ILANGOVAN KRISHNAN

v.

SHIYA SDN BHD

Industrial Court, Johor
Mohd Azari Harun
Award No: 515 of 2016 [Case No: 16/4-157/15]
27 April 2016

Dismissal: *Misconduct due to poor performance — Claimant dismissed due to poor work performance — Application to challenge dismissal — Whether claimant given right to be heard on alleged misconduct — Whether misconduct by claimant proven — Whether dismissal proportionate in circumstances to deal with claimant*

This was the claimant's application against the respondent company ("the company") for wrongfully dismissing him. During his employment, the claimant had been issued with a show cause letter for the misconducts of frequently being late in reporting for work and leaving the work place without informing his superior. The claimant had admitted those misconducts and apologised for his actions. However, the claimant's performance did not improve and he was issued a final warning letter. Subsequently, the company gave a one month's notice to the claimant to terminate his employment. The reason for his dismissal was that his work performance was not satisfactory and he was irresponsible. Accordingly, the issues to be decided were, whether the claimant had not been given the right to be heard on the alleged misconduct; whether the company had proven the misconduct by the claimant and if so, whether dismissal was proportionate in the circumstances to deal with the claimant.

Held (dismissing application):

(1) It was well-settled law that even if no inquiry was held with regard to the alleged misconduct and no opportunity had been given to explain the misconduct to the claimant, there was no infringement of the rule against natural justice as the company was entitled to present the case of misconduct against the claimant afresh or *de novo* at the full trial, and at the same beset the claimant would still be given the opportunity to contest the allegation against him. In the instant case, the claimant had been given the opportunity to cross and put across his version. Therefore, the claimant could not complain that he had not been given the right to be heard. (paras 21 & 23)

(2) On the totality of the evidence, the company had proven the misconduct on the part of the claimant (*Milan Auto Sdn Bhd v. Wong Seh Yen (refd)*). (para 28)

(3) While the claimant had denied the alleged misconduct, he had failed to produce any document or call any other witness to contradict the testimonies of the company's witnesses. Thus, his denial must be taken as a bare denial. In the instant application, not only had the misconduct been proven against

the claimant, such misconduct on the part of the claimant had also caused the breakdown in the employment relationship which was irrevocable. Consequently, the dismissal of the claimant by the company was with just cause or excuse. (paras 31, 34 & 35)

Case(s) referred to:

Beverley Hills Collection Sdn Bhd v. Yau Yok Chun [1999] 1 MELR 431 (refd)

Century Mahkota Hotel, Melaka & Anor v. Michele Geraldine Kessler [1999] 2 MELR 325 (refd)

Hang Edzharsyah Hang Tuah v. Maybank [2013] MELRU 104 (refd)

Ireka Construction Berhad v. Chantiravathan a/l Subramaniam James [1995] 1 MELR 373 (refd)

Malayawata Steel Bhd v. Mohd Yusof Abu Bakar & Anor [1994] 1 MLRH 177 (refd)

Malaysia Milk Sdn Bhd v. Ng Chee Meng [1986] 2 MELR 465 (refd)

Milan Auto Sdn Bhd v. Wong Seh Yen [1995] 2 MLRA 23 (refd)

Warren Zawawi Hussein v. Wagner Global Services (M) Sdn Bhd [2012] 2 MELR 447 (refd)

Wong Yuen Hock v. Syarikat Hong Leong Assurance Sdn Bhd & Another Appeal [1995] 1 MLRA 412 (refd)

Legislation referred to:

Industrial Relations Act 1967, ss 20, 30(5)

Counsel:

For the claimant: A Sivananthan; Malaysian Trades Union Congress

For the respondent: Chen Wai Jiun; M/s WJ Chen & Company

AWARD

Mohd Azari Harun:

Factual Backround

[1] The claimant commenced his probationary employment with the respondent company on 18 January 2012 as a Safety and Security Officer pursuant to a letter of employment dated 1 January 2012 and was confirmed on 1 November 2012.

