

**IN THE INDUSTRIAL COURT OF MALAYSIA**

**CASE NO.: 22/4-1795/19**

**BETWEEN**

**JALALUDIN BIN MOKHTAR**

**AND**

**CELCOM NETWORKS SDN. BHD.**

**AWARD NO. 1648 OF 2024**

**BEFORE** : Y.A. TUAN PARAMALINGAM A/L J. DORAISAMY  
- Chairman

**VENUE** : Industrial Court of Malaysia, Kuala Lumpur

**DATE OF REFERENCE** : 30.08.2019

**DATES OF MENTION** : 08.10.2019; 06.01.2020; 09.12.2020; 20.08.2021;  
16.12.2021; 20.04.2022; 27.05.2022; 19.10.2022;  
13.12.2022; 26.05.2023; 08.08.2023; 07.09.2023;  
16.10.2023; 23.10.2023; 09.11.2023 & 12.01.2024

**DATES OF HEARING** : 03.01.2023; 16.02.2023; 01.06.2023; 18.07.2023 &  
16.05.2024

**REPRESENTATION** : Dato' Muhammad Adam Abdullah  
together with Cik Nur Khairunnisa Adriana Binti  
Zainuddin  
Messrs. The Law Office of Adam Abdullah & Mani  
Counsel for the Claimant

Ms. Wong Keat Ching  
together with Ms. Noor Ameerah Ahmad Nasri  
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 **Jalaludin Bin Mokhtar** (hereinafter referred to as “*the Claimant*”) by **Celcom Networks Sdn Bhd** (hereinafter referred to as “*the Company*”) on 6 May 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 6 May 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 17 September 2019.

[3] The matter was fixed for mention on 8 October 2019, 6 January 2020, 9 December 2020, 20 August 2021, 16 December 2021, 20 April 2022, 27 May 2022, 19 October 2022 and 13 December 2022.

[4] The trial proceeded on 3 January 2023, 16 December 2023, 1 June 2023, 18 July 2023 and concluded on 16 May 2024.

## **II. The Parties' Position On The Merits**

### **(a) The Claimant**

**[5]** The Claimant was first employed by Telekom Cellular Sdn Bhd on 1 November 1997 as a Senior Manager, Corporate Affairs and Legal Division.

**[6]** After the merger of Telekom Cellular Sdn Bhd and the Company, the Claimant was then placed at Regulatory, Legal & Corporate Affairs Division of the Company. Later, the Claimant was transferred to Vendor & Partnership Management Division, Group Network as Senior Manager from 1 November 2012.

**[7]** The Claimant was then promoted as the Head of Network Vendor & Partnership Management from 1 September 2012. The Claimant then was promoted to the role of Head of Vendor Partnership Management from 1 June 2014.

**[8]** On 31 December 2018, the Company had accepted the Claimant's offer for the Sunrise program, being a voluntary separation scheme ("VSS"). The compensation package offered to the Claimant was RM538,301.92 and other benefits. The Claimant's last date of employment was on 31 March 2019.

**[9]** In January 2019, there was apparently a whistleblower complaint about the Claimant, alleging that the Claimant had practised favouritism in awarding the In-

Building Coverage (“IBC”) Project to the Company’s vendor, namely Grass2Route Sdn Bhd (“G2R”).

[10] In cooperating with the corporate investigation and forensic on 9 January 2019 regarding the complaint, the Claimant had denied the favouritism allegation in the IBC project.

[11] *Vide* a show cause letter dated 18 February 2019 (“*the Show Cause letter*”) issued by the Company to the Claimant, the Claimant was charged with 3 misconducts, which are as follows:-

- i. **Misconduct 1 – Submission of Fraudulent Claim:** The Claimant had deceived the Company into reimbursing the Claimant by submitting a fraudulent ETS tickets claim amounting to RM141.00 even though the ETS tickets were purchased by G2R for the Claimant and the Claimant’s subordinate, Mohd Sazali Bin Muhamat @ Sharif which was subsequently approved by the Company and credited into the Claimant’s account;
- ii. **Misconduct 2 – Conflict of Interest:** The Claimant had failed to act in the best interest of the Company when he directly awarded 20 sites of IBC projects to G2R without offering the same 20 sites to other active vendors. During investigation on this matter, the Claimant had admitted that the Claimant’s daughter was employed by G2R as Engineer, IBC since February 2018. In the light of the Claimant’s daughter’s employment with G2R, the

Claimant had breached the Company's Blue Spirit Policy – Conflict of Interest; and

- iii. **Misconduct 3 – Abuse of Authority:** The Claimant had requested Malik Faizal Bakar, Managing Director of Platinum Core Solutions Sdn. Bhd. ("*Platinum Core*") that is also one of the Company's active vendors at the material time to find and/or secure an employment in favour of the Claimant's daughter, preferably in Petronas, which was a breach of the Company's Blue Spirit Policy – Business Conduct (Dealing with External Parties – Dealing with Vendors and Business Partners).

