

**IN THE INDUSTRIAL COURT OF MALAYSIA**  
**IPOH, PERAK**

**CASE NO. 10/4-2920/20**

BETWEEN

**SASIKUMAR A/L PARAMASIVAM** ...The Claimant

AND

**UNITED OVERSEAS BANK (MALAYSIA) BHD.** ...The Company

**AWARD NO. : 3 OF 2024**

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

**Venue:** Industrial Court of Malaysia, Perak Branch

**Date of Reference:** 18/11/2020

**Dates of Mention:** 06/01/2021, 15/03/2021, 17/06/2021, 22/02/2022 &  
12/01/2023

**Dates of Hearing:** 05/08/2022, 03/02/2023 & 26/07/2023

**Representation:** For the Claimant:  
**Sakthivel Nagalingam**  
Messrs. Amran Joseph Chan & Co.

For the Company:  
**Wong Keat Ching with Loh Qiao Wen**  
Messrs. Zul Rafique & Partners

**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 **Sasikumar a/l Paramasivam** (hereinafter referred to as “*the Claimant*”) by **United Overseas Bank (Malaysia) Bhd.** (hereinafter referred to as “*the Company*”) on 25/02/2020.

**Factual Background:**

1. The dispute before this Court is over the dismissal of the Claimant from his services with the Company (the Bank) with effect from 25/02/2020 due to the alleged misconduct of misappropriation of Bank's cash money amounting to RM1,000.00 from the cash excess under his care as a Teller at the Bank's Ipoh branch. At the time of the Claimant's dismissal, he held the position of Service Associate / Teller with his last drawn basic salary of RM4,547.00 per month. The Claimant was also entitled to cost of living allowance of RM600.00, laundry allowance of RM80.00, meal allowance of RM15.00 and childcare subsidy of RM90 (Employee Salary Statement at pages 15-16 of COB-2).

2. The Claimant commenced his employment with the Company (the Bank) vide a contract of employment dated 04/10/2002 under a fixed term contract by the Bank as Temporary Clerk with effect from 07/10/2002 until 31/02/2002. Prior to 2002, the Claimant joined the Bank in 1997 and subsequently he voluntarily resigned from the Bank by way of letter of resignation dated 27/04/2002. Thereafter, he was offered a permanent appointment as a Clerk with effect from 02/01/2003 given that the position had become vacant and the Claimant was familiar with the job. Vide a letter dated 27/05/2019 (at page 14 of COB-1) the management of the Bank had approved the Claimant's request to be transferred to the Bank's Ipoh branch – operations with effect from 01/07/2019.

3. The incident of Claimant's misconduct of misappropriation of Bank's cash money had triggered on 22/01/2020 at about 6.00 p.m. during the end of day

balancing surprise check conducted by **Salahuddin Bin Abdul Hamid** (COW-3); the Chief Cashier of the Ipoh branch, who discovered a cash shortage of RM1,000.00 comprising of RM10.00 denomination notes at the branch. COW-3 informed **Kevin Lee Shee Kin** (COW-1), the Branch Manager and Sales Service Manager about the cash shortage.

4. On 26/01/2020, from the Bank's CCTV recording and footage at 3.22 p.m. (E1, E-4B & E-5B) had showed that the Claimant had obtained and received RM1,000.00 in cash from COW-3 at 3.22 p.m. on 22/01/2020. The same CCTV footage also showed that the Claimant putting a bundle of cash money from his drawer into an envelope and then into his bag on 22/01/2020 at 6.18 p.m. (E-2, E-3, E-7B, E-8B & E-9B). Later on, COW-3 recalled that the Claimant had requested RM1,000.00 from him without recording the cash request on the Bank's iBranch System even though COW-3 reminded the Claimant to do so. In actual fact, the Claimant failed to fill in the said transaction and it was not recorded by him in the iBranch System.

5. On 28/01/2020, COW-3 and the Claimant was called in for interview before the branch manager on the cash shortage wherein the Claimant admitted he had taken RM1,000.00 in cash and he was instructed by the branch manager to return the said cash. Eventually, the Claimant then returned the RM1,000.00 cash money in RM50.00 denomination notes to COW-3 on the same day.

6. As a result of the incident, the Claimant was issued a Letter of Suspension dated 28/01/2020 (at page 1 of COB-1) by the Bank informing of his suspension from

the services with immediate effect pending investigation upon his misconduct until further notice.

7. Upon the ongoing investigation, the Claimant was also issued the Show Cause Letter dated 03/02/2020 (at page 2 of COB-1) by the Bank, requesting the Claimant to provide his written explanation in respect of the alleged misconduct proffered against him. By a letter of reply dated 04/02/2020 (at pages 8-9 of COB-1) the Claimant furnished his written explanation to the Bank in response of the said Show Cause Letter.

8. The Claimant was informed to attend the Domestic Inquiry conducted by the Bank vide a Notice of Domestic Inquiry dated 11/02/2020 (at page 3 of COB-1) to explain and defend himself against the alleged charge of his misconduct as follows:

*“That you had on 22 January 2020, misappropriated cash amounting to RM1,000.00 from the cash under your care as a Teller at the Ipoh Branch”*

9. In the same Notice of Domestic Inquiry, the Claimant was also informed that he is entitled to bring along witnesses, if any, to the inquiry. He was also informed that if he fails to attend the inquiry, the Bank reserve the right to proceed with the inquiry on ex-parte basis and to take whatever disciplinary action deemed appropriate against the Claimant.

**10.** The Company (the Bank) conducted the Domestic Inquiry convened against the Claimant on 11/01/2020 wherein the Claimant pleaded not guilty to the alleged charge of misconduct preferred against him. At the end of the disciplinary process, the Bank found the Claimant was proven guilty and the Claimant was issued a Letter of Termination dated 25/02/2020 by the Bank (at page 4 of COB-1) informing him that the Bank could not repose the necessary trust and confidence in him to effectively discharge his duties as an employee of the Bank. Due to seriousness of the misconduct committed, the Claimant was dismissed from the services of the Bank with immediate effect.

**11.** Thereafter, the Claimant appealed against the Bank's decision vide letter of appeal dated 27/02/2020 (at pages 12-13 of CLB) whereby the Bank had replied vide a letter dated 18/05/2020 (at page 5 of COB-1) informing him that the Bank had considered his appeal against his dismissal. The Bank decided to dismiss his appeal due to reason that integrity is expected of every employee, particularly as the Bank is a custodian of public funds. As such, any breach of integrity would be a gross misconduct warranting his dismissal.

**12.** Being dissatisfied with the termination of his employment, the Claimant had referred his representation to the Honourable Minister of Human Resources Malaysia dated 18/11/2020 to be referred to this division of Industrial Court for adjudication and Award to be handed down.

## The Function of the Industrial Court & The Burden of Proof:

13. 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.

14. 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"*

15. The above principle was further reiterated by the Federal Court in **K A Sanduran Nehru Ratnam v. I-Berhad [2007] 1 CLJ 347** where the Court outlined the function of the Industrial Court:

*"The main and only function of the Industrial Court in dealing with a reference under **s. 20 of the Industrial Relations Act 1967** is to*

*determine whether the misconduct or irregularities complained of by the management as to the grounds of dismissal were in fact committed by the workman. If so, whether such grounds constitute just cause or excuse for the dismissal.”*

16. And in the case of **Goon Kwee Phoy v. J & P Coats (M) Bhd. [1981] 1 LNS 30; [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".*

17. The term "*dismissal*" under **s. 20 of the Act** is not clearly spelt out and generally covers the act of termination of the employee by the employer. In the case of **Colgate Palmolive (M) Sdn. Bhd. v. Yap Kok Foong [1998] 2 ILR 965 (Award No. 368 of 1998)**, the Court held as follows:

*"In a s. 20 reference, a workman's complaint consists of two elements: firstly, that he has been dismissed, and secondly that such dismissal was without just cause or excuse. It is upon these two elements being established that the workman can claim his relief, to wit, an order for*

*reinstatement, which may be granted or not at the discretion of the Industrial Court. As to the first element, industrial jurisprudence as developed in the course of industrial adjudication readily recognizes that any act which has the effect of bringing the employment contract to an end is a 'dismissal' within the meaning of s. 20. The terminology used and the means resorted to by an employer are of little significance; thus, contractual terminations, constructive dismissal, nonrenewal of contract, forced resignations, retrenchments and retirements are all species of the same genus, which is dismissal."*

18. 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] 1 ILR 101; [1986] ILR 101; [1985] 2 MELR 245***). Similarly in ***Telekom Malaysia Kawasan Utara v. Krishnan Kutty Sanguni Nair & Anor [2002] 3 CLJ 314***, the Court of Appeal held as follows:

*"[2] Thus in a hearing of unjust dismissal, where the employee was dismissed on the basis of an alleged criminal offence such as theft of company property, the Industrial Court is not required to be satisfied beyond a reasonable doubt that such an offence was committed. The standard proof applicable is the civil standard, i.e., proof on a balance of probabilities which is flexible so that the degree of probability required is proportionate to the nature and gravity of the issue."*

19. In ***Monie v. Coral Racing Ltd. [1981] ICR 109***, the Court of Appeal in England had to decide an appeal by an employee who had been dismissed for dishonesty.... The Court of Appeal, dismissing the appeal by the employee held, *inter alia*:



*“Held, dismissing the appeal, (1) that whether a dismissal based on mere suspicion of an employee's theft was fair depended on whether in all the circumstances of the case the employers had acted reasonably in treating their suspicion as a sufficient reason for dismissing the employee: that such reason was in the circumstances a "reason related to the conduct of the employee"; and that the industrial tribunal, having asked themselves whether there were solid and sensible grounds on which the employers could reasonable suspect dishonesty, were entitled to find that that the employers had discharged the onus of proof...”*

### **The Law Relating to Misconduct:**

20. As the Company had caused the dismissal of the Claimant, it follows that the Company must discharge the burden of proof that the dismissal is with just cause or excuse. The Court refers to the case of ***Ireka Construction Berhad v. Chantiravathan Subramaniam James*** [1995] 2 ILR 11 (Award No. 245 of 1995) to drive home this point:

*“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 or excuse for taking the decision to impose the disciplinary measure of dismissal upon the employee. The just cause must be, either misconduct, negligence or poor performance based on the facts of the case.”*

21. In ***Mohd Saufi Ahmad Rozali & Anor v. Puspakom Sdn. Bhd.*** [2013] 2 ILR 144 (Award No. 393 of 2013), it was held that:

*“[6] When an employer makes an accusation of misconduct against an employee and dismisses him on that ground, it is trite law that the employer bears the burden of proving the misconduct against the employee. However, it is my humble view that the standard of proof has seen some significant changes in the recent past... The standard that is required of the employer is that of a reasonable employer and whether there were "solid and sensible grounds" on which the employer could reasonably suspect the employee guilty of the misconduct. The other important point is that the Industrial Court cannot demand proof to its satisfaction and the Industrial Court has only to be satisfied that company was justified in coming to its conclusion. What is vital to note is that the employer has only to show that he had reasonable grounds to believe and did honestly believe that the employee was guilty of misconduct.*

*[7] Hence, even the standard of proof on the balance of probabilities may be too rigid a standard and the standard now is of reasonable belief. This standard has been reaffirmed by the Court of Appeal in the case of **KA Sanduran Nehru Ratnam v. I-Berhad [2007] 1 CLJ 347**. This case established that the test is not whether the employee did it but whether the employer acted reasonably in thinking the employee did it.”*

22. In **Milan Auto Sdn. Bhd. v. Wong Seh Yen [1995] 4 CLJ 449** in pp. 454 dan 455 Y.A. Mohamed Azmi Kamaruddin decided as follows:

*“As pointed out by this Court recently in **Hong Leong Assurance Sdn. Bhd. v. Wong Yuen Hock [1995] 3 CLJ 344; [1995] 2 MLJ 753**, the function in the Industrial Court in dismissal cases on a reference under s. 20 is two-fold: first to determine whether the misconduct complained of by the employer has been established and secondly to determine whether the proven misconduct constitutes just cause or excuse for the dismissal of the employee.”*

23. In **Syarikat Kenderaan Melayu Kelantan Sdn. Bhd. v. Transport Workers Union** [1988] 1 LNS 234, had defined "misconduct" as:

*"... conduct so seriously in breach of the accepted practice that, by standards of fairness and justice, the employer should not be bound to continue the employment."*

24. The Court of Appeal in a case of **Institute Of Technology Petronas Sdn. Bhd./Universiti Teknologi Petronas v. Amirul Fairuz Ahmad** [2023] 1 LNS 222 (Rayuan Sivil No. A-01(A)-122-02-2020) has adequately encapsulated the functions of this Court which this Court need only to refer, as follows:

*"[30] It is trite law that the function of the Industrial Court in dismissal cases on a reference under s. 20 of the Industrial Relations Act is twofold, first, 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 (see Milan Auto Sdn. Bhd. v. Wong Seh Yen [1995] 4 CLJ 449; [1995] 3 MLJ 537, FC). In other words, the Industrial Court will have to ascertain whether the Claimant had been dismissed, and if so, whether the dismissal was with or without just cause or excuse. Failure to determine these issues on the merits would be a jurisdictional error which would merit interference by certiorari by the High Court."*

25. The Federal Court in **Wong Yuen Hock v. Syarikat Hong Leong Assurance Sdn. Bhd. & Another Appeal** [1995] 3 CLJ 344 held that:

*"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.*

*Therefore, in the present case, the duty of the Industrial Court is to determine whether the misconduct complained of by the university has been established, and whether the proven misconduct constitutes just cause or excuse for the dismissal. It is also common ground that the onus to prove, on a balance of probabilities that the dismissal was for just cause or excuse, lies with the University (see **Telekom Malaysia Kawasan Utara v. Krishnan Kutty Sanguni Nair & Anor [2002] 3 CLJ 314**).*

*It is also important for the Industrial Court to determine whether misconduct has been made out based on the evidence presented at the trial. It is also pertinent to note that the Industrial Court cannot rely on the notes of proceedings of the Domestic Inquiry only to decide whether a prima facie case has been established.”*

**Issues:**

**26.** Based on the factual facts enumerated above and by reference to the cause papers including to the Claimant’s Statement of Case dated 10/02/2021, the issues which fall to be determined by this Court may be summarized as follows:

- (a) Whether the charge of misconduct preferred against the Claimant is proven on a balance of probabilities; and
- (b) Whether the punishment of dismissal that was based on the charge of misconduct was proportionate and constitutes just cause or excuse.

### **The Company's Case:**

**27.** The Bank had tendered various evidence to show that the RM1,000.00 was the cash requested from the Chief Cashier (COW-3) which the Claimant did not key in into the Bank iBranch System. The Claimant took the cash of RM1,000.00 home on 22/01/2020, whereby the cash did not belong to him but the Bank. He did it so despite knowing that it was not the right thing to do and that it amounted cash misappropriation.

**28.** The Bank submits that based on the totality of the evidence adduced, the Bank has, without doubt, proven the charge specified in the notice of domestic inquiry, on a balance of probabilities. Not only had the Claimant failed to be honest and truthful by not reporting the cash excess, he took the money home and only returned to the Bank after his misconduct was discovered by the Bank. The Claimant's act of misappropriating the cash belonging to Bank was done deliberately and not by mistake. This is serious misconduct which justifies punishment of dismissal.

**29.** The Company reiterated that the punishment of dismissal against the Claimant was proportionate to the nature and gravity of the misconduct committed by him. Integrity is expected of every employee, more so in the Bank as it is a custodian of public funds. As such, any breach of integrity would be a gross misconduct warranting summary dismissal. Based on facts and authorities, the Company submits that the Claimant's dismissal was with just cause and excuse.

### **The Claimant's Case:**

**30.** The Claimant contended that he never intended to misappropriate the cash money, but was merely trying to do the right thing by returning the cash money that he thought rightfully belonged to the customer. The Claimant immediately returned the money when he was asked to do so, and there is not an iota of evidence to show that he had taken this excess cash money for his own use. He had taken the excess cash money out from the Bank with noble intention of returning the money to the customer and the Bank had not suffered any loss.

**31.** The Claimant claims that he had made a genuine mistake that he had mistaken belief that it was a customer's money and his error was seemingly justified when the surprise spot check did not reveal any shortage.

**32.** The Claimant further claims that at the end of working hours, he found that his cash counter machine was not properly in working order and faulty, and he believed the excess cash of RM1,000.00 belonged to Mito Food Sdn. Bhd., the Bank's customer. So he put the money into the envelope and then into his bag and intended to return the money to the customer, but he could not find her. He then took the excess cash back home and brought it back on the next day (23/01/2020) hoping to return the money back to the said customer but he was unable to do so as the Bank was very busy on the day before Chinese New Year holidays and some employees were already on leave. As he finished work on the day, he once again took the cash money of RM1,000.00 back home and intended to bring the excess money back to the Bank on 28/01/2020 after the Chinese New Year holidays, but

somehow he forgot to do so. On the contrary, if what the Claimant thought was right, the act of returning the customer's money would have greatly enhanced the Bank's image.