[2] By a show cause letter dated 6 January 2014, the claimant was required to justify his following misconducts, that is frequently late in reporting for work and leaving the workplace without informing his superior. The so called show cause letter is reproduced below (p 6 COB):

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SHIYA SDN. BHD. (Co. No. 107881-K)

PKK KELAS 'A' (BUMIPUTERA KONTRAKTOR)

Tarikh : 6 Januari 2014

Encik Ilangovan A/L Krishnan
Safety Supervisor

PERKARA : SURAT TUNJUK SEBAB

Perkara di atas adalah di rujuk.

Pihak syarikat mendapati bahawa anda telah melakukan beberapa kesalahan seperti berikut antaranya komen dari Penyelia anda :

1. Anda di lihat kerap meninggalkan tempat kerja tanpa memaklumkan kepada Penyelia
2. Anda di lihat juga sering lewat datang ke tempat kerja
3. Anda sering mengambil cuti kecemasan setiap bulan tanpa alasan yang munasabah dan sering menyambung cuti pada hari berikutnya tanpa memaklumkan kepada Penyelia

Di sebabkan tabiat buruk anda tersebut telah menyebabkan pihak syarikat menghadapi masalah untuk menguruskan kerja-kerja anda yang tergendala . Oleh itu anda di minta untuk menjelaskan kepada pihak syarikat alasan anda atas setiap kesalahan demikian.

Anda di beri tempoh 3 hari (dari tarikh surat ini di tandatangani oleh anda) untuk memberikan surat jawapan kepada Penyelia. Kegagalan anda untuk mengemukakan jawapan yang munasaoan atau kegagalan untuk memberi sebarang jawapan kepada Penyelia, maka pihak syarikat akan mengambil tindakan displin yang serius terhadap anda dengan memberikan **AMARAN TERAKHIR**. Sila ambil perhatian bahawa tindakan displin yang serius akan menjejaskan rekod anda sebagai seorang pekerja.

Terima kasih.

Yang benar,
SHIYA SDN. BHD.

SHIYA SDN. BHD. Co. No. 107881-K

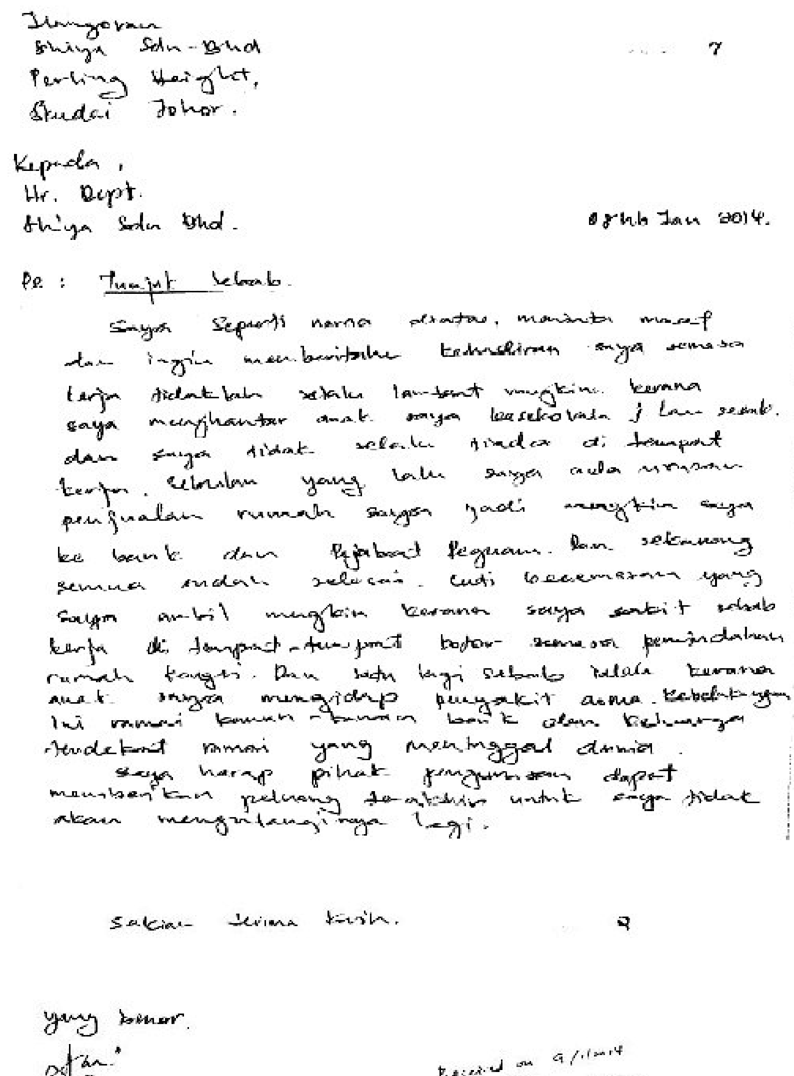
Nor Asiah Dol Moin
Eksekutif Sumber Manusia

