DIMENSION BID (M) SDN BHD
v.
MOHD FAIZZAL BAHARULRAZI

High Court Malaya, Kuala Lumpur
Alice Loke Yee Ching J
[Appeal No: WA-16A-28-06/2023]
10 February 2026

Case(s) referred to:
Gan Yook Chin &Anor v. Lee Ing Chin &Ors [2004] 2 MLRA 1; [2005] 2 MLJ 1; [2004] 4 CLJ 309; [2004] 6 AMR 781 (refd)
He-Con Sdn Bhd v. Bulyah Ishak &Anor And Another Appeal [2020] 5 MLRA 98; [2020] 4 MLJ 662; [2020] 7 CLJ 271; [2020] 5 AMR 645 (refd)
Ladang Holyrood v. Ayasamy Manikam &Ors [2004] 1 MELR 19; *[2004] 1 MLRA 341; [2004] 3 MLJ 339; [2004] 2 CLJ 697; [2004] 4 AMR 62 (refd)*
Ng Hoo Kui &Anor v. Wendy Tan Lee Peng &Ors [2020] 6 MLRA 193; [2020] 12 MLJ 67; [2020] 10 CLJ 1; [2020] 8 AMR 227 (refd)
Pan Global Textiles Bhd Pulau Pinang v. Ang Beng Teik [2001] 1 MELR 39; *[2001] 1 MLRA 657; [2002] 2 MLJ 27; [2002] 1 CLJ 181; [2002] 1 AMR 469 (refd)*
Tokio Marine Insurans (Malaysia) Berhad v. Tan Kooi Luang &Anor [2014] MLRHU 1301; [2015] 3 AMR 713 (refd)

Legislation referred to:
Employment Act 1955, s 14

Counsel:
For the appellant: Azzan Aznan Abdul Rahim (Iffah Faqiha with him); M/s Syazwan Hasim &Azrel Eskandar
For the respondent: Pathma Raj Ramasamy; M/s Pathma Raj Ramasamy &Co

[Allowing the appeal with costs of RM3,000.00.]

JUDGMENT

Alice Loke Yee Ching J:

Introduction

[1] On 8 June 2023, the Industrial Court found that the Appellant had dismissed the Respondent without just cause and excuse. The Appellant now appeals against the said decision citing several grounds to warrant a setting aside of the decision. For ease of reference, the parties will be referred to as the Claimant and Company respectively, as they were in the Industrial Court.

Key Background Facts

[2] By a letter of appointment dated 22 November 2006, the Claimant formally joined the Company as an employee on 2 January 2007. He was confirmed as a Field Engineer on 1 September 2007. At the material time, he was stationed in Kemaman, Terengganu.

[3] Sometime in early March 2021, the Claimant was notified by the Company's Chief Operating Officer, Mr Sheikh Muzafar, of the Company's intention to relocate him to Labuan. The relocation was due to the Covid-19 situation which had resulted in low operations in Kemaman.

[4] The Claimant was made aware of the impending move through various meetings with Mr Sheikh Muzafar and Puan Noraidah, the Human Resource Manager.

[5] Pursuant thereto, on 16 March 2021, the Company issued a letter directing the Claimant to report to the operation base in Labuan. He was asked to report no later than 1 April 2021. He was also informed that all terms and conditions pertaining to his service remained unchanged.

[6] On 22 March 2021, the Respondent wrote to appeal against the transfer and requested to continue working in Kemaman, Terengganu.

[7] The Claimant failed to report to work in Labuan by 1 April 2021. Consequently, the Company deemed the Claimant's refusal to comply with the transfer order and absence at the Labuan Warehouse as a serious misconduct constituting a breach of the terms of employment. A letter titled RELEASE FROM EMPLOYMENT was issued by the Company on 2 April 2021.

[8] On 8 June 2023, the Industrial Court found that the dismissal of the Claimant was without just cause or excuse and ordered the Company to pay a sum of RM295,800.00 to the Claimant as compensation.