**33.** The Claimant had appeal against the decision of the Bank in dismissing him from his service asking that he be forgiven for his indiscretion and that he be given a second chance based on his clean record whilst working for the Bank for so many years and that his only intention was to return the RM1,000.00 to the customer but the Bank had rejected his appeal.

**34.** The Claimant's demeanor throughout the proceedings was of an honest person and he answered the questions put to him truthfully even though his evidence were not favorable to him. The Claimant was employed for almost 18 years and for all intent and purposes, this would be his first misconduct and the Letter of Caution dated 23/01/2017 (at page 12 of COB-4) which was sprung at the very last moment should not be accepted as evidence of previous misconduct as the Bank admitted that they had accepted the Claimant's explanation about the shortage and had cautioned him.

**35.** The Claimant's action here was clearly not dishonest and neither did he try in any way to deceive his employer but it was foolish and naive. The Claimant's dismissal being the ultimate punishment that could be meted out by an employer for the employee's misconduct, was proportionate to the severity of the misconduct the employee was guilty of while bearing in that not all misconduct would justify a dismissal as there are different graduation of misconduct.

**36.** The Claimant submits that the punishment meted out against him in this case was severely harsh and not proportionate to his misconduct especially as at most, he had made an error of judgment by not informing his superiors about his intended actions. Although he did not deny that he is guilty of misconduct but he alleges that his misconduct does not warrant a dismissal as it was too harsh in the circumstances.

**37.** In conclusion, the Claimant further contends that the misconduct committed by the Claimant is an error of judgment on the part of the Claimant and he deserves some mercy and compassion from the employer. As such, the Claimant prays that his dismissal was without just cause or excuse and that his claim as prayed in his Statement of Case be allowed.

**Cause Papers, Bundle of Documents, Witness Statements & Written Submissions Referred:**

**38.** The Claimant; **Sivakumar A/L Paramasivam** (CLW-1) gave evidence of his own behalf whilst the following witnesses testified on behalf of the Company (the Bank) in the trial:

- (i) **Lee Shee Kin** (COW-1) – the Bank’s Ipoh Branch Sales & Service Manager;
- (ii) **Lai Tak Ming** (COW-2) – the Bank’s Executive Director, Country Head, Human Resources; and
- (iii) **Salahuddin bin Abdul Hamid** (COW-3) – the Ipoh’s Branch Chief Cashier (retired).



**39.** In the course of this hearing, parties had referred the Court on the following documents:

- (i) *Pernyataan Kes* dated 10/02/2021;
- (ii) Statement in Reply dated 08/04/2021;
- (iii) *Ikatan Dokumen Pihak Menuntut* (11/02/2021) marked as CLB;
- (iv) Company's Bundle of Documents (12/04/2021) marked as COB-1;
- (v) Bank's Bundle of Documents [Volume 2] (21/02/2021) marked as COB-2;
- (vi) Bank's Bundle of Documents [Volume 3] marked as COB-3;
- (vii) Bank's Witness Statement of **Lee Shee Kin** (COW-1) dated 05/08/2022 marked as COWS-1A;
- (viii) Bank's Supplementary Witness Statement of **Lee Shee Kin** (COW-1) dated 05/08/2023 marked as COWS-1B;
- (ix) Bank's Witness Statement of **Lai Tak Ming** (COW-2) dated 26/07/2023 marked as COWS-2A;
- (x) Bank's Supplementary Witness Statement of **Lai Tak Ming** (COW-2) dated 26/07/2023 marked as COWS-2B;
- (xi) Bank's Witness Statement of **Salahuddin Bin Abdul Hamid** (COW-3) dated 26/07/2023 marked as COWS-3;
- (xii) Claimant's Witness Statement of **Sasikumar A/L Paramasivam** (CLW-1) dated 26/07/2023 marked as CLWS-1;
- (xiii) Bank's Written Submissions dated 29/09/2023;
- (xiv) *Hujahan Bertulis Pihak Menuntut* dated 03/10/2023;

(xv) *Hujahan Balas Bertulis Pihak Menuntut* dated 30/10/2023; and

(xvi) Bank's Written Submission in Reply dated 01/11/2023.

**Evaluation of Evidence & Findings:**

40. During the hearing before this Court, it had made known the Company's position in this case that the Company shall not be relying on the Domestic Inquiry conducted by the Company (the Bank) and shall proceed to prove the charge of misconduct against the Claimant via a *de novo* hearing before this Court. Hence, the Company shall rely on the evidence produced in this Court to prove the charge of misconduct against the Claimant, without having to adduce any evidence of the Domestic Inquiry proceedings and findings.

41. In this regard, the Court relies on the authority of ***Wong Yuen Hock v. Syarikat Hong Leong Assurance Sdn. Bhd. & Another Appeal*** [1995] 3 CLJ 344 which followed the decision of the then Supreme Court in ***Dreamland Corp. (M) Sdn. Bhd. v. Choong Chin Sooi & Industrial Court of Malaysia*** [1988] 1 CLJ (Rep) 39 which held it is trite law that a defective inquiry or failure to hold a domestic inquiry is not a fatality but only an irregularity curable by a *de novo* proceedings before the Industrial Court.

42. In the Court of Appeal case of ***Hong Leong Equipment Sdn. Bhd. v. Liew Fook Chuan & Other Appeals*** [1997] 1 CLJ 665, Gopal Sri Ram JCA as he then was opined that:

*“The fact that an employer has conducted a domestic inquiry against his workmen is, in my judgment, an entirely irrelevant consideration to the issue whether the latter had been dismissed without just cause or excuse. The findings of a domestic inquiry are not binding upon the Industrial Court which rehears the matter afresh.”*

**Whether The Charge of Misconduct Has Been Proven:**

43. The charge preferred against the Claimant as per the Notice of Domestic Inquiry dated 11/02/2020 (at pages 3 of COB-1) reads as follows:

***“That you had on 22 January 2020, misappropriated cash amounting to RM1,000.00 from the cash under your care as a Teller at the Ipoh Branch.”***

44. The videos containing in the two (2) CDs tendered by the Company (the Bank) – three (3) videos in each CD were played in Court in the course of the hearing and marked as E-1 to E9B accordingly. E-10A refers to the CD labelled as “*original*” tendered by the Company containing three (3) videos with original speed. E-10B refers to the CD labelled as “*slow-mo*” tendered by the Company containing three (3) slow motion version videos of E-10A. The CCTV footages contained in the two (2) CDs (E-10A & E-10B) tendered by the Company, in this regard, that the Claimant had confirmed and agreed to the contents of the CCTV footages.

45. On 22/01/2020, **Salahuddin Abdul Hamid** (COW-3) as the Ipoh Branch Chief Cashier discovered an end of day (EOD) cash shortage of RM1,000.00 in RM10.00 denominations. At the end of every business day, every teller including the

Claimant who was the Clerk or Bank Teller at the material time, has to do cash balancing, which means balancing the cash in the teller's petty cash box against the teller's total report in the Bank's iBranch System which is the Bank's system recoding for every transaction processed by the teller every day. After the EOD cash balancing done by the tellers, they will hand over their excess cash from the petty cash to the Chief Cashier to be kept in the Bank's vault. After the EOD done on that same day, the Chief Cashier (COW-3) discovered that there was a RM1,000.00 cash shortage in his cash position based on the Bank's iBranch System.

46. Evidence of COW-3 had affirmed that as the Chief Cashier of the Ipoh Branch who reported to **Lee Shee Kin** (COW-1); the Branch Sales and Service Manager at the material time, he was at all times responsible for the Bank's operations, including managing the Bank's counter transactions and the Branch's daily cash handling. The Claimant will refer to COW-3 when he requires cash or when he returns cash during banking hours. COW-3 also affirmed that during the material time in year 2020, the Claimant also reported directly to COW-1.

47. Evidence of COW-1 and COW-3 had confirmed that surprise check as performed on the Bank's tellers' petty cash on a random basis twice a month. This was the second time that a surprise check had been done for the month of January 2020. The surprise checks on 22/01/2020 at 5.30 p.m. was done after the tellers had completed their EOD balancing for the day.

48. During the surprise check on 22/01/2020, COW-3 as the Chief Cashier adhered to the Bank's standard procedures for surprise checks and checked the

teller's petty cash box to ensure that the amount of cash in the petty cash box does not exceed the maximum amount allowed. The surprise checks do not include the tellers' drawers since the tellers would have done their EOD balancing as reflected in their EOD balance report.