[12] *Vide* the Claimant's letter dated 1 March 2019 to reply to the show cause letter, the Claimant replied as follows:-

- i. To Misconduct 1 – Submission of Fraudulent Claim, the Claimant requested for G2R's assistance to purchase the ETS tickets due to time constraints and had reimbursed the same to G2R on 9 March 2017. The Claimant had attached a statutory declaration affirmed by G2R's representative, Muhammad Hezri bin Mahmud confirming that the Claimant had reimbursed the sum of RM141.00 to Muhammad Hezri bin Mahmud;
- ii. To Misconduct 2 – Conflict of Interest, the Company intended to procure 69 new sites for IBS.
  - a. Edotco had selected 27 sites out of 69 sites;

- b. There remained a balance of 42 sites. 7 sites were distributed to Digi and Celcom, 8 sites belonged to Maxis and Celcom, 2 sites belonged to U Mobile and Celcom, 3 sites belonged to OCK and Celcom and 1 site was mapped with Touch Matrix;
- c. There then remained 21 sites after the mapping and distribution to be distributed to the remaining Network Facilities Providers (“*NFP*”) being Telekom Malaysia (“*TM*”), G2R, Sunway Digital and Sacofa;
- d. However, the remaining 21 sites were not offered to the following *NFPs* for the following reasons:
- *TM* had only built 1 IBC pilot site namely Melawati Mall in Kuala Lumpur and delivered the same in August 2017. At the material time, the Company had yet to accept the system built by *TM* due to Radio Frequency (“*RF*”) failure;
  - Sunway Digital only built IBC system within Sunway properties premises/buildings; and
  - Sacofa had only built IBC system in Sarawak;
- e. Having deliberated, the IBC Working Team selected G2R due to, among others, G2R’s excellent track record, expertise, hands on design, planning, installation, operation, maintenance, being Edotco’s preferred contractor, flexibility and the fact that G2R

was appointed under Celcom Axiata and Edotco's Vendor Development Program;

- f. Out of 21 IBC sites, 7 sites were handled by G2R on repeater basis and does not impose any penalty on the Company for early termination once the Company decided to migrate to full IBC system;
  - g. The process of awarding the IBC sites to G2R was done with the consultation with the IBC Working Team and with the approval of the Claimant's previous superior, Jason Stephen Nayagam, being the former Head of Roll-Out;
  - h. In any event, the Claimant had no final say in awarding IBC projects to NFPs as there were other procedures with Legal and Finance to be followed for the awards to be finalised;
  - i. The Claimant's daughter's appointment as G2R's engineer was based on qualification and vacancy; and
  - j. The Claimant was not involved in and did not control G2R's process or procedures in hiring their employees.
- iii. To Misconduct 3 – Abuse of Authority, the Claimant's action was not against any policy as Petronas has no business with the Company or Platinum Core and that Malik Faizal Bakar had requested for the CV and volunteered to assist the Claimant's daughter in procuring employment.

[13] During the meeting held by the Disciplinary Committee (“*DC/DC Meeting*”) chaired by Datuk Mohamad Idham Bin Nawawi on 19 April 2019, the DC found the Claimant guilty of all 3 charges aforementioned.

[14] As a consequence of the DC’s decision, the Claimant, being informed that he had committed serious misconducts *vide* a letter dated 6 May 2019 (“*the dismissal letter*”), was summarily dismissed from the employment with the Company with immediate effect.

**(b) The Company**

[15] At the time of the Claimant’s dismissal from service, the Claimant held the position of Head of Property Acquisition, Network Finance & Property Management. The Claimant’s last drawn monthly basic salary was RM20,140.00 per month. He was also entitled to a fixed car allowance of RM2,000.00 per month and petrol allowance of RM700 per month.

