

CASE SUMMARY

RAMDAN SHARIFF V HENGYUAN REFINING COMPANY BERHAD

AWARD NO. 693 OF 2020 / [2020] 2 LNS 0693

1. The case concerns an application made by an employee ("**the Applicant**") pursuant to **Section 20(3) of the Industrial Relations Act 1967 ("IRA")** arising out of the Applicant's dismissal by the Company.
2. The Applicant in this case was found guilty of misconduct of only one charge out of seven levied upon him. The Court made the finding of guilt based on the evidence of a sole witness, a Bangladeshi employee, who gave evidence in Bahasa Malaysia despite, only having basic and simple understanding of the language. In particular importance to note, the oral evidence was given without an aid of an interpreter.
3. Subsequent to the Court's findings, the Court held that although the Applicant had worked for 36 years for the Company without any prior misconduct, his dismissal was held to be just and with cause.

BRIEF FACTS

4. The Applicant was continuously employed with the Company for a period of 36 years prior to the Applicant's dismissal.
5. First, the Applicant was served a show cause letter by the Company, due to allegations that, in summary, the Applicant had instructed staff of a cleaning company hired by the Company, to perform personal works during working hours. The works being, cleaning, moving of goods and general upkeep of the Applicant's personal residences. ("**Works**")

6. The Applicant had been alleged to have done so in seven different occasions involving the same staff members.
7. Responding to the show cause letter, the Applicant replied in essence, that the Applicant had in fact requested for the said Works and that:
 - (a) The requested Works were in fact, favours;
 - (b) The Applicant had not known that the staffs carried out the Works during working hours; and
 - (c) The instructed staff members were compensated for their Work;
8. A Domestic Inquiry was then held, which found the Applicant guilty of 5 out of 7 charges. Subsequently, the Company dismissed the Applicant. The Applicant filed for the Domestic Inquiry decision to be reviewed before the Industrial Court.

INDUSTRIAL COURT FINDINGS

9. The Applicant amongst others claimed that the Domestic Inquiry held was defective as the Applicant was not heard nor permitted to defend against the Company's allegations.
10. In the course of Court proceedings, the Company levied a total of 7 charges against the Applicant.
11. It is well established that the burden of proof in an unfair dismissal claim, lies on the employer to prove that the dismissal was just and with cause. (See, **Stamford Executive Centre v Dharsini Ganeson [1986] 1 ILR 101**)
12. Despite the multiple allegations and charges against the Applicant, the Company during the Court proceeding only led evidence through a sole witness.

13. The said sole witness, a Bangladeshi national, managed to give oral evidence in simple Bahasa Malaysia. The statements made and recorded by the Company was also signed by the sole witness, after having had the help of someone explain to the sole witness in *Hindi the contents of the said report.

14. The Court found that the sole witness was a credible witness who with his basic understanding of the Bahasa Malaysia language, could testify truthfully on the facts of the case.

**Bangladesh's official language is Bengali.*

15. At the end of proceedings, the Court found the Company had successfully proven only one charge of the seven. The Court credited the sole witness's evidence as a reason of the Court's findings.

16. Having found the Applicant guilty of only a charge, the Court held that the Company actions in dismissing the Applicant was done with just cause and excuse.

17. The Court held that the Applicant's conduct was in direct breach of the Company's anti – bribery and corruption guidelines which had made it clear that, the Company does not tolerate its staff offering or taking gifts or bribes. The Applicant's act of requesting the cleaning company's staffs to carry out the Works and later paying them was in clear breach of the said manual.

18. In fact, the Court further stated that the Company's manual provided procedures for the Applicant to employ outside staff's services in line with the manual. This, the Applicant failed to do which the Court viewed as a deliberate attempt to hide the Works from Company's knowledge.

THE LAW

19. The Court held that the Applicant's act was against the Company's best interest and faithful discharge of the Applicant's duty to the Company pursuant to the trite decision of **Earce v Foster [1886] QBD 536**.
20. The Applicant's claim that the Domestic Inquiry was defective was dismissed by the Court, as an absence of a domestic inquiry is not fatal as it could be cured before the Industrial Court per **Wong Yuen Hock v Syarikat Hong Leong Assurance Sdn Bhd and Another Appeal [1995] 2 MLJ 753**.

KEY TAKE AWAYS

(a) A misconduct suffices

21. The Court held that the Applicant's dismissal was valid although this was his first misconduct. This was further made on the backdrop of the Applicant's 36 years of service with the Company.
22. Coupling the above decision and the requirement set out pursuant to **Section 20, IRA**, it suffices to note that the threshold to meet the requirement of a just cause or excuse amounting dismissal is low. However, such findings must be supported by clear evidence led before the Court.

(b) Importance of Documentation and Witnesses

23. The importance of clear and precise documentation is often understated. This decision highlights the importance of record keeping and witness statements in proving or defending against a claim.
24. Despite having levied seven charges against the Applicant, the Court only found the Company, only managed to prove one charge based on the evidence led in Court. The

Court highlighted that, its findings on the one charge was made due to the sole witness led by the Company. The burden of proof for the remaining charges were not discharged by the Company based on the evidence led on those charges.

25. It is worth noting that, the Company had led other documentary evidence, however those documentary evidence proved to be insufficient as the charges could not be proven based on the documentary evidence alone.

26. An employer seeking to defend a decision to dismiss an employee must be able to lead clear evidence proving any cause and/or excuse for the said dismissal.

(c) **Language limitation does not affect credibility of Witness**

27. Additionally, and of interest, the credibility of the sole witness was challenged in Court.

28. The Court took the view that though the sole witness is a foreigner, basic understanding of Bahasa Malaysia made him a credible witness. Hence the credibility of a witness is not pegged on their language ability.

CONCLUSION

29. The decision in **Ramdan Shariff v Hengyuan Refining Company Berhad** exhibits the Court's position with respect to the dismissal of an employee arising out of a misconduct. The burden to proof just cause and excuse remains unchanged.

30. However, an employee seeking to discharge the said burden, would only be able to do so through clear and credible evidence led before the Court.

31. It is also noted that the above decision has been upheld by the High Court.

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