**49.** In furtherance, evidence of COW-3 had affirmed and explained that he discovered an end-of-day (EOD) cash shortage of RM1,000.00 in RM10.00 denominations. COW-3 further clarified that at the end of every business day, every teller including the Claimant has to do cash balancing, meaning that balancing the cash in the teller's petty cash box against the teller's total report in Bank's iBranch System which records every transaction processed by the teller every day. After the EOD cash balancing done by the tellers, they will hand over their excess cash from the petty cash box daily limit to the Chief Cashier (COW-3) to be kept in the Bank's vault. As the Chief Cashier, COW-3 responsible for tabulating the EOD cash balance of all tellers working in the Ipoh Branch. This is to ensure that the tellers have declared all cash in their possession, and that the cash declared is accurately reflected in the Bank's iBranch System.

**50.** COW-3 further explained and testified that based on his Cash Balancing Report dated 22/01/2020 (at page 5 of COB-2), there should have RM23,000.00 in RM10.00 denominations in his possession. However, his physical cash possession was only RM22,000.00 in RM10.00 denominations. As a result of the shortage, COW-3 informed COW-1 as the Bank's Branch and Sales Manager about the cash shortage.

**51.** Evidence from **Lee Shee Kin** (COW-1) as the Branch Sales and Service Manager who was in the year 2020 responsible for the whole operation of the Ipoh Branch had confirmed that the Bank carried out investigation to find out the reason for the cash shortage of RM1,000.00. On 26/01/2020, based on the CCTV footage exhibits E1, E4B & E5B, COW-1 and COW-3 had reviewed that on 22/01/2020 at 3.22 p.m., COW-3 had handed over RM1,000.00 cash in RM10.00 denominations to the Claimant in a bundle of cash which was taken by the Claimant on 22/01/2020 at 6.18 p.m. from his drawer and the Claimant put it inside an envelope. Then, at 6.18 p.m. he placed the said envelope inside his bag (CCTV footage exhibits E-2, E3, E-7B, E-8B & E-9B).

**52.** The Claimant (CLW-1) confirmed during examination in chief that he received RM1,000.00 in RM10.00 denominations from COW-3 on 22/01/2020 at around 3.22 p.m.:

*“Question: Did you take RM1,000.00 from En. Salahuddin on 22/01/2020?”*

*CLW-1: As it was just before Chinese New Year, customers were asking for new notes and I had run short of new RM10.00 notes, so I requested for some new RM10.00 notes from En. Salahuddin who was the Chief Cashier. He gave me RM1,000.00 in new RM10.00 denominations around 3.20 p.m.”*

**53.** By viewing the screenshot from the CCTV footage (at page 1 of COB-3) it clearly showed that COW-3 was taking some cash to the cash counting machine in the COW-3's room and the Claimant can be seen at the location marked as “A-1”. After COW-3 put the cash in the cash counting machine, the screenshot at page 2 of COB-3 (the same location and same date) clearly showed that the Claimant at 3.22

p.m. was taking the cash from the cash counting machine. The Claimant can be seen at the location marked as "A-2". The CCTV that captured the events in COW-3's room is at the location marked as "A-3".

**54.** In addition, a screenshot from the CCTV footage at page 4 of COB-3 had also clearly showed that on 22/01/2020, the Claimant was opening his drawer and there was a bundle of cash in his drawer. A screenshot of CCTV footage at page 5 of COB-3 and CCTV footage of E-2 also clearly showed that the Claimant was putting a bundle of cash into an envelope after opening his drawer on 6.16 p.m. on the same day; 22/01/2020. The CCTV that captured the events at the Claimant's workplace from the back view is at the location marked as "B-1" (at pages 4-6 of COB-3) and the same CCTV at the location marked as "B-2" (at page 7 of COB-3). The screenshot of CCTV footage at page 8 of COB-3 had clearly showed that on 22/01/2020, the Claimant was holding an envelope with the cash he just put in at the material time. The screenshot of CCTV footage at page 9 of COB-3 and the CCTV footage of E-3 also clearly showed that subsequently, the Claimant placed the envelope into his bag at the time of event at 6.18 p.m. on the same day. The CCTV that captured the Claimant placing the envelope into his bag is at the location marked as "C-1" (at page 10 of COB-3).

**55.** It is clear evidence that a cash shortage inquiry against the Claimant was conducted on 28/01/2020 with the Branch Manager; **Carly Shim Wen Shan**, COW-1 and COW-3. In the same inquiry, the Claimant admitted that he had kept excess cash in the sum of RM1,000.00 which he had taken home on 22/01/2020. The Branch Manager; **Caryl Shim Weng Han** instructed the Claimant to return the cash

excess in the sum RM1,000.00 to the Bank. The Minutes of Cash Inquiry conducted by Ipoh Branch on 28/01/2020 at 9.15 a.m. which was attended by the Claimant as seen at the handwritten minutes signed by the Claimant at pages 7-8 of COB-2.

**56.** It was the Claimant's excuse and he claimed that the excess cash in the sum of RM1,000.00 belonged to a customer, Mito Food Sdn. Bhd. which he suspected that the customer had a shortage of cash deposit and that the Claimant forgot to bring the RM1,000.00 back to the Bank to check back with the said customer on 23/01/2020 or on 24/01/2020. To note that on 25/01/2020 and 26/01/2020 were weekends and 27/01/2020 was a public holiday in conjunction with Chinese New Year upon which the Bank had closed its premises and operations. Evidently, the Claimant admitted in his cross examination that the cash excess of RM1,000.00 is confirmed from COW-3 and not from Mito Food Sdn. Bhd.:

*“Question: Your cash excess of RM1,000.00 is confirmed from Chief Cashier and not from Mito Food?”*

*CLW-1: Yes. After the investigation only I know.”*

**57.** Notwithstanding that, there was no complaint from Mito Food Sdn. Bhd. that there was a shortage of RM1,000.00 in the cash deposit made on 22/01/2020. A copy of a cash deposit receipt for the sum of RM5,600.00 by Mito Food Sdn. Bhd. made at 12.17 p.m. on 22/01/2020 (at page 4 of COB-2) showed that the Bank did not receive a cash excess from Mito Food Sdn. Bhd. at the material time. There is no evidence led by the Claimant to prove that the cash excess indeed belonged to Mito Food Sdn. Bhd. as Bank's customer as he alleged.



58. On the contrary, the Bank had produced cogent evidence to proof that the cash excess belonged to the Bank, and not the customer. The motive and justification as alleged by the Claimant to take the money out from the Bank was irrelevant. The Claimant could not take the money out from the Bank and later when his was caught, he could return the money and claim is was a mistake or it was for some unknown purposes. In ***Lim Hui Qian v. Malaysia Building Society Berhad*** [2020] 2 LNS 1315, it was held that:

*“Evaluation of Evidence*

*[51] The Court finds that it is not in dispute that the Cheeky Accounts were opened and that the remarks of "original sighted" stamp do not appear anywhere. Further, the withdrawal from the said accounts were made in the absence of the account holders and was carried out after banking hours. Further, there remains unchallenged evidence that the Claimants had conducted the transactions in breach of the banking practices and procedures. Their efforts may appear noble but when it involved the banking sector, public confidence must not be eroded. A slight aberration from established banking practices can trigger severe and grave consequences. Their actions although devoid of ignoble motives cannot be justified in any circumstances and any employer in a similar situation would not react in the same way cannot be gainsaid.*

*Findings of the Court*

*[52] Upon weighing the evidence presented by both the parties, the Court is of the opinion that the Respondent had proven on a balance of probabilities that the Claimants had committed serious misconducts in the transaction involving the Cheeky Accounts; the most serious one being the withdrawal from the accounts in the absence of the accounts holders. The monies withdrawn were not handed over to the account holders but handed back to the staff fund. In the circumstances, the*

*Court is of the view that the Claimants were dismissed with just cause and excuse; a conclusion that the Court also arrives at having regards to **Section 30(5) of the Industrial Relations Act 1967** viz, to act according to equity, good conscience and the substantial merits of the case. This claim therefore not warrant the intervention of this Court.”*

59. In any event, regardless of his intention or whether the cash of RM1,000.00 belonged to the customer as alleged by the Claimant, he should not have taken the money out from the Bank's premises and intentional retentions of the money of an employer by a workman which does not belong to him even for a temporary period will tantamount to serious act of misappropriation of such money (see **O.P. Malhotra in The Law of Industrial Dispute (6<sup>th</sup> Ed.) Vol.2 at p. 1168**). It is clear finding that at the moment the Claimant took out the money from the Bank and brought it home without permission or authority from the Bank, then it is considered misappropriation of money regardless when he returned it to the Bank.