[16] The Claimant’s employment history and the events leading to his dismissal from the services of the Company are as follows:-

- i. By a letter dated 25 July 1997, the Claimant was employed by Telekom Cellular Sdn Bhd as Senior Manager, Corporate Affairs and Legal Division effective 1 November 1997;
- ii. By a letter dated 12 October 2012, the Claimant was appointed by Celcom Axiata Berhad as Senior Manager, Vendor &



Partnership Management Division, Group Network effective 1 November 2012;

- iii. By a letter dated 6 November 2012, the Claimant was appointed by Celcom Transmission (M) Sdn Bhd as Acting Head of Vendor & Partnership Management, Group Network for a period of 6 months effective 1 November 2012;
- iv. By a letter dated 22 May 2013, the Claimant was promoted to the position of Head of Network Vendor & Partnership Management by the Company effective 1 September 2012;
- v. By a letter dated 27 May 2014, the Claimant was appointed by Celcom Axiata Berhad as Head of Vendor Partnership Management, Group Network effective from 1 June 2014;
- vi. Subsequently, the Claimant was appointed as Head of Property Acquisition, Network Finance & Property Management, i.e. the Claimant's last held position;
- vii. By email dated 5 December 2018, the Claimant had made an offer to the Company to be accepted for the Company's voluntary separation scheme referred to as the Sunrise Programme;
- viii. By email dated 31 December 2018, the Company had accepted the Claimant's offer. However, in light of the Company's subsequent discovery of the Claimant's alleged acts of misconduct, the Company had retracted its previous acceptance of the Claimant's offer to be accepted for the Sunrise Programme, and communicated the same to the Claimant by email dated 13 February 2019;

- ix. On 30 December 2018, the Corporate Investigation department of the Company had received information from the Company's Legal department in respect of the awarding of sites of the In-Building Coverage ("*IBC*") Projects to G2R by the Claimant;
- x. Pursuant thereto, the Corporate Investigation department commenced investigations on the allegations against the Claimant and found the following:
  - a. In the Claimant's written statement from investigation interview dated 9 January 2019, the Claimant had admitted that his daughter, one Nur Syuhadah Jalaludin, was employed as an engineer in G2R since February 2018. No prior declaration was made by the Claimant to the Company on the same;
  - b. On 12 February 2018, which is the same month his daughter was employed with G2R, the Claimant had directly awarded 20 sites of IBC Projects to G2R without offering the same 20 sites to other active vendors, as such failing to act in the best interest of the Company;
  - c. As the Head of Property Acquisition, the Claimant was responsible for distributing the site list to other active vendors for the IBC Projects, but he had failed to do the same;
  - d. The Claimant was the sole person in charge of the IBC Projects negotiations with G2R and had awarded these sites without consulting or referring to a committee and/or his immediate superior;

- e. Following from the above, it was also discovered that the Claimant had on 3 April 2018, sent an email (using the Company email) to Platinum Core (an active vendor of the Company at the material time) requesting for assistance in finding employment for his daughter; and
- f. The investigations further revealed that the Claimant had in March 2017 requested G2R to buy Electric Train Service (“ETS”) tickets for him and his then subordinate, one Mohd Sazali bin Muhamat @ Sharif. Despite G2R buying the ETS tickets on behalf of the Claimant, the Claimant had claimed reimbursement amounting to RM141.00 from the Company.

**[17]** The Corporate Investigation department reported the above findings in the Corporate Investigation Report dated 22 January 2019 and recommended that the Human Capital department proceed with disciplinary process against the Claimant.

**[18]** Subsequently, by a Show Cause Letter dated 18 February 2019, the Claimant was required to submit his written explanation as to why disciplinary action should not be taken against him for the 3 charges of misconduct as stated therein:-

- “i. Between 8 March 2017 and 9 March 2017, you had requested our vendor, Grass2Route Sdn. Bhd. (G2R) to buy Electric Train Service (ETS) tickets for you and your subordinate, Mohd Sazali Bin Muhamat @ Sharif purportedly for attending business*

meeting at Northern Region. Details of your business trip are as follows:-

<b>Date</b>	<b>Destination</b>		<b>Time</b>		<b>Fare (RM)</b>
	<b>From</b>	<b>To</b>	<b>Departure</b>	<b>Arrival</b>	
09/03/2017	KL Sentral	Butterworth	09:00	13:02	79.00
09/03/2017	Sungai Petani	KL Sentral	20:51	01:12	62.00
<b>Total (RM)</b>					<b>141.00</b>

You had submitted claims amounting to RM141.00 (Ringgit Malaysia: One Hundred and Forty One Only) despite the ETS tickets were bought by G2R. The claims were subsequently approved and credited into your account on 25 April 2017. Your action in claiming the above had deceived the Company into reimbursing you with the said amount”.

