the principle that the standard of proof that is required to prove a case in the Industrial Court is one that is on the balance of probabilities wherein his lordship Justice *Abdul Hamid Mohamad*, JCA opined:-

*"Thus, we can see that the preponderant view is that the Industrial Court, when hearing a claim of unjust dismissal, even where the ground is one of dishonest act, including "theft", is not required to be satisfied beyond reasonable doubt that the employee has "committed the offence", as in a criminal prosecution. On the other hand, we see that the courts and learned authors have used such terms as "solid and sensible grounds", "sufficient to measure up to a preponderance of the evidence," "whether a case... has been made out", "on the balance of probabilities" and "evidence of probative value". **In our view the passage quoted from Administrative Law by H.W.R. Wade & C.F. Forsyth offers the clearest statement on the standard of proof required, that is the civil standard based on the balance of probabilities, which is flexible, so that the degree of probability required is proportionate to the nature of gravity of the***

issue. But, again, if we may add, these are not "passwords" that the failure to use them or if some other words are used, the decision is automatically rendered bad in law."

Issues:

13. Based on the pleadings filed, the issues before this Court are as follows;
- a) Whether the Letter of Offer constitute a binding contract between the parties;
 - b) Whether at the time of the termination, the Claimant is still under probation period or otherwise; and
 - c) Whether the Claimant was dismissed with just cause or otherwise.

The Law On Probation:

14. It is a well recognized legal position that an employee on probation enjoys the same rights as a permanent or confirmed employee and his or her services cannot be terminated without just cause or excuse. In ***Khaliah bte Abbas v. Pesaka Capital Corp Sdn Bhd*** [1997] 3 CLJ 827; [1997] 1 MLJ 376, the Court of Appeal held as follows:

*"It is our view that **an employee on probation enjoys the same rights as a permanent or confirmed employee and his or her services cannot be terminated without just cause or excuse.** The requirement of bona fides is essential in the dismissal of an employee on probation, but if the dismissal or termination is found to be a colourable exercise of the power to dismiss or is a*

result of discrimination or unfair labour practice, the Industrial Court has the jurisdiction to interfere and to set aside such dismissal." (emphasis mine)

15. It can be observed that as a general rule, a dismissal of an employee before the end of his/her probationary period may well be sufficient to amount to a dismissal without just cause or excuse. In ***Sulnayah bte Hj Mohd Isa v. Sekolah Kanak-Kanak Pekak Selangor & Anor*** [1999] 6 CLJ 234; [1999] 6 MLJ 249, Azmel J (later FCJ) decided as follows:

"In my view, it was unfair and improper for the first respondent to prejudge the performance of the applicant before the expiry of her probationary period. The applicant should be given the opportunity to complete her probationary period. She had been denied of this opportunity. The first respondent had breached what it had already agreed to do. If it was found that the applicant's performance at the expiry of her probationary period was unsatisfactory then it would be only proper and in fact it would be expected that the first respondent should consider giving the necessary assistance and cooperation to enable the applicant to improve her performance including extending her probationary period in order to enable her to achieve the standard of performance required. The act of the first respondent of issuing a letter dated 4 March 1996 asking the applicant to enhance her performance within a period of one month should be regarded as completely insincere and without bona fide. Even before the expiry of the one month period the first respondent issued another letter dated 26 March 1996 dismissing her services. It is clear that this letter was issued in bad faith. The first respondent committed two premature acts against the applicant. Firstly, the applicant was given one month to improve her performance. Yet before the expiry of one month she was dismissed. Secondly, she was on probation for a minimum period of one year. Yet after only nine months she was dismissed." (emphasis mine)

16. It is pertinent to observe that on the other hand, probationers are not immune from dismissal action by the employers on the ground of *inter alia* misconduct or poor performance wherein employers are entitled to to dismiss their employers summarily. In the case of ***Hartalega Sdn Bhd v. Shamsul Hisham*** [2004] 3 CLJ 257; [2004] 3 MELA 827, it was decided that the test to dismiss an employee for poor performance was not the same for probationers and confirmed employees. Probationers are considered as employees on trial and there was no necessity to provide them with written or oral warnings prior to dismissal.

17. Termination of probationers was also considered by the Industrial Court in the case of ***Ong Chee Meng v. Sitt Tatt Bhd*** [2004] 2 ILR 388 wherein it was held, at page 393a-c as follows:

"In my view the company was fully entitled to terminate the claimant's service if upon their evaluation, the claimant was found to have been unable to perform his job functions satisfactorily. How he is to be assessed and the yardstick to be used to gauge his performance is best left to the company's prerogative and judgment so long as it is not tainted by mala fide intentions. It could well be based on performance per se or upon a combination of other variables and values such as suitability, aptitude, conduct, behavior, mannerism and so forth. Its categories are never exhaustive. After all it is well settled that the company is entitled to organize its business in the manner it considers best. It is the duty of the claimant to measure up to the company's expectation. All the more so as the claimant was still under probation."