60. **Russell On Crime (Vol. 2) (12<sup>th</sup> Ed.) at p. 1062-1063** states:

*"The old distinction however has been steadily maintained, namely, that if the servant first reduces the property (money, chattel, or valuable security) into his master's possession as, for example, by putting goods into his master's cart or building, and then takes out that property dishonestly, he commits larceny. Whereas if he misappropriates the money for his own dishonest use after it has come into his hands but before it gets to the master's possession he commits embezzlement. Again, a servant who receives money or goods from his master for the purpose of paying the money or transferring the goods to a third person on his master's account, and wrongfully appropriates the same, is not guilty of embezzlement but of larceny, and the same applies where he has received the money from any one of the master's clerks. But*

*where money received by one clerk on account of his master is handed over by that clerk to another clerk to be handed to the master in the ordinary course of business and the latter clerk appropriates the money, he is guilty of embezzlement".*

61. In ***Aminuddin Baki @ Sabtu Esa v. Scan Associates Berhad*** [2016] 2

**LNS 0801** it was held by the learned Industrial Court Chairlady, *Hapipah Monel*:

*"According to **Sathiada v. PP** [1970] 2 MLJ at page 243, the gist of the crime is entrustment and dishonest misappropriation. Loss as a consequence of the act is not a factor, it is the act itself which amounts in law to this offence.*

**Section 504 Penal Code** describes the person who may be guilty as one being in any manner entrusted with property or dominion over it. And if that person dishonestly misappropriates (that property), he or she commits; criminal breach of trust'.

*As soon as the accused certified, approved or paid out the loan, or any part of it notwithstanding whether to an outside body or to another account within his organization and such payment was either outside the ambit of his responsibilities or unlawful, he committed the crime of criminal breach of trust. It does not matter whether the pay-out was for a split second or the amount was paid back within a few days. To hold otherwise will be to encourage officials who have dominion over money or property misuse their positions and gamble or play the stock and shares. Such person can then promise that they will settle the sum when the value of the shares goes up or make up for the shortfall when the price goes down. That cannot represent the law.*

*Further, at page 244 the relevant portion of the judgment read as follows:*

*"For the purpose of establishing dishonest intention, it is not the law in this country (any more than it is the law in India) that the prosecution should go further and also prove the actual mode of misappropriation or conversion. Once the prosecution has proved that the appellant was entrusted with money for a specific purpose. And that he has failed to account for it, or has done something which is clearly indicative of his dishonest intention, the charge of dishonest misappropriation must be held to have been established unless the appellant shows the existence of some fact or circumstance within his own knowledge which is consistent with his innocence. It is must be stated here that for the purpose of establishing dishonest intention, the persecution is not required to eliminate all possible defenses and circumstances which might exonerate the appellant or that, apart from proving the appellant's possession of the money and his inability to account for it, it has also to prove the exact manner of his disposal of the money in a manner contrary to the purpose for which he received it."*

*In **JM Desai v. State of Bombay AIR 1960 SC 889**, the relevant portion of the Judgment reads as follows:*

*"To establish a charge of criminal breach of trust, the prosecution is not obliged to prove the precise mode of conversation, misappropriation, or misappropriation by the accused of the property entrusted to him or over which he has dominion. The principal ingredient of the offence being dishonest misappropriation or conversion, which may not ordinarily be a matter of direct proof, entrustment of property and failure, in breach of an obligation, to account for the property entrusted, if proved, may in the light of other circumstances justifiably lead to an inference of dishonest misappropriation or conversion".*

**62.** Nevertheless, the Claimant admitted in his cross examination that the cash excess of RM1,000.00 should have not taken out from the Bank:

*“Question: Even if money belonged to customer, you should not have taken money out from Bank?”*

*CLW-1: Yes, agree.”*

**63.** Evidence of COW-1 and COW-3 also confirmed that the cash counting machine was in good condition and working order properly because if the cash counting machine was not in working order, the Claimant would have been able to complete the surprise check at 5.30 p.m. on 22/01/2020 as he would need to use his own cash counting machine to count the cash in his possession at the material time. Nevertheless, there was no evidence that the Claimant did inform COW-1 and COW-3 that his cash counting machine was spoilt or not in working order on that day; 22/01/2020.

**64.** Evidence of COW-1 also confirmed in his testimony that during and after the surprise check until the end of the business day on 22/01/2020, no one and not even the Claimant informed him of COW-3 on any cash shortage of surplus or unbalance. However, at about 6.00 p.m. on the same day; 22/01/2020, COW-3 confirmed that he discovered a cash shortage of RM1,000.00 comprising of RM10.00 denomination notes which later COW-3 had reported it to COW-1.

**65.** At the surprise cash count check carried out on 22/01/2020 at 5.30 p.m., the Claimant could have informed the Bank that he was holding RM1,000.00 cash excess, and this is what caused the cash shortage in COW-3's cash position on 22/02/2020. There was an opportunity on the same day; 22/02/2020 for the Claimant to inform the Bank of cash excess of RM1,000.00 that he was holding. On the following days on 23/01/2020 and/or on 24/01/2020, the Claimant also could have

informed the Bank that he was holding the RM1,000.00 cash excess, but he did not do so. He kept quiet for the matter without informing the Bank until the Cash Shortage Inquiry was conducted on 28/01/2020. The Claimant never revealed that he had any cash excess although the surprise check was activated at 5.30 p.m. on 22/01/2020, just about two hours after his cash request of RM1,000.00 from COW-3 at 3.22 p.m. on the same day.

**66.** It is undisputed fact that, on 28/01/2020 at around 10.30 a.m., the Claimant brought back and passed to COW-1 the cash of RM1,000.00 in RM50.00 denomination which was put in an envelope and thereafter COW-1 handed it over to COW-3 for his further action.

**67.** The Bank did not discover the cash of RM1,000.00 held by the Claimant during the surprise check at 5.30 p.m. on 22/01/2020 because COW-1 and COW-3 had discovered it later on 26/01/2020 after COW-1 and COW-3 viewing the CCTV footage, that earlier at 3.22 p.m. on 22/01/2020, the Claimant had requested and obtained RM1,000.00 cash from COW-3 but he did not enter this transaction into the Bank's iBranch System. This evidence was confirmed by the Claimant (CLW-1) himself during examination in chief that he did not key in the RM1,000.00 received from COW-3 in the Bank's iBranch System"

*“Question: Did you record your collecting the additional RM1,000.00 from the Chief Cashier in the Bank's iBranch System?”*

*CLW-1: I did not record....”*

**68.** The Claimant (CLW-1) also admitted in his cross examination:

*“Question: Was the RM1,000.00 requested from En. Salahuddin recorded in the iBranch?”*

*CLW-1: No.”*

**69.** This is why during the surprise check, the Claimant’s cash was kept by himself and could not be discovered because he did not record this receipt of cash from COW-3 in the Bank’s iBranch System when he was supposed to do so, and this is what caused the cash shortage in COW-3’s cash position on 22/01/2020. Examination in chief of COW-1 revealed that:

*“Question: Did the Claimant declare that he had any cash belonging to the Bank on 22/01/2020?”*

*COW-1: The Claimant never revealed that he had any cash excess although the surprise check was activated at 5.30 p.m. on 22/01/2020, just about two (2) hours after his cash request of RM1,000.00 at 3.22 p.m.”*

**70.** Evidence of COW-1 and COW-3 confirmed that the Bank first realize that the Claimant had taken the RM1,000.00 cash from the Bank when after the 22/01/2020, they tried to look for the cash shortage on 23/01/2020 (Thursday) and 24/01/2020 (Friday). Then COW-3 remembered that the Claimant had taken cash from him on 22/01/2020 at 3.22 p.m. When COW-3 checked iBranch System during the investigation, COW-3 discovered that the Claimant’s cash request of RM10,000.00 on 22/02/2020 at 3.22 p.m. was not recorded in the iBranch System whereas the Claimant only recorded his cash request for 22/01/2020 up until 12.01 p.m only (at page 6 of COB-2).