“ii. On 12 February 2018, you had failed to act in the best interest of the Company when you have directly awarded 20 (twenty) sites of In-Building Coverage (IBC) Projects to Grass2Route Sdn. Bhd. (G2R) without offering the same 20 sites to other active vendors. During investigation, you have admitted that your daughter, Nur Syuhadah Jalaludin was employed by G2R as Engineer, IBC since February 2018.

Your action in awarding such IBC Projects directly to G2R is construed as a Conflict of Interest in breach of the Company’s Blue Spirit Policy – Conflict of Interest”.

*“iii. On 3 April 2018, you had sent an e-mail to Malik Faizal Bakar, Managing Director of Platinum Core Solutions Sdn. Bhd. i.e. Celcom’s active vendor during the material time and requested him to find and/or secure employment in favour of your daughter, Nur Syuhadah Jalaludin preferably in Petronas. Your action is construed as abusing your authority in breach of the Company’s Blue Spirit Policy – Business Conduct [Dealing with External Parties – Dealing with Vendors and Business Partners]”.*

**[19]** By a letter dated 1 March 2019, the Claimant furnished his written explanation to the Company in response to the Show Cause Letter.

**[20]** On 19 April 2019, the Company’s Disciplinary Committee convened to deliberate on the following documents:-

- i. the Show Cause Letter;
- ii. the Claimant’s Reply to the Show Cause Letter;
- iii. the deck presented by Mohd Rashdan Bin Mohd Bakari, Head of Corporate Investigation during the Disciplinary Committee meeting.

**[21]** Based on the above, the Disciplinary Committee decided as follows:-

- i. that the Claimant was guilty of the 3 acts of misconduct as stated in the Show Cause Letter; and

- ii. that the Claimant be dismissed from his services as the Company could no longer repose the necessary trust and confidence in him.

[22] By letter dated 6 May 2019, the Claimant was informed by the Company as follows:-

- i. the Disciplinary Committee had deliberated and resolved that the Claimant had committed serious acts of misconduct;
- ii. after taking into consideration all the relevant facts and circumstances surrounding the Claimant's case, that the Claimant be summarily dismissed from employment with the Company with immediate effect.

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

[23] It is established law that the function of the Industrial Court in a Section 20(3) Industrial Relations Act 1967 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 constitutes just cause or excuse for the dismissal.

[24] In the case of **Milan Auto Sdn Bhd v. Wong Seh Yen [1995] 4 CLJ 449** the Federal Court held (*vide* judgment of Mohd Azmi Bin Kamaruddin FCJ (*at pp. 12-13*):-

*"As pointed out by this Court recently in Hong Leong Assurance Sdn Bhd v. Wong Yuen Hock [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 re proven misconduct constitutes just cause or excuse for the dismissal”.*

**[25]** And in the case of **Goon Kwee Phoy v. J & P Coats (M) Bhd [1981] 2 MLJ 129** 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”.*

**[26]** 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. This principle was expounded by the Industrial Court in the case of **Stamford Executive Centre v. Dharsini Ganeson [1986] ILR 101:-**

*“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. He must prove the workman guilty and it is not the workman who must prove himself not guilty. This is so basic a principle of industrial jurisprudence that no employer is expected to come to this Court in ignorance of it.*

#### **IV. Issues To Be Decided**

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

- (i) whether the charges of misconduct levelled against the Claimant are proven on a balance of probabilities;
- (ii) whether the misconduct, if proven, constitutes just cause or excuse for the dismissal.