The Company's Case:

18. At all material times, the Claimant was aware and had agreed to execute an Employment Contract. The Letter of Offer had only been issued due to the Claimant's

request for an official letter to confirm his employment so as to secure early release from his previous employment. The Letter of Offer was always meant to be followed by the Employment Contract. The Claimant's refusal to admit the same and refusal to execute the same warranted the Company's conduct in terminating the Claimant's employment.

19. The issuance of the Employment Contract and the application of the disputed terms is consistent with the Company's standard operating procedure which had been implemented by the Company even before the Claimant had joined the Company. At all material times, the Claimant was aware and had agreed to the disputed terms, as such his conduct in renegading from the agreed terms warranted the Company's conduct in terminating his employment.

20. The disputed terms had all material times been standard terms imposed on all employees of the Company and that the same terms had been agreed and discussed during the interview with the Claimant, the Company's representatives had through numerous meetings attempted to explain the disputed terms and reassures the Claimant in respect of its practical operation. Despite the Company's attempts to resolve the matter, the Claimant persisted in his refusal to execute the Employment Contract and the Company was left with no other recourse but to terminate the Claimant's employment.

The Claimant's Case:

21. The Claimant contents that he is not obligated to sign the Employment Contract and that his refusal shall not warrant a dismissal. The termination was done unfairly without following the term specified in the Letter of Offer, where the Company may terminate the Claimant should he is guilty of misdemeanour, misconduct, negligence, or breach of any terms and regulations laid down by the Company from time to time.

22. The Claimant had carried out his job diligently throughout the employment period, and the Company never issued any warning letter and/or non-performance notice to the Claimant. The Claimant's disagreement to the terms in the Employment Contract did not suggest misdemeanour, misconduct, negligence or breach of any terms. The Company had failed to justify the reason for the Claimant's termination and only rely on the Claimant's disagreement to sign the Employment Contract whereby the Company contended that the Claimant is no longer interested in being employed by the Company.

23. During the interview session between the Claimant and Mr. Du, the Company never informed the Claimant about the Employment Contract that will replace the Letter of Offer. The Claimant was only issued with the Letter of Offer during the interview session and was made to understand that the Letter of Offer will serve as the binding contract between the parties.

24. The Letter of Offer constitutes a binding contract between the parties at all material times since no Employment Contract was given during the interview and it was

given late to the Claimant, not as soon as he was accepted as an employee in the Company. The Employment Contract which was given in July 2020 was never signed nor agreed by the Claimant. Hence, it is reasonable for the Claimant to rely on the Letter of Offer alone as the binding contract between the parties due to the non-existence of the Employment Contract at the material time.

25. In May 2020, the Company informed the Claimant that his monthly salary would be increased to RM6,500/. However, the Company failed to pay the Claimant's salary for May 2020. His salary has been increased after two (2) months of being employed by the Company whereby he received an increment of RM500/ in his salary, from RM6,000/ to RM6,500/ monthly. According to the Letter of Offer under the heading of Cash Compensation, the Company will pay the Claimant a starting salary of RM6,000/ per month. The starting salary is referred to as the probation period salary. The Company had admitted that the increment of RM500/ in his salary was due to the Claimant's performance be satisfying and excellent. The probation period agreed was only for 30 days and although he has not received any confirmation letter, he was not discharged but his salary was raised to RM6,500/ per month instead.

26. The Company's conduct in increasing the Claimant's salary shows that the Company was actually satisfied with the Claimant's performance during his probation period and has impliedly confirmed the Claimant's position. The different base wage before and after the 30 days probation period is sufficient to prove that the Claimant's employment status has been confirmed as confirmed employee of the Company.

27. Based on the Letter of Offer, the Claimant's employment can only be terminated by giving a 7-day written notice if the Claimant is still under probation and a 30-day written notice during a contract period. The Letter of Termination of employment dated 22/7/2020 to the Claimant was given within 30 days, suggesting that the Claimant indeed regarded as a confirmed employee by the Company. The Claimant is a confirmed employee and not a probationer at all material times. His probation period has lapsed based on the treatment and conduct of the Company.

28. The Company had failed to prove on the balance of probabilities that based on the disagreement for the Claimant to agree and sign the Employment Contract can warrant a dismissal. The reason relied by the Company was merely an afterthought, simply made out of reason, baseless and it is definitely does not warrant a dismissal out of misconduct upon which the Claimant contended that his termination was without just cause or excuse.