**71.** The Claimant explained that he could not key in the RM1,000.00 received from COW-3 into the Bank's iBranch System because COW-3 did not open the iBranch System for him to key in the sum, although the Claimant had the opportunity to do so. Evidence of COW-3 explained during examination in chief that the iBranch System would be opened throughout the day when other tellers requested or returned money to him and the Claimant had the opportunity to access the iBranch System to key in the sum:

*“Question: Please explain whether the Claimant had the opportunity to key in cash request after he received the cash?”*

*COW-3: Yes, the Claimant had the opportunity to key in the iBranch System. Because after 3.22 p.m. other tellers also may request or return the cash to me whenever they have excess cash.*

*They will ask me to open the iBranch System so that they can key in. The Claimant could have asked me to open the system for him. The Claimant did not request me to open the iBranch System. After 3.22 p.m, when he took the cash from me, a lot of other tellers may request to return the cash during this or open the system and my system will be open until end of the day.*

*Question: If the iBranch system open during the day after other tellers asked to open the system, does the Claimant need to request?*

*COW-3: Once the system is open any tellers can access, including the Claimant. When iBranch System is opened, all tellers can access including the Claimant.”*

**72.** Evidence of COW-3 also confirmed that on 22/01/2020, the Claimant came into the cash room and verbally requested for RM1,000.00 cash in RM10.00



denomination from COW-3. The Claimant was instructed by COW-3 to key in his cash request into the iBranch System, and he agreed to do so. COW-3 then handed over RM1,000.00 cash in RM10.00 denomination to the Claimant. Hence, given that the Claimant did not key in cash of RM1,000.00 received from COW-3 in the Bank's iBranch System, he had cash excess of RM1,000.00 in hand which was not detected by the Bank's iBranch System. The only plausible explanation to this finding is that the Claimant wanted to avoid any detection that he had received RM1,000.00 cash in hand from COW-3. The Claimant had confirmed this during cross-examination:

*“Question: This RM1,000.00 in hand is not detectable because you didn't record in iBranch?”*

*CLW-1: Yes, agree.*

*Question: If you had recorded in iBranch, this RM1,000.00 cash in hand would be detected, agree?”*

*CLW-1: Yes, agree.”*

**73.** The Minutes of the Cash Shortage Inquiry as exhibited (at pages 7-8 of COB-2) was conducted by the Ipoh Branch on 28/01/2020 regarding the RM1,000.00 cash shortage which COW-3 and COW-1 discovered on 22/01/2020. During the Cash Shortage Inquiry, the Claimant confirmed that on 22/01/2020, he had taken RM1,000.00 in cash belonging to the Bank back to his home.

**74.** The Claimant had confirmed the contents of the minutes of the Cash Shortage Inquiry (at page 8 of COB-2) during his cross-examination that the Claimant (CLW-1) admitted during the Cash Shortage Inquiry on 28/01/2020 that he brought the cash of RM1,000.00 home on 22/01/2020:

*“Question: Refer COB-2, page 8.*

*This document is the minute of inquiry conducted by Bank’s Branch Manager together with Chief Cashier on 28/01/2020 with yourself. Can you confirm that?*

*CLW-1: Yes. I confirm.*

*Question: And your signature is on the bottom left?*

*CLW-1: Yes. My signature.*

*Question: You signed and confirmed minutes?*

*CLW-1: Yes. I confirm.”*

**75.** To compound matter, the Claimant also admitted that he brought cash of RM1,000.00 belonging to the Bank home even though he knew it was wrong to do so. The Claimant had in his reply to the show cause letter (at pages 8-9 of CLB) stated that: *“...I took that RM1,000.00 and insert it into envelope and sealed properly to return to customer on my way to home...”*

**76.** The Claimant on his narrative, claimed that as it was just before Chinese New Year, customers were asking for new notes and the Claimant upon running short of new RM10.00 notes, had requested for some new RM10.00 notes from COW-3 who gave him RM1,000.00 in new RM10.00 denomination notes at around 3.20 p.m. However, he also claimed that he had kept the RM1,000.00 cash excess for a customer and had forgot to bring it back. At the outset, that it is not disputed that the Claimant brought the cash of RM1,000.00 belonging to the Bank home on 22/01/2020, upon which the Claimant admitted in cross-examination that conduct of taking money out of the Bank was not the right thing to do and that it amounted to cash misappropriation:

*“Question: Your conduct of taking money out of Bank amounted to cash misappropriation?”*

*CLW-1: Yes.*

*Question: You knew that not reporting the cash excess and taking money out of Bank is serious misconduct?”*

*CLW-1: Yes.*

*Question: Refer CLWS-1, question 7 at page 5; you stated, “On 28/01/2020, I was summoned by my supervisor and told me that the Bank’s closed circuit television system showed me taking money after work on 22/01/2020.*

*I was taken to the office of Branch Manager, Ms. Caryl and I explained what happened to her and Ms. Caryl wrote down my explanation...and she asked me to go home and get the RM1.000.00 and I did so and gave the money to Mr. Lee.”*

*You returned the money to the Bank because you knew it was wrong to take money out from Bank?”*

*CLW-1: Yes. I agree.*

*Question: You only returned the money after the bank carried out inquiry on 28/01/2020?”*

*CLW-1: Yes, I agree.*

*Question: You kept the money for 6 days without returning to bank?”*

*CLW-1: Yes.*

*Question: And without reporting to anyone?”*

*CLW-1: Yes.*

*Question: You only returned the money to the bank on 28/01/2020, after you were caught by CCTV?”*

*CLW-1: Yes.*

*Question: There were multiple opportunities for you to report the cash excess on 22/01/2020 and the days after but you fail to do so?*

*CLW-1: Yes, I agree.*

*Question: From date 22/01/2020 to 28/01/2020, you had the opportunity to be truthful and honest, but you fail to be truthful and honest?*

*CLW-1: Agree.”*

**77.** It is undisputed fact and finding that only after the Cash Shortage Inquiry, on 28/01/2020, the Branch Manager; **Caryl Shim Weng Han** had instructed the Claimant to return the RM1,000.00 to the Bank. The Claimant returned the RM1,000.00 cash to COW-1 and passed the cash to COW-3 when then COW-3 returned the RM1,000.00 cash into the Chief Cashier cash box. The whole period from 22/01/2020, the Claimant failed to inform COW-3 until the Cash Shortage Inquiry was duly conducted by the Bank on 28/01/2020 despite he had sufficient opportunity to inform either COW-1 or COW-3 about his cash excess prior taking the cash home on 22/01/2020. The Claimant could have revealed that he has cash excess of RM1,000.00 right after from the time of surprise check on 22/01/2020, however he did not inform anyone until the Cash Shortage Inquiry was conducted on 28/01/2020.

**78.** When they reviewed the CCTV footage of transactions on 22/01/2020, it was confirmed that the Claimant had received cash from COW-3 at 3.22 p.m. on 22/01/2020. The same CCVT footage also showed the Claimant putting a bundle of cash into an envelope and into his bag on 22/01/2020 at 6.18 p.m. The Claimant never revealed that he had any cash excess although the surprise check was

activated on 22/01/2020 at 5.30 p.m., just about two (2) hours after the cash request of RM1,000.00 at 3.22 p.m. on the same day; 22/01/2020.

**79.** In addition, the Branch's findings, comments and recommendation on the cash shortage of RM1,000.00 on 22/01/2020 has been exhibited at page 9 of COB-2 in the trial in which COW-3 had confirmed by signing at the bottom of the Investigation Findings. The incident was then escalated to the Bank's Head Office (Channels and Digitalization) for further action. On 28/01/2020, the Bank issued a Suspension Letter dated 28/01/2020 (at page 1 of COB-1) to the Claimant pending further investigation.

**80.** In the instant case, the Claimant had multiple opportunities to return the cash excess of RM1,000.00 on 22/01/2020. Nevertheless, he chose to keep the excess cash for six (6) days, from 22/01/2020 until 27/01/2020 and he only returned it on 28/01/2020 upon being requested by the Bank to do so after his act of taking the money back to his home was discovered by the Bank.

**81.** It is clear and profound finding that the Claimant is not allowed to take money belonging to the Bank, or any customer, out from the Bank's premises. This would be the case even if the RM1,000.00 cash belonged to the customers as alleged by the Claimant. In fact, it is undisputed that the Claimant as Bank's Clerk or Teller was informed and instructed to handle cash diligently and that cash misappropriation is a serious offence. The Claimant's act of misappropriating the cash belonging to the Bank was done deliberately and not by mistake.

**82.** Perusing the Claimant's letter of appeal to the Bank's decision of dismissal dated 27/02/2020 (at pages 12-13 of CLB) the Claimant acknowledged that he should have reposted the cash excess or shortage to the management. Evidence of COW-1 and COW-2 had confirmed that the Claimant attended and had been given a cash misappropriation training by the Branch Sales and Service Manager on 14/08/2019 and 16/01/2020 as referred to the attendance list of those who attended the Branch Cash Handling – Cash Misappropriation briefings (at pages 10-11 of COB-2). During the briefing, all the attended including the Claimant was informed to handle cash diligently and that cash misappropriation is a serious offence.