#### **V. The Court's Findings And Reasons**

**(i) Whether the charges of misconduct levelled against the Claimant are proven on a balance of probabilities**

- **Charge No. 1 – The Submission of the ETS Tickets**

**[28]** Charge No. 1 contained in the Show Cause letter dated 18 February 2019 (at p. 162 of COB-1) reads as follows:-

“(i) *Between 8 March 2017 and 9 March 2017, you had requested our vendor, Grass2Route Sdn. Bhd. (G2R) to buy Electric Train Service (ETS) tickets for you and your subordinate, Mohd Sazali Bin Muhamat @ Sharif purportedly for attending business meeting at Northern Region. Details of your business trip are as follows:-*



<b>Date</b>	<b>Destination</b>		<b>Time</b>		<b>Fare (RM)</b>
	<b>From</b>	<b>To</b>	<b>Departure</b>	<b>Arrival</b>	
09/03/2017	KL Sentral	Butterworth	09:00	13:02	79.00
09/03/2017	Sungai Petani	KL Sentral	20:51	01:12	62.00
<b>Total (RM)</b>					<b>141.00</b>

*You had submitted claims amounting to RM141.00 (Ringgit Malaysia: One Hundred and Forty One Only) despite the ETS tickets were bought by G2R. The claims were subsequently approved and credited into your account on 25 April 2017. Your action in claiming the above had deceived the Company into reimbursing you with the said amount”.*

**[29]** At the outset, it is not in dispute that G2R was an active vendor of the Company at the material point in time and that its Chief Executive Officer (“CEO”), i.e. Muhammad Hezri Bin Mahmud (CLW-2) had been a close friend of the Claimant since 2013.

**[30]** The Claimant in his Reply letter dated 1 March 2019 (at p. 165 of COB-1) to the Show Cause letter had explained with regard to Charge No. 1 in the following manner:-

**“1. Claim for ETS ticket amounting to RM141.00**

*Your alleged on item No. 1 claim for ETS ticket amounting to RM141.00 is hereby referred.*

*Celcom organized a meeting at Northern Region with a few of the NFP’s and regional staff on the progress of site delivery. My present*

*and my subordinate is approved by my immediate superior, Che Juhan Che Mat. The approval of the trip is attached herewith as **Appendix 1**.*

*In view of the urgency and time constraints, I have requested G2R assistance to buy the ETS ticket for me and my subordinate with the intention to reimburse the payment when I arrived.*

*Upon returning back to the office I've submitted my claim including the ticket as I've paid the ticket money to Muhammad Hezri Bin Mahmud ("Muhd Hezri"). All transaction is done in good faith and I have not gain any benefits for such alleged and hereby denied any conflict of interest thereon.*

*As an evidence that reimbursement been made to Muhd Hezri, I attached herewith the Statutory Declaration made by Muhd Hezri dated 27<sup>th</sup> February 2019 which is self-explanatory as **Appendix 2**".*

**[31]** In short, the Claimant does not deny that he had sought the assistance of G2R via its CEO, i.e. CLW-2, to purchase the impugned ETS tickets. The Claimant however contends that he had no *mala fide* intention by making a fraudulent claim when he submitted his claim for reimbursement of the ETS tickets to the Company.

**[32]** It is in evidence that the Company had approved the Claimant's claim for reimbursement for the ETS tickets. However, it was not disputed that the Claimant had failed to disclose to the Company at the material point in time when he made the said claim that he had requested G2R to purchase 2 ETS tickets for himself and his subordinate, i.e. Mohd Sazali Bin Muhamat @ Sharif (at pp. 144-146 of COB-1). CLW-

2, i.e. the CEO of G2R, had emailed the said tickets to the Claimant on 8 March 2017 (at pp. 139-143 of COB-1). The Claimant had chosen to remain silent on the actual facts surrounding the purchase of the said ETS tickets until the point when the Company commenced investigations against him 2 years later in 2019.

[33] The Claimant in his Witness Statement (CLWS-3; Q & A No. 11) testified as follows:-

**“Q11: What was your reply to the First Charge?**

**A11: I had explained that the reason why I requested for G2R’s assistance to purchase the ETS tickets was due to time constraints and that I have reimbursed the payment to G2R on 9.3.2017.**

*I have also attached a Statutory Declaration which was affirmed by G2R’s representative, Muhammad Hezri confirming that I had duly reimbursed the sum of RM141-00 to him. The statutory declaration was affirmed on 27.2.2019 because this issue cropped up on 18.2.2019 and I asked Muhammad Hezri to affirm the SD to state the truth. To my mind, this would have been the best way to show that there was no falsity in my making the claims for the ticket.*

**Please refer to the said Statutory Declaration at page 35 of CLB”.**

(Emphasis added)

**[34]** Rather than providing answers, the Statutory Declaration by CLW-2 (*at p. 35 of CLB-1*), it raised even more questions which by the end of the trial remained unanswered. Firstly, knowing that G2R was an active vendor of the Company at the material point in time, why did the Claimant approach G2R, even if he did know its CEO? Even more so when it was well within the Claimant's knowledge that requiring assistance from G2R and/or its personnel could undoubtedly place him in a situation of conflict of interest.