Evaluation of Evidence & Findings:

29. A *"contract of employment"* has been defined under **s. 2 of the Industrial Relations Act 1967** ("the Act") to mean *"any agreement, whether oral or in writing and whether express or implied, whereby one person agrees to employ another as a workman and that other agrees to serve his employer as a workman."* In the absence of a written contract of employment, the court would now look at the conduct of both parties and other relevant evidence or documents to determine whether there is a binding contract between the Claimant and the Company when the Claimant alleged that the Company had verbally employed him for the Company's services (see also **Lau**

Sieng Nguong v. Hap Shing Company Ltd [1969] 1 LNS 80 where the Federal Court held that it is necessary to look at the whole correspondence between the parties to deduce whether there is a binding contract).

30. Accepting the job offer letter does not mean starting of a working relationship. The job offer letter does not mean that the employment relationship has started unless there is a proof that it has actually started. The job offer letter is an offer of employment from the employer to the prospective employee and not the actual commencement of employment date, thus, the one who claims that the employment relationship has started must prove it.

31. Employment contract supersedes the job offer letter. It is known in contracts that the subsequent contract supersedes the previous, therefore, if the parties in the employment contract agree on the terms and conditions which vary or in conflict with the job offer letter, in this case, what prevails between the parties is the employment contract as it has been concluded after the job offer letter of what is agreed upon in the employment contract is considered in determining the rights and obligations of both the employer and the employee.

32. Therefore, what has been indicated in the job offer letter are reproduced in the employment contract, whereas, the new contract regulates the relationship between the two parties, which means that they may intentionally agree to exclude what was provided or in conflict with the terms and conditions in the previous contract. In case the employment contract does not mention some of what has been agreed upon in the job offer letter, it shall take into account what has been provided in the job offer letter,

unless it has been indicated in the employment contract clearly and expressly the intention of cancelling all that has been previously agreed between the two parties.

33. From the evidence of the Claimant in his own statement during cross examination, the Claimant had requested that the Letter of Offer be issued by the Company to the Claimant to secure early release from his previous employment. Thereafter, the Company issued the Letter of Offer to the Claimant which was signed on 13/01/2020, and it was agreed that the Claimant would commence his employment with the Company on 03/02/2020. However, upon the Claimant's requests on the reason that the Claimant had not yet obtained early release from his previous employment and due to his illness at that material time, the Claimant made two subsequent request to commence his employment with the Company on 09/3/2020 upon which the Company had been duly informed by the Claimant and had granted his requests.

34. Due to the Covid-19 pandemic and during the implementation of the Movement Control Order (MCO) 1.0 by the Government of Malaysia, the Claimant was not required to report to work and as such was paid RM50.00 a day during this period. The Claimant had never been confirmed as an employee and was still in fact a probationer at the point of the termination of his employment. In coming to the above finding, the Court is very much aware of the case of **Robert John Reeves v. Menteri Sumber Manusia, Malaysia & Anor [2000] 1 CLJ 180**, the High Court referring to the case of **KC Mathews v. Kumpulan Guthrie**,.. where it is stated:

“At the end of the six months period, the employer can either confirm or terminate his services, because his service is found of unsatisfactory. If no action is taken by the employer either by way of confirmation or by way of termination, the employee continues to be in service as a probationer.”

35. The Company’s representative; Mr. Du (COW-1) has given evidence that the Company’s standard operating procedure is to issue an Employment Contract and not an Offer Letter even prior to the Claimant commencing his employment with the Company. The Claimant had requested the Offer Letter to secure an early release from his previous employer by confirming his application to be employed with the Company. The Claimant was aware he would have to execute an Employment Contract in order to secure employment with the Company.

36. The Letter of Offer was never intended to be an exclusive and/or complete agreement. The Letter of Offer was a summary of the agreement where the other material terms agreed by the parties during the interview was at all material times meant to be formalised in the Employment Contract. It was a clear evidence that the Letter of Offer was issued pursuant to the Claimant’s own request in securing early release from his previous employment. No where in the Claimant’s Statement of Case and Rejoinder has the Claimant pleaded that he had requested for a letter to confirm his employment with the Company. These facts only came up in the course of the cross examination of the Claimant.