**83.** The Claimant was well aware he should have reported to his superior whenever there is a cash excess, particularly in view of his long years of service with the Bank as a Teller. The Claimant admitted in his cross examination that he had attended cash misappropriation trainings by the Bank:

*“Question: Refer page 10 to 11, COB-2*

*At page 10, COB-2, you agree that you attended cash misappropriation training on 14th August 2019 at item no.12 is your name?*

*CLW-1: Yes. 14/08/2019.*

*Question: Refer page 11, COB-2. You attended cash misappropriation training on 16/01/2020?*

*CLW-1: Yes...*

*Question: You aware that you should report to your superior there is cash shortage of cash excess?*

*CLW-1: Yes.”*

**84.** It is proven on the balance of probability that the Bank has succeeded to prove the Claimant had misappropriated cash amounting RM1,000.00 on 22/01/2020. Hence, this amounted to a fundamental breach of the Claimant's terms of employment and gross violation of discipline. As can be seen from the findings above, the Bank has succeeded to prove on a balance of probabilities that the Claimant is guilty of the charge levelled against him.

**85.** As a Teller, the Claimant would handle public money on daily basis. It was implausible that someone who has long service at the Bank unable to aware of the process on cash handling. On the contrary, the Claimant was being evasive and not truthful. He did not want to take responsibility for his act of misconduct and claimed ignorance of the cash handling procedure.

**Whether The Misconduct Constitutes Just Cause or Excuse for The Dismissal:**

**86.** The Bank as public financial institution demands from its employee's absolute honesty and impeccability. Integrity is paramount as the Bank is custodian of public funds and accountable for such responsibilities. The banking industry belonged to a special kind of business and services rendered to the public. Therefore, a high quality of discipline, care and conduct of the highest order of an employee in the banking industry is expected of its staff to serve the public confidence.

**87.** The Bank submits that it is patently clear that the Claimant as an employee of the Bank had committed serious act of misconduct which warrants the punishment

of dismissal. Being the financial industry, the Bank requires a higher standard of conduct from its employees as custodians of public monies. In the case of ***Perwira Habib Bank (M) Bhd. v. Tan Teng Seng @ Lim Teng Ho*** [1997] 2 ILR 839, the Industrial Court held that:

*"The banking industry belongs to a special kind of business and services rendered to the public. It is entrusted with other people's money. Therefore, a high quality of discipline and conduct of the highest order is expected of its staff to win public confidence. The bank demands from its employee's absolute honesty and impeccability. The claimant, as a bank manager, occupied a position of trust. He should not only be honest but be seen to be honest. Like Caesar's wife, the claimant must be above all suspicion".*

88. Similar in the case of ***Norbaya Anita Mohd Arsad v. CIMB Bank Berhad*** [2020] 2 LNS 0579, the Industrial Court held that:

*"[36] As can be seen from the findings above, the Bank has succeeded to prove on a balance of probabilities that the Claimant is guilty of the charges levelled against her.*

*[37] As an employee of the Bank, the Claimant was expected to discharge her duties with full trustworthiness and probity. This is more so where the Bank is a custodian of public funds and thus places its employees on strict standards of trust, honesty and integrity. Any form of misconduct which challenges the ability of its employees to carry out its duties with honesty and integrity is one that warrants dismissal."*

89. In ***Norhayati Ibrahim v. Malayan Banking Berhad*** [2018] 2 LNS 0138 the learned Industrial Court Chairlady. *Ani AK Solep*, held:



*"In my opinion, the Claimant had been dishonest in her conduct on the handling the cash excess/cash discrepancy on the evening of 28.09.2015. I address myself this question, had COW1 not discovered the cash shortage on 28.09.2015, what would happen to the cash kept by the Claimant in the pigeon hole? Had the Claimant been honest, I would expect her to declare the cash excess to COW1 before COW1 discovered the cash discrepancy and confronted the Claimant on the same. As a bank officer the Claimant would handle public money on daily basis. The cash discrepancies, whether in the form of cash shortage or excess are bound to occur and it is expected of a bank officer to declare the same immediately to his superior. Hence, the need to strictly observe rules like the Bank's SPI PP/CB/Cash/0052. The fact that the Claimant did not declare her cash discrepancy immediately in violation of the Bank's SPI PP/CB/Cash/0052 under 6.7.4 and declaring the same only upon the discrepancy being discovered and upon being questioned by COW1, is in my considered opinion a dishonest act committed against the Company which is a serious misconduct. By her dishonesty, she had breached the trust and confidence reposed on her by the Company. The Company is justified in losing trust and confidence in her and I find her dismissal by the Company to be with just cause and excuse".*

**90.** By a letter dated 18/05/2020 (at page 5 of COB-1), the Claimant was informed that the Bank had considered the Claimant's appeal against his dismissal and decided that his appeal could not be allowed as the Bank had explained that integrity is expected of every employee, particularly as the Bank is a custodian of public funds. Hence, the Claimant was required to take all possible steps to protect the interest of the Bank and to discharge his duties with utmost integrity, honesty and diligence. As such, any breach of integrity would be a gross misconduct warranting summary dismissal.

91. Evidence of **Lai Tak Ming** (COW-2) as the Bank's Executive Director, Country Head & Human Resources, he explained and confirmed in his testimony that the Bank took into consideration the Claimant's years of service, past service record and also the seriousness of the misconduct which he was found guilty, particularly in view of the nature of the Bank's business whereas the Bank can no longer repose the necessary trust and confidence in the Claimant to effectively discharge his duties as an employee of the Bank. This Court agree with the evidence of COW-2 affirming that integrity is expected of every employee, more so in the Bank as financial institution as a custodian of public funds. As such, any breach of integrity would be a gross misconduct warranting summary dismissal.

92. The Claimant who had been with the Bank for 17 years since 2003, he would be aware that cash misappropriation is a gross misconduct and it is of utmost importance that all employees of the Bank should be of unimpeachable integrity and trust. In **Balbir Singh Pindar Singh v. Tenaga Nasional Berhad [2019] 2 LNS 0482** it was held by the Industrial Court Chairman, *Dato' Tan Ghee Phaik*:

*"The Court will agree with the submissions made by the Respondent that having worked with the Respondent for 37 years, the Claimant should have set a good example to the other junior employees and to protect the Respondent's interests at all times and also uphold the confidence reposed in him by the Respondent".*

93. The Claimant's claim of ignorance of this matter is unacceptable. The Claimant failed to be truthful and honest by not disclosing to the Bank that he possessed cash in excess until he was discovered and then instructed by COW-1 to return the cash of RM1,000.00 to the Bank. Further, he took home the excess cash

out of the Bank's premises and did not return the cash voluntarily and immediately as he kept the money for seven days.

94. Although the Claimant had 17 years of service with the Bank since 2003, but he did not possess a clean record of service as alleged. The Bank had already given the Claimant a second chance through its caution letter dated 23/02/2017 (COB-4) involving a cash shortage incident. In case of **VDO Instruments (M) Sdn. Bhd. v. Lau Jit Imm [2004] 3 ILR 392**, the Industrial Court held that:

*"The law is that past misconduct is a relevant factor when considering whether a dismissal is justified. The repetition and cumulative effect of similar acts of misconduct may justify dismissal. Even if misconduct is condoned it is a conditional forgiveness subject to the implied condition of satisfactory future conduct. (see **Syarikat Kenderaan Melayu Kelantan Berhad v. Rosdi Zakaria [1995] 2 ILR 1051** and **Kamala Loshanee Ambalavanar v. Jaffnese Co-operative Society [1998] 1 LNS 339; [1998] 7 MLJ 61**)."*

95. Similar in **Hurriyati Mohd Hussein v. United Oversea Bank (Malaysia) Bhd. [2011] 2 LNS 0922**, it was held that:

*"Based on the principles in VDO's case, the Court finds that the Claimant's 2 previous misconduct of cash shortages in the petty cash box in the amount of RM100 incurred on 1.11.1999 and cash shortages in the amount of RM700.00 on 4.4.2000 in which in both instances, the Bank had issued warning letter and had fully absorbed the cash shortages are similar past misconducts which 'repetition and cumulative effect of the misconducts are relevant factors which justifies the dismissal of the Claimant.*

*The mutual trust and confidence the Bank had with the Claimant has been 'marred' with the Claimant's misconduct of misappropriation the money coupled with the Claimant's 2 similar previous misconduct and that the misconduct justifies the dismissal of the Claimant. Clearly the Claimant by misappropriating money from the Bank had failed to show 'the unimpeachable integrity and honesty required' of her as a Bank employee which is of 'utmost importance in the banking industry as the bank is the custodian of public money and property.'*

**96.** This case was the second time the Claimant was found to have committed misconduct relating to cash handling. The Claimant as the Bank's Teller who deals with cash on daily basis, held a position of trust. Hence, he is expected to be vigilant and diligent when discharging his duties and he has been sufficiently trained to report immediately in the event there is any shortage or excess of cash.