**[35]** Secondly, the Statutory Declaration or even CLW-2's testimony before this Court does not prove conclusively that G2R and/or CLW-2 had initially paid for the ETS tickets and the Claimant later reimbursed CLW-2. No documentary evidence was produced, other than the Statutory Declaration, showing the payments for these ETS tickets. It is also pertinent to note that the Statutory Declaration by CLW-2 was made almost 2 years later after the investigations started, and that too upon the request of the Claimant (as admitted by the Claimant in his testimony before the Court).

**[36]** Crucially (and this is the whole crux of Charge No. 1), the Claimant failed to satisfactorily explain as to why he had failed to inform the Company when he made the submission for the reimbursement for the ETS tickets that he had in fact obtained the assistance of G2R *via* its CEO (i.e. CLW-2) to purchase the said ETS tickets. This is where the Claimant had practiced deception on the Company. The Claimant knew fully well that had he disclosed to the Company that he had sought the assistance of G2R, he would have landed in hot soup due to the Company's Blue Spirit Policy, in particular with regard to Conflict of Interest (*at p. 52 of COB-1*):-

*“Employees must be aware that they are at all times employees of Celcom, both on and off the job, and that they owe their loyalty to the company. Accordingly, employees must not engage in any activity or advance their personal interests, including the interests of his/her relatives or of any other third party, at the expense of the company’s interests. Employees must avoid all situations where their loyalty may be divided. Where a conflict of interest situation becomes known to the employee, the employee shall abstain from participating in any Celcom decision-making or deliberations involving the entity or person and avoid doing anything that could influence the decisions in such dealings. **Any conflict of interest situation should be cleared with HC function. Failure to fully disclose the nature and scope of the conflict of interest may result in disciplinary action against the employee**”.*

(Emphasis added)

[37] Whether or not the Claimant reimbursed CLW-2 and/or G2R is irrelevant and does not exonerate the Claimant from his misconduct of deceiving the Company into thinking that the ETS tickets were purchased by him and not by others, and certainly not by an active vendor of the Company.

[38] Much ado was made by the Claimant that the Company was trying to rely on situations of conflict of interest whereas Charge No. 1 deals with fraud and/or deception. However, it is clear that Charge No. 1 pertains to the Claimant’s misconduct of deceiving the Company into thinking that he had purchased the ticket and concealing the fact that he had actually sought the assistance of G2R *via* its CEO (i.e.

CLW-2) in the said purchase of the ETS tickets in order not to run afoul of the Company's Blue Spirit Policy on conflict of interest. Furthermore, the fact that the Claimant chose to keep absolutely silent until when the investigations commenced 2 years later indeed speaks volumes of his *mala fide* intention.

[39] The Court thus finds that the Company has succeeded to prove on a balance of probabilities that the Claimant is guilty of Charge No. 1.

- **Charge No. 2 – Awarding 20 IBC Project Sites to G2R**

[40] Charge No. 2 contained in the Show Cause letter dated 18 February 2019 (at p. 162 of COB-1) reads as follows:-

*“(ii) On 12 February 2018, you had failed to act in the best interest of the Company when you have directly awarded 20 (twenty) sites of In-Building Coverage (IBC) Projects to Grass2Route Sdn. Bhd. (G2R) without offering the same 20 sites to other active vendors. During investigation, you have admitted that your daughter, Nur Syuhadah Jalaludin was employed by G2R as Engineer, IBC since February 2018.*

*Your action in awarding such IBC Projects directly to G2R is construed as a Conflict of Interest in breach of the Company's Blue Spirit Policy – Conflict of Interest”.*

[41] Charge No. 2 yet again deals with the Claimant's involvement with G2R, i.e. an active vendor of the Company. It pertains to the Claimant's action of directly awarding 20 IBC Project Sites to G2R without offering the same to other active vendors of the

Company, whilst knowing fully well that he was already placed in a situation of conflict of interest by the fact that his daughter, i.e. Nur Syuhadah Jalaludin, was employed by G2R at the material point in time as an Engineer.

**[42]** The Claimant had contended that the Company had failed to produce before the Court procurement process or policy to be adhered to before awarding such projects to its active vendors. The Claimant had also produced his superior at the material point in time when the Project sites were awarded to G2R, i.e. Jason Stephen Nayagam (CLW-1) who had testified on how the Claimant had consulted him and got his approval to award the IBC Project sites to G2R.