Saya Ilangovan No Kad Pengenalan 720219-04-5111
faham dan terima segala isi kandungan di dalam surat ini.

Tarikh : 6/01/2014

No. 15-01, Jalan Pandan Rin 6, Pusat Perdagangan Pandan, 81100 Johor Bahru, Johor Darul Takzim.
Tel: 07-332 4395 / 4429 / 4431 Fax: 07-332 4397 Email: shiya09@streamyx.com

[3] The claimant replied by a letter dated 8 January 2014 whereby he admitted the misconducts, apologised and promised to make amend, as reproduced below (pp 7-8 COB):



Ilangovan
Shiya Sdn Bhd
Perling Height,
Skudai Johor.

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Kepada,
Hr. Dept.
Shiya Sdn Bhd.

08hb Jan 2014.

Re: Tunjuk sebab.

Saya seperti nama di atas, meminta maaf dan ingin memberitahu kehadiran saya semasa kerja ditetapkan selalu lambat mungkin kerana saya menghantar anak saya ke sekolah dan lain sebab. dan saya tidak selalu berada di tempat kerja. Sebelum yang lalu saya ada urusan penjualan rumah saya jadi mungkin saya ke bank dan Pejabat Peguam. Dan sekarang semua sudah selesai. Cuti kecemasan yang saya ambil mungkin kerana saya sakit sebab kerja di tempat-tempat botol semasa pemindahan rumah tangki. Dan satu lagi sebab ialah kerana anak saya menghidap penyakit asma. Kebelakangan ini ramai kawan-kawan baik dan keluarga terdekat ramai yang meninggal dunia.

Saya harap pihak pengurusan dapat memberikan peluang terakhir untuk saya tidak akan mengulanginya lagi.

Sekian terima kasih.

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Yang benar,

Received on 9/1/2014

[4] On 15 January 2014, the respondent company had decided to issue a final warning to the claimant to improve on his performance, as below:

SHIYA SDN. BHD. (Co. No. 107881-K)
PKK KELAS 'A' (BUMIPUTERA KONTRAKTOR)

Tarikh : 15 Januari 2014

Encik Ilangovan A/L Krishnan
Safety Supervisor

Encik Ilangovan,

PERKARA : AMARAN AKHIR

Perkara di atas adalah di rujuk.

Pihak syarikat mendapati bahawa kesemua alasan-alasan yang di kemukakan oleh anda adalah tidak munasabah. Kesemua alasan anda adalah berkaitan dengan hal-hal peribadi.

1. Adalah menjadi kesalahan yang besar kepada seseorang pekerja yang menggunakan waktu kerja untuk menjalankan urusan peribadi. Anda di minta untuk tidak menggunakan waktu kerja bagi menjalankan urusan peribadi, jika perlu sila maklumkan terlebih dahulu kepada Penyelia. Tanpa kelulusan dari Penyelia anda tidak di benarkan keluar untuk menjalankan apa-apa urusan sekalipun
2. Anda di minta untuk datang ke tempat kerja tepat pada waktu masuk kerja iaitu pada pukul 8.00 pagi
3. Anda di minta merancang untuk bercuti dan elak dari mengambil cuti kecemasan yang kerap

Anda di beri tempoh **sebulan iaitu 30 hari untuk berubah sikap dan memperbaiki rekod kedatangan**. Jika anda gagal membuktikan sebarang perubahan dalam tempoh yang di berikan, maka pihak pengurusan tidak dapat bertolak ansur dan akan mengambil tindakan displin yang tegas sepertimana yang termaktub di dalam Akta Perhubungan Perusahaan 1967.

Terima kasih.

Yang benar,
SHIYA SDN. BHD.