**97.** In ***Jingan Anak Aron v. Ambank (M) Berhad [2021] 3 ILR***, the Industrial Court held that:

*“[94] The claimant's dismissal was further justified by the following grounds:*

- (a) The Claimant's misconduct had breached the strict standards of trust, honesty and integrity required by the Bank from its employees.*
- (b) The Claimant's misconduct was a breach of the Bank's policies and procedures.*
- (c) The Claimant's misconduct was a serious breach of the fiduciary relationship between the employer and employee.*

*Breach Of Strict Standards Of Trust, Honesty And Integrity:*

[95] *It is trite that the Bank, being in a banking industry, requires a higher standard of conduct from its employees. In **Chairil Mohd Tamil v. Export-Import Bank of Malaysia Berhad [2019] 2 LNS 3200 (Award No. 3200 of 2019)**, the Industrial Court, KL held:*

[197] *It is trite law that the nature of the banking industry requires a higher standard of conduct from its employees as custodians of public monies. In **Perwira Habib Bank (M) Bhd v. Tan Teng Seng @ Lim Teng Ho [1997] 2 ILR 839**, the court held:*

*The banking industry belongs to a special kind of business and services rendered to the public. It is entrusted with other people's money. Therefore, a high quality of discipline and conduct of the highest order is expected of its staff to win public confidence. The bank demands from its employees' absolute honesty and impeccability.... He should not only be honest but be seen to be honest. Like Caesar's wife, the claimant must be above all suspicion.*

...

[199] *In **Norkhairul Izam Kassim v. Bank Muamalat (M) Berhad [2018] 2 LNS 0375** the Industrial Court held:*

*The employees in the banking industry are indeed required to uphold a higher standard of integrity in executing their duties and responsibilities. Every procedure, rule and SOP which were in place by the company had its own objectives to ensure the company's interest, in particular; and the public at large were safeguard.*

[96] *In **Norbaya Anita Mohd Arsad v. CIMB Bank Berhad [2020] 2 LNS 0579 (Award No. 579 of 2020)**, the Industrial Court, KL held that:*

[37] *As an employee of the Bank, the claimant was expected to discharge his duties with full trustworthiness and probity. This is more so where the Bank is a custodian of public funds and thus places its employees on strict standards of trust, honest and integrity. Any form of*

*misconduct which challenges the ability of its employees to carry out its duties with honesty and integrity is one that warrants dismissal.*

*[97] The importance of the principles of honesty and integrity to the Bank are embodied in AmBank's Code of Conduct & Ethics which sets out the principles and strict standards of conduct expected of AmBank's employees. The Message from the Chairman of AmBank Group states:*

*Success to date has been premised upon our strong culture of professionalism, integrity and ethical behaviour. If we want to grow our business successfully for the future, we must continue to keep professionalism, integrity and ethics at the heart of everything we do.*

*In line with our commitment to build a strong ethical culture, we have developed a Code of Conduct ("CoC") for AmBank Group. The CoC is meant to be your guide in relation to appropriate ethical behaviour and decision making.*

*[98] In line with the above authorities, the special nature of the banking industry and the AmBank's Code of Conduct & Ethics, the claimant, as a Bank employee and even more so as a CSA handling public funds on a daily basis, was required to uphold a higher standard of trust, honesty and integrity in executing his duties and responsibilities.*

*[99] The company submitted, given the special nature of the banking industry and the higher standard of integrity required by the Bank of its employees, all misconducts involving an employee's honesty, integrity and credibility constitutes a serious misconduct to be dealt with strictly by the Bank and will not be condoned.*

*[100] The claimant's misconduct, i.e., dishonest actions of misappropriating Bank monies, was contrary to the strict standards of trust, honesty and integrity required of him as a Bank employee and amounts to a very serious misconduct for which the Bank will not condone."*

**98.** Based on the Claimant's experience, the training that he had attended and the very fact that he was an employee of the Bank, the Claimant is expected to know that he should have never taken the cash excess out from the Bank. As custodian of the customers and public trust, the Bank must be seen to be impeccable in terms of integrity and honesty. The employee of the Bank must therefore demonstrate that same integrity and be impeccable in their dealings with the customers, all and more, employees who are handling cash. Further, the Claimant had attended the Branch's cash misappropriation training on 16/01/2020, which was six (6) days before the misconduct happened on 22/01/2020. Hence, he is deemed to be aware of the proper steps to be taken and the correct procedure to comply with when it involves cash excess or shortage.

**99.** Given that, any mishandling of cash by any employee is deemed a serious misconduct and has direct implication on the core of the employer – employee's relationship which is trust and fiduciary responsibility. Any money that is taken out of the Bank without proper authorization is itself deemed an act of misappropriation.

**100.** Nevertheless, in appreciating the Claimant's long years of service, his alleged good records of work attendance and alleged good comments and compliments received from customers. It did not justify the Claimant's act of breaching his integrity in committing this serious misconduct despite it was committed after a recent training and that it was a second offence of similar nature. The appeal factors raised by the Claimant were not reflected of the issue at hand, which is the Claimant's integrity, in view of him having committed such a serious misconduct.

**101.** While the Bank is sympathetic with the Claimant's personal and family situation as a result of his dismissal, the Bank viewed that the misconduct committed by the Claimant was very serious which had resulted in the Bank to losing trust and confidence in the Claimant. The Bank could not condone and tolerate this kind of misconduct as the Bank has the duty to protect the honour and integrity of the Bank. Given the seriousness of the misconduct, the position of trust held by the Claimant as the Service Associate and the nature of the Bank's business, the Bank is left with no alternative but to dismiss the Claimant from service as a strong message to other employees in preventing such similar misconduct in future involving the Bank.

**102.** The Bank cannot condone and tolerate this kind of mishandling conduct as the Bank has the duty to protect the honour and integrity of the Bank. The Claimant admitted that the moment he took away the money home and returned the money when his misconduct was discovered by the Bank, it is already a breach of integrity. It goes to the heart of employer and employee relationship which is trust and fiduciary responsibility. If the employee cannot be trusted, it is very hard for the Bank to retain his service. Whether there is loss suffered by the Bank is immaterial.

**103.** In the case of *Maybank v. Panneerselvan Karupiah* [2007] 2 LNS 2591, the Industrial Court held that:

*"His misconduct had also seriously affected the image and reputation of the bank as a financial institution as well as undermined public trust and confidence in its services.*

*Simply put, the claimant had by his misconduct shown that he did not possess the unimpeachable integrity and honesty required of him as an*



*employee to be in the bank's continued employment despite his long years of service. In the circumstances, his dismissal was justified although it was his single and first act of misconduct. The bank could no longer repose any trust and confidence in him. Accordingly, his claim that he was dismissed without just cause or excused is dismissal."*

**Conclusion:**

**104.** In the whole circumstance of the case, considering the nature and consequences of the Claimant's proven misconduct, record of service and the nature of the Bank's business, by any standard, the punishment meted out against the Claimant is proportionate with the nature and gravity of his proven misconduct. Evidently, this is not a case of an unwarranted dismissal which had no basis on the merits. The charge against the Claimant was very grave misconduct involving the core of the Bank's business and the Claimant must have been aware that dismissal would have been the inevitable punishment.

**105.** On the totality based on overwhelming cogent and compelling evidence and of considered findings, it is more probable in favour of the Company (the Bank) to satisfy that the Claimant was guilty of the serious charge of misconduct preferred against him involving misappropriation of cash money where upon the Bank has discharged its burden of proving on balance of probabilities of the Claimant's act of misconduct, and therefore bearing in mind **sub-s. 30(5) of the Industrial Relations Act 1967** for this Industrial Court to act according to equity, good conscience and the substantial merits of the case without regards to technicalities and legal form, hence, upon analyzing 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 Bank was done with just cause and excuse.

**106.** Accordingly, the Claimant's case is hereby dismissed.

**THIS AWARD HANDED DOWN AND DATED ON 02<sup>ND</sup>. JANUARY 2024**

**Signed**

**(ZULHELMY BIN HASAN)  
CHAIRMAN  
INDUSTRIAL COURT OF MALAYSIA  
IPOH, PERAK**