**[43]** Despite CLW-1 testifying that the approval for the awarding of the 20 IBC Project sites could only be done by him, what is pertinent here is that it was the Claimant who had submitted the papers to CLW-1 for the final approval. CLW-1 admitted when cross-examined that he did not know that the Claimant's daughter was working with G2R at the material point in time.

**[44]** The crux of Charge No. 2 pertains to the Claimant's failure to disclose to the Company of his daughter's employment in G2R as an Engineer. Whether or not the Claimant's daughter was ultimately involved with the said Project is immaterial. The onus is upon the Claimant to declare to the Company of the situation of conflict of interest that he had been placed under, as is clearly provided under the Company's Blue Spirit Policy (*at p. 52 of COB-1*). The Court also takes note that the Claimant's daughter was employed with the Edotco-IBC Department in G2R, as evidenced by her salary slip (*at p. 11 of CLB-2*), which cements the Company's contention that the

Claimant's daughter's functions were indeed related to IBC works, putting paid to the Claimant's stand that his daughter was not involved or did not know anything about the 20 IBC Project Sites that the Claimant had caused the Company to directly award to her company, i.e. G2R.

**[45]** Despite knowing fully well of the position of conflict of interest he had been placed under, the Claimant nevertheless proceeded to directly award the 20 IBC Project sites to G2R without following any fair or best procurement practice, such as carrying out a tender. In fact, as is stated under the Company's Blue Spirit Policy on Conflict of Interest (*at p. 52 of COB-1*), the Claimant could have even recused himself from getting involved in the process of awarding the said Project if at all he felt only G2R, and not any other active vendors, was qualified to carry out the works.

**[46]** The Claimant chose to remain silent with regards to his daughter's employment with G2R despite him taking an active role in awarding the 20 IBC Project sites to G2R, until two years later when the investigations on his alleged misconduct commenced.

**[47]** The Court finds that the Company had succeeded in proving on a balance of probabilities that the Claimant is guilty of Charge No. 2. The Claimant had abused his position in the Company as the Head of Property Acquisition, Network Finance & Property Management to directly award the 20 IBC Project sites to G2R, where his daughter was working as an Engineer in the Edotco-IBC department, and thus had failed to act in the best interest of the Company.



- **Charge No. 3 – Abuse of Authority as Head of Network Vendor & Partnership Management**

[48] Charge No. 3 contained in the Show Cause letter dated 18 February 2019 (at p. 162 of COB-1) reads as follows:-

*“iii. On 3 April 2018, you had sent an e-mail to Malik Faizal Bakar, Managing Director of Platinum Core Solutions Sdn. Bhd. i.e. Celcom’s active vendor during the material time and requested him to find and/or secure employment in favour of your daughter, Nur Syuhadah Jalaludin preferably in Petronas. Your action is construed as abusing your authority in breach of the Company’s Blue Spirit Policy – Business Conduct [Dealing with External Parties – Dealing with Vendors and Business Partners]”.*

[49] This charge pertains to the Claimant seeking a favour from one En. Malik Faizal Bakar of Platinum Core to find a suitable job for the Claimant’s daughter, preferably at Petronas. This can be found in the Claimant’s email to the said En. Malik Faizal dated 3 April 2018 (at p. 136-138 of COB-1):-

*“Salam Malik,  
  
Mintak jasa baik untuk find a suitable job/work for my daughter who’s just completed her studies in “chemical industry, USIM (if possible Petronas). Currently she is working with G2R, company providing repeater and IBC system.  
  
Thanking you in advance.  
  
Regards.”*

**[50]** Learned Counsel for the Claimant had submitted that Charge No. 3 is without any footing as Platinum Core was not even an active vendor of the Company. This however contrasts significantly with the Claimant's own admission before the Court during cross-examination by learned Counsel for the Company that Platinum Core was an active vendor of the Company at the material point in time, i.e. 3 April 2018. In light of the admission by the Claimant, surely the submission by learned Counsel for the Claimant on this point is wholly misconceived.

**[51]** The Claimant even contends that it was in fact En. Malik Faizal who had approached the Claimant seeking to assist the Claimant's daughter in finding a job. This is however unsubstantiated by any contemporaneous document. What is before the Court is the Claimant's email of 3 April 2018 (*at p. 136-138 of COB-1*) clearly asking for a favour from En. Malik Faizal to find a job for his daughter, preferably in Petronas.