37. At all material times, the Claimant had aware that the Employment Contract eventually would follow the Letter of Offer upon which the Claimant had agreed in his evidence during the cross examination;

“RGC: *Saya pergi ke soalan seterusnya. Saya cadang kepada Encik Tajul bahawa oleh kerana Letter of Offer tersebut merupakan ringkasan terma-terma yang dipersetujui pada semua masa yang material, pihak-pihak, iaitu pihak Syarikat dan Encik Tajul mengkehendaki bahawa Letter of Offer tersebut diikuti dengan Employment Contract. Setuju atau tidak?*

Claimant: *Setuju.”*

38. The Claimant also at the material times had fully aware and within his knowledge of the Company’s project in Ampang 3rd Avenue and was informed by the Company of his assignment into Ampang 3rd Avenue project at the time he commencing working with the Company. He had confirmed this his own evidence during cross examination;

“NJS: *OK, tadi ada dinyatakan secara ringkasan berkenaan dengan projek-projek yang akan dilakukan oleh Encik Tadjul dijalankan oleh syarikat, sama ada dimaklumkan berkenaan Encik Tadjul untuk Ampang Avenue ataupun tidak, dan Encik Tadjul katakan tidak. Boleh jelaskan? Sebenarnya Encik Tadjul ada pengetahuan mengenai projek atau macam mana? Boleh jelaskan secara menyeluruh tak?*

Claimant: *Untuk pemulaan memang saya akan bekerja untuk Ampang 3rd Avenue project. Tapi dalam masa yang sama saya tahu yang syarikat ini akan ada projek di Sungai Besi. Macam itulah.*

NJS: *Sebelum mula kerja tu dah dimaklumkan ke berkenaan arrangement projek ini?*

Claimant: *Projek mana? Ampang 3rd Avenue?*

NJS: *Ya betul.*

Claimant: *Ya saya.”*

39. There were contractual terms agreed by both parties that were not incorporated in the Letter of Offer which is silent in respect of annual, medical and emergency leave (leave entitlement), wages, bonuses etc, which the Claimant admitted himself he is entitled to. In this case having evaluated the intention and conduct of the parties, the Letter of Offer alone cannot stand on its own and not a binding contract between the parties. When the termination of the workman's employment is referred to the Industrial Court for adjudication some form of employment contract is necessary if not mandatory for the court to find out whether the workman is bound by the terms of he has agreed to. *In the case of Erms Management Sdn. Bhd. v. Gelbert Ang Phaik Ai [1994] 1 ILR 45; [1993] 2 MELR 252:*

"I am of the view that basically the employment relationship is fundamentally contractual in nature. Within the framework of statute-guaranteed security of employment and the right to work when the termination of workman's employment is referred to the Industrial Court for adjudication some forms of employment contract is necessary if not mandatory for the Court to find out whether the workman is bound by the terms he has agreed to. When a dispute

pertaining to the tenure of employment arises the arbitrator invariably will look at the terms and conditions of contract for guidance. It is, therefore, of paramount importance that the terms, particularly the fundamental terms be clearly spelt out in a contract and communicated to the workman in the first instance to be binding on him. A term that affects a workman's continued employment is a fundamental term and ought to be in writing. "

40. Without the Employment Contract, these terms could not have been formalised or incorporated. The Employment Contract is a signed agreement between the employee and employer. Where the Offer Letter can be vague about future contractual terms, an Employment Contract puts them front and centre. As such, it is reasonable that the Letter of Offer to be followed by the Employment Contract to incorporate all the relevant contractual terms which had been agreed by the parties during the interview.

41. The Claimant had at all material times been made aware of the disputed terms and had agreed to the same during the Claimant's interview. The Claimant had been made aware during his interview that the nature of the Company's business was totally depending on projects awarded by the Malaysian Government and as such the tenure of the Claimant's employment would be on a fixed term basis and/or contingent on the early and/or completion of the relevant project. This term applies to every employee in the Company, the Claimant was not singled out in anyway. The Claimant's refusal to sign the Employment Contract and comply with the disputed terms is in breach of the collateral and/or oral agreement between the Company and the Claimant. As a result, the Company left with no other choice had to then terminate the Claimant's employment.

Conclusion:

42. Based on the circumstances of the present case in its entirety and the evidence adduced by both parties in the proceedings and upon hearing the testimonies of the witnesses and perusing the written submissions, the Court is of the considered view that the Company has successfully proven on the balance of probabilities that the Claimant was terminated with just cause or excuse.

Decision:

43. In the upshot, having decided that the Claimant's termination was with just cause or excuse; this Court bearing in mind the provision in **Section 30(5) Of the Industrial Relations Act 1967** by which virtue the Court shall act according to equity, good conscience and the substantial merit of the case without regard to technicalities and legal form, has no hesitation in dismissing the Claimant's case. The Claimant's case is hereby dismissed.

HANDED DOWN AND DATED THIS AWARD ON 14TH FEBRUARY 2022

-Signed-

**(ZULHELMY BIN HASAN)
CHAIRMAN
INDUSTRIAL COURT MALAYSIA
KUALA LUMPUR**