Nor Aslah Doi Moin
Eksekutif Sumber Manusia

Saya Ilangovan No Kad Pengenalan 720219-04-5111
faham dan terima segala isi kandungan di dalam surat ini.

Tarikh : 24/01/2014.

No. 15-01, Jalan Pandan Ria 6, Pusat Perdagangan Pandan, 81100 Johor Bahru, Johor Darul Takzim.
Tel: 07-332 4395 / 4429 /4431 Fax: 07-3324397 Email: shiya_sb@yahoo.com

[5] At the material time, the claimant was working primarily at a project identified as Perling Heights at Taman Perling.

[6] In February 2014, the claimant was transferred to a new workplace known as Langkasuka Apartments at Larkin. During that time, the project was newly completed and defect check work was ongoing. It was also part of the claimant's duty to attend to fogging at two other construction sites, namely Pine Residence in Gelang Patah and Taman Industrial Jaya in Skudai, on fortnight basis.

[7] On 07 April 2014, the respondent company gave one month notice to the claimant to terminate his employment, reasons being the work performance of the respondent was not satisfactory and he was irresponsible, as set out in the letter as below:

SHIYA SDN. BHD. (Co. No. 107881-K)
PKK KELAS 'A' (BUMIPUTERA KONTRAKTOR)

Tarikh : 7 April 2014 — ***Sulit & Persendirian***

Encik Ilangovan A/L Krishnan
(No. K/P : 720219-04-5111)
02-08 Blk C Villa Bestari NB 2 10/2
Taman Nusa Bestari 2
81300 Johor Bahru

Kepada Encik Ilangovan,

PERKARA : PENAMATAN PERKHIDMATAN DENGAN NOTIS BERBAYAR SATU BULAN

Perkara diatas adalah dirujuk.

Pihak syarikat mendapati bahawa sikap anda tidak memuaskan dan anda juga tidak bertanggungjawab terhadap tugas yang diberikan walaupun telah diberikan surat Amaran Terakhir yang bertarikh 15 Januari 2014, tetapi anda masih tidak berubah sikap.

Oleh itu pihak syarikat memutuskan untuk menamatkan perkhidmatan anda dengan memberikan satu (1) bulan notis bermula dari 7 April 2014 hingga 6 Mei 2014. Syarikat akan membayar gaji sepanjang tempoh notis tersebut dan hari terakhir anda bekerja adalah pada 7 April 2014.

Perkhidmatan anda boleh ditamatkan oleh Syarikat atau diri sendiri dengan memberikan satu (1) bulan notis bekerja atau membayar gantirugi notis. Merujuk dari surat perlantikan kerja anda yang telah ditandatangan bertarikh 1 Januari 2012.

Gaji anda bagi tempoh 1 April 2014 hingga 6 April 2014 akan dibayar bersama dengan pembayaran notis tersebut dan akan dimasukkan terus ke akaun anda pada 1 Mei 2014.

Sekian, terima kasih.

Yang benar,
SHIYA SDN BHD

SHIYA SDN. BHD. Co. No. 107881-K

Encik Ishak Bin Othman
Pengarah Urusan

No. 15-01, Jalan Pandan Ria 6, Pusat Perdagangan Pandan, 81100 Johor Bahru, Johor Darul Takzim.
Tel: 07-332 4395 / 4429 /4431 Fax: 07-3324397 Email: shiya_sb@yahoo.com

[8] At the time of the termination, the claimant's last drawn salary was RM2,750.00 per month and he had served the company for two years and three months.

The Law

[9] As to the function of the court when handling a reference under s 20 of the Industrial Relations Act 1967 ("the Act"), the Federal Court in *Wong Yuen Hock v. Syarikat Hong Leong Assurance Sdn Bhd & Another Appeal* [1995] 1 MLRA 412, at p 419 enunciated:

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

[10] The same principle was followed by the Federal Court in *Milan Auto Sdn Bhd v. Wong Seh Yen* [1995] 2 MLRA 23, in relation to the two-fold function of the court.

[11] In *Century Mahkota Hotel, Melaka & Anor v. Michele Geraldine Kessler* [1999] 2 MELR 325, the Industrial Court stated:

> "It is settled law that in cases of direct dismissal such as this, the burden is always on the employer to satisfy the court by way of cogent and convincing evidence, albeit on a balance of probabilities that such misconduct as are alleged have indeed been committed by the employee and if so, whether it deserves a dismissal."