**[52]** It is also indeed very brazen of the Claimant to not only ask En. Malik Faizal for the favour, but to make that request using the Claimant's company email, i.e. *jalah@celcom.my*, sent to En. Malik Faizal's company email, i.e. *faizal@platinum-core.com*. It is clear that the Claimant does not think much of the Company's Blue Spirit Policy and indeed gave short shrift to the same, especially with regard to conflicts of interest.

**[53]** In light of the incontrovertible evidence, the Court finds that the Claimant is clearly guilty of Charge No. 3.

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

**[54]** 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 all the allegations as contained in the Show Cause letter dated 18 February 2019.

**[55]** The misconduct complained of by the Company in the said Show Cause letter constitute serious misconduct. Being the Head of Property Acquisition, Network Finance & Property Management, which is a senior position in the Company, the Claimant without a doubt had added responsibilities and a fiduciary duty to always act in the best interests of the Company. The Claimant not only had concealed his conflict of interest from the Company but had also practised deception on the Company by virtue of his position in the Company. Under the circumstances, the punishment of dismissal meted out by the Company to the Claimant is proportionate to the act of misconduct complained of.

**[56]** The Claimant's conduct was against the Company's best interest and faithful discharge of his duty to the Company. In the oft-quoted case of **Pearce v. Foster** **[1886] QBD 536** it was held by Lord Esher MR:-

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

*own act he prevents himself from doing so, the master may dismiss him. It is not that the servant warrants that he will duly and faithfully perform his duty; because, if that were so, upon breach of his duty his master might bring an action against him on the warranty. But the question is, whether the breach of duty is a good ground of dismissal”.*

**[57]** In the case of **Zulbahari Ladat v. CIMB Bank Berhad [2012] 2 ILR 225** the Industrial Court held:-

*“In Esso Production Malaysia Inc. v. Md Yusop Nordin [1997] 2 ILR 711 (Award No. 356 of 1997) it was held that:*

*It is settled law that the employee is required at all times to act in a faithful manner, and not place himself in a position where his interests conflict with his duties. If the employee does an act which is inconsistent with the fiduciary relationship with the employer, then it will be an act of bad faith...”*

B.R. Ghaiye *in his text ‘Misconduct in Employment’ Chapter XIX at pp. 650 states:*

***The servant stands in a fiduciary relation***

*The relation between an employer and an employee is of fiduciary character. The word ‘fiduciary’ means belonging to trust or trusteeship. It means that whenever an employer engages a worker he puts trust that the worker will faithfully discharge the service and protect and further the interest of the employer. A*

*fiduciary relationship exists between employer and employed: (a) whenever the former entrusts the latter with property, tangible or intangible, eg., confidential information and relies upon the other to deal with such property for the benefit of the employer, or for purposes authorized by him, and not otherwise, (b) whenever the employer entrusts the employee with a task to be performed, eg., the negotiation of a contract, and relies on the servant or agent to procure the best terms available. If the employee does an act which is inconsistent with the fiduciary relationship, then that will be an act of bad faith for which his services can be terminated. ...*

*The obligation to serve his master with good faith and fidelity arises out of necessary implication which is deemed to be engrafted on each and every contract of service. This...condition is recognised on account of realization of the need of full confidence between the employee and the employer... .”*

**[58]** The Industrial Court in the case of **Cellular Communications Network (M) Sdn Bhd v. Johari Tahar [2001] 1 ILR 387** stated that there is a specific implied term that an employee shall not act in any manner which will put his interests in conflict with those of his employer. It was held:-

*“The underlying object of conflict of interests rules and obligations of good faith and fidelity implied by law is the avoidance of conflicts which will or may arise, between an employee’s interest and those of his*

*employer. Such actual or potential conflicts of interests may be direct or indirect*". (Emphasis added)

[59] In the case at hand, there were clear express provisions on situations of conflicts of interest and the duty on the employees to declare such conflicts to the Company, by virtue of the Company's Blue Spirit Policy.

[60] 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. The Company is justified in dismissing the Claimant for the serious acts of misconduct committed by the Claimant.

## **VI. Conclusion**

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

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

**HANDED DOWN AND DATED THIS 21<sup>st</sup> DAY OF OCTOBER 2024**

**-signed-**

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