[12] In *Ireka Construction Berhad v. Chantiravathan a/l Subramaniam James* [1995] 1 MELR 373, it was stated that:

> "It is a basic principle of industrial jurisprudence that in a dismissal case, the employer must produce convincing evidence that the workman committed that offence of which the workman is alleged to have been dismissed. The burden of proof is 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 a misconduct, negligence or poor performance based on the case."

Case Evaluation

[13] It is a principle of industrial jurisprudence that in a dismissal case, as in the present case, the burden of proof lies on the company as employer to prove, on a balance of probabilities, that the claimant's dismissal was with just cause or excuse. The employer must produce convincing and cogent evidence to justify the dismissal of the employee and that the misconduct committed by the complainant went to the root of the matter and disrupted the company's operation.

[14] It is not disputed that the claimant had earlier on been issued with a show cause letter dated 6 January 2014 for frequently being late in reporting for work and leaving the workplace without informing his superior, to which the claimant admitted responsibility, apologised and promised to make amend in his answer to the show cause letter dated 8 January 2014. It is also not disputed that the company had issued a final warning to the claimant based on this admission.

[15] The only thing in issue here is the subsequent misconducts allegedly committed by the claimant which gave rise to the termination letter being issued by the company on the 7 April 2014. The letter alleged that the claimant has failed to improve on his work performance and was irresponsible despite the final warning issued before and thus the company has decided to dismiss the claimant with a one month notice or salary *in lieu* of notice. His complaint is that there was an infringement of the rule against natural justice as he was not given the opportunity to be heard and no show cause letter issued, unlike the first misconducts in which he admitted.

[16] On the one month notice given for termination of employment based on the terms of the contract of employment, the position of law now is clear, despite such notice given, it is still open for the claimant to challenge it on the ground of unjust and unfair dismissal in the Industrial Court (*Malaysia Milk Sdn Bhd v. Ng Chee Meng* [1986] 2 MELR 465). As such, it is still pertinent for the company to show that the dismissal was with just cause and excuse despite the notice provided for contractually.

[17] But the respondent company alleged the termination notice dated 7 April 2014 is not a termination simpliciter, because there were reasons given for the dismissal. It is now for this court to determine whether such dismissal was with just cause and excuse.

[18] The reasons relied upon by the company in the termination letter dated 7 April 2014 were that notwithstanding the issuance of the final warning dated 15 January 2014, the claimant's work attitude remained unsatisfactory and he had failed to discharge his duty in a responsible manner. Since the reference was made to the final warning dated 15 January 2014, I agree with the learned counsel for the company that the whole event from the time of the show cause letter dated 6 January 2014 leading to the termination letter dated 7 April 2014 must be evaluated in totality, and shall not be considered in isolation.

[19] The claimant through his letter of admission dated 8 January 2014 and during his testimony in this did not dispute any of the allegations made in the show cause letter dated 6 January 2014. The claimant had also accepted the final warning dated 15 January 2014 without any protest on his part.

[20] As mentioned earlier, the only complaint made by the claimant is that there was no further warning letter issued by the company for the period since the final warning on 15 January 2014 up to the termination notice on 7 April

2014. Essentially, the claimant is alleging there was a breach of natural justice principle because he was not given the right to be heard before the termination was issued.

[21] On proper evaluation of the authorities, to my mind this argument is rather misconceived. It is well-settled law that even if no inquiry was held with regard to alleged misconduct and no opportunity had been given to explain the misconduct to the claimant, there is no infringement of the rule against natural justice as the company is entitled to present the case of misconduct against the claimant afresh or *de novo* at the full trial, and at the same beset the claimant will still be given the opportunity to contest the allegation against him. The authorities to support the proposition is the case of *Malayawata Steel Bhd v. Mohd Yusof Abu Bakar & Anor* [1994] 1 MLRH 177 where the High Court ruled:

> "... the absence of domestic inquiry or the presence of defective domestic remedy is not a fatality, but merely an irregularity ...
>
> ... the Industrial Court had produced a purported decision which was a nullity, in having failed to proceed to hold its own enquiry through evidence led after having found there was no such enquiry (by the employer)."

The Federal Court in the case of *Milan Auto Sdn Bhd v. Wong Seh Yen* [1995] 2 MLRA 23 has approved this principle where the Federal Court held that the initial defect in natural justice in not holding an inquiry was "curable" by the inquiry held by the Industrial Court itself.

[22] The Industrial Court in the case of *Beverley Hills Collection Sdn Bhd v. Yau Yok Chun* [1999] 1 MELR 431:

> "On the other hand, it is also settled law where the impugned termination relates to the decision-making process and not the decision itself, the infringement of the natural justice principle is regularised at the hearing of the substantive issues in the proceedings before the Industrial Court that is to say that it is not a fatality but only an irregularity."

[23] It is my humble view based on the aforesaid case, even if the claimant was not given the right to be heard at that time as alleged, the company has the right to prove the misconduct *de novo* or afresh at the trial whereby the claimant has been given the opportunity to cross and put across his version. Therefore he cannot complain of not given the right to be heard now. In this respect, four witnesses testified on behalf of the company during the trial confirming the claimant had failed to improve his attendance and discharge his duty properly.

[24] In the case of *Ireka Construction Berhad v. Chantiravathan a/l Subramaniam James* [1995] 1 MELR 373 , the court held that in order to justify the dismissal of the claimant on the ground of misconduct due to poor performance, the company has to establish:

(a) that the claimant was warned about his poor performance;

(b) that the claimant was accorded sufficient opportunity to improve; and

(c) the complainant failed to sufficiently improve his performance.

[25] The court in the above said case also observed:

> "So it is the graduated process of evaluation of the employee's performance that becomes the tacit requirement for the employer to monitor the work progress of his worker from stage to stage, before the court can be satisfied or convinced of the allegation of this particular specie of misconduct."

[26] To my mind, this guideline in the case of *Ireka Construction* has been observed in our present case. The claimant was warned about his poor performance and misconduct, was accorded opportunity to improve and by the testimonies of his superiors and colleagues, had failed to sufficiently improve.

[27] I will now go to the evidence on this. COW1, the HR Executive, testified as follows:

COWS1 at p 2:

"Question 26: Was there any improvement in the claimant's attendance after the final warning letter?

Answer: Initially there were some improvement. However from late February 2014 onwards, I again received complaint from the project director that the claimant had reverted back to his habit of reporting late to work and missing from the place of work during working hours.

Question 27: What did you do then?

Answer: To give the claimant the benefit of the doubt, I had in March 2014 and on three different occasions, personally visited the claimant's place of work at 3.00pm or thereabout and stayed for about 1-2 hours. True enough, I did not see the claimant on each and every of the visits. When I checked with the site security personnel, I was told that the claimant was usually at the place of work in the morning but very often did not return to work after lunch."

COW2 the Site Supervisor testified (pp 7-9):

"Question 9: Adakah pemeriksaan kecacatan berjalan dengan lancar?

Answer 9: Tidak, pemeriksaan kecacatan kurang berjalan dengan lancar.

Question 10: Mengapa?

Answer 10: Banyak kerja-kerja pemeriksaan telah terganggu kerana pihak menuntut sering tidak berada di tapak projek.

Question 11: Berapa kerapkah itu?

Answer 11: Pihak menuntut adalah biasanya tidak kelihatan di sekitar selepas makan tengah hari untuk 1 hingga 3 jam. Kerap hilang selepas makan tengahari sehinggalah esok pagi baru kelihatan."

COW3, the Security Guard at the project identified as "Langkasuka Apartments" testified to the similar effect.

COW4, the Project Manager at the other projects identified, respectively, as "Pine Residence" at Gelang Patah and "Taman Industrial Jaya" at Skudai testified in as follows:

At p 2, COWS4:

"Question 7: What may be your instruction concerning the claimant's job function?

Answer 7: As Safety Officer, the claimant was supposed to do fogging at the Gelang Patah and Skudai sites twice a month each.

Question 8: Between the period from January to April 2014, did the claimant attended to fogging at the Gelang Patah site?

Answer 8: No. The claimant had failed to attend to fogging at the Gelang Patah and Skudai site for the period from January to April 2014.

Question 9: Did you remind the claimant about the fogging?

Answer 9: Yes. I did remind the claimant that he had to attend to the fogging."

[28] On the totality of the evidence, it is my considered view that the company has proven the misconduct on the part of the claimant and therefore the first threshold in the case *Milan Auto Sdn Bhd v. Wong Seh Yen* [1995] 2 MLRA 23 has been satisfied.

[29] Next we have to consider whether dismissal is a just remedy to deal with the claimant and whether it is proportionate in the circumstances. This court is aware of the case of *Warren Zawawi Hussein v. Wagner Global Services (M) Sdn Bhd* [2012] 2 MELR 447 as follows:

> "There must be proportionality between the severity of the misconduct and the discipline imposed or the dismissal must be reasonable in the circumstances of the case. To constitute just cause it must cause a breakdown in the employment relationship that is irrevocable."

The observation by the Honourable Chairman Tuan Roslan Mohd Nor in the case of *Hang Edzharsyah Hang Tuah v. Maybank* [2013] MELRU 104 also needs mention:

"The absence or non attendance of the claimant at the working place does not automatically warrant a dismissal and the court needs to consider the reasons of non-attendance and whether such non-attendance jeopardised the operation of the company."

[30] The relevant evidences are as follows:

"43. The claimant also admitted during cross-examination that defect check and fogging were important work. The material parts of the cross-examination are as follows:

Soalan: Bolehkah kamu beritahu mengapa fogging di tapak pembinaan diperlukan?

Jawapan: Untuk mencegah denggi.

Soalan: Kamu setuju fogging adalah suatu kerja yang penting?

Jawapan: Setuju.

Soalan: Selepas kecacatan dilihat dan dibetulkan oleh kontraktor, kamu perlu menyemak semula. Benar?

Jawapan: Benar.

Soalan: Kamu setuju syarikat perlu membuat semua kerja itu supaya pembeli rumah boleh dapatkan kunci cepat?

Jawapan: Setuju.

Soalan: Kamu setuju hari-hari pun berada kerja menyemak catatan?

Jawapan: Setiap hari.

Soalan: Kamu setuju menyemak kecacatan adalah suatu kerja yang penting?

Jawapan: Setuju."

[31] While the claimant had denied the subsequent misconduct, he had failed to produce any document or call any other witness to contradict the testimonies of the company's witnesses other than his testimony and so his denial must be taken as a bare denial. I have no reasons not to believe the testimony of the four company's witnesses.

[32] This is fortified by the fact that there was written admission by the claimant himself in his letter dated 8 January 2014 to show that he was someone who had the tendency not to adhere to the working hours which the court ought to take cognisance.

[33] In the case of *Hang Edzharsyah Hang Tuah v. Maybank* [2013] MELRU 104, the Industrial Court opined as follows:

At p 159, paras A-C (at p 27, company's bundle of authorities)

> "Oleh yang demikian, mahkamah perlu melihat alasan ketidakhadiran pihak menuntut tersebut serta tidak mengenepikan tempoh ketidakhadiran pihak menuntut. Pada masa yang sama, mahkamah perlu melihat kepada tugasan pihak menuntut di syarikat melalui keterangan COW1 bagi memastikan sama ada ketidakhadiran pihak menuntut dalam tempoh tersebut boleh menjejaskan operasi pihak responden. Selain itu, mahkamah juga perlu melihat sama ada terdapat rekod pihak menuntut yang menunjukkan beliau adalah seorang yang sering kali tidak hadir bekerja. Ini bermakna, ketidakhadiran pihak menuntut di tempat kerja tanpa kebenaran pihak responden bukanlah secara authotik menyebabkan tindakan membuang kerja pihak menuntut adalah sesuatu yang wajar."

[34] Taking all the evidence in totality, this court found that not only the misconduct has been proven against the claimant, but also that such misconduct on the part of the claimant had caused breakdown in the employment relationship which is irrevocable.

[35] For the reasons stated above and taking into account equity, good conscience and substantial merits of the case under s 30(5) of the Industrial Relations Act 1967, the court finds that the dismissal of the claimant by the respondent company is with just cause or excuse and therefore this application is dismissed.