Decision Of The Industrial Court

[9] The Industrial Court found for the Claimant primarily on the following grounds:

(i) The Claimant never refused to be transferred; he merely appealed against the Company's decision to transfer him to Labuan;

(ii) The Claimant had verbally appealed against the transfer and had put his appeal in writing by letter dated 22 March 2021;

(iii) In the interest of fairness and social justice, the Company ought to have considered the Claimant's appeal and informed him of the outcome of appeal instead of hastily issuing the letter of 2 April 2021 dismissing the Claimant from employment;

(iv) This Industrial Court took cognizance of the fact that the

Claimant was issued with letter of transfer on 16 March 2021 after he had refused the Company's request to tender his resignation and to be compensated with three (3) months' salary on 15 March 2021;

(v) The company had failed to issue any show cause letter to the Claimant and to give him an opportunity to be heard before dismissing him.

[10] Premised on the abovementioned reasons, the Company was ordered to pay the Claimant one (1) month salary based on his last drawn monthly salary of RM10,200.00 for every year of service totaling fourteen (14) years *in lieu* of reinstatement and back wages based on RM10,200.00 for fifteen (15) months.

Grounds Of Appeal

[11] Before me, the Company has advanced several grounds of appeal to contend that the Industrial Court had wrongly found the Claimant to have been dismissed without just cause and excuse as follows:

(i) The Industrial Court erred in finding that Claimant did not refuse to be transferred, he merely appealed against the transfer;

(ii) The Industrial Court erred in finding that the Company acted *mala fide* and wanted to dismiss the Claimant; and

(iii) The Industrial Court erred in finding that the Company did not issue a show cause letter and hence failed to give the Claimant an opportunity to be heard.

Analysis And Findings Of This Court

Principles Applicable On Appeal

[12] The legal principles of appellate intervention in cases of a full trial involving oral evidence of witnesses are well-settled. It is trite law that an appellate court will not intervene in a trial court's actual decision unless the trial court:

(i) Was plainly wrong in arriving at its decision;

(ii) There was no or insufficient judicial appreciation of the evidence;

(iii) No reasonable judge, similarly circumstanced, would have decided in the manner that he did;

(iv) Had drawn the wrong inferences of fact; and

(v) Erred in law or in principle in arriving at a decision in the case.

(See: *Gan Yook Chin &Anor v. Lee Ing Chin &Ors* [2004] 2 MLRA 1; [2005] 2 MLJ 1; [2004] 4 CLJ 309; [2004] 6 AMR 781; *He-Con Sdn Bhd v. Bulyah Ishak &Anor And Another Appeal* [2020] 5 MLRA 98; [2020] 4 MLJ 662; [2020] 7 CLJ 271; [2020] 5 AMR 645; *Ng Hoo Kui &Anor v. Wendy Tan Lee Peng &Ors* [2020] 6 MLRA 193; [2020] 12 MLJ 67; [2020] 10 CLJ 1; [2020] 8 AMR 227).

[13] I shall now deal with the contention of the parties in relation to the grounds of appeal. To my mind, there are only 2 principal issues to be dealt with in determining this appeal. Firstly, whether transfer is a management prerogative and secondly, whether the Claimant ought to be given a right to be heard before he was dismissed.

Transfer Is A Prerogative Of The Company

[14] The letter of 2 April 2021 dismissing the Claimant informed him that he "had failed to report to the new location as formally ordered ... by 1 April 2021." The Company also informed that the Claimant's letter refusing the transfer was without merit as he was bound by the Company's policy to accept transfer.

[15] I find the Company's position is justified as cl 9 of the Companies Handbook applicable to the Claimant provides that transfer is the prerogative of the Company. The relevant provision reads:

> 9. Transfer
>
> Due to the nature of the business and for operational requirements and/or the employee's career development, the company may be required to transfer an employee from one assignment to another or from one place of work to another permanently, depending on where New Dimension group of Companies has or will have business activities or operations.
>
> The company also reserves the right to instruct employee to perform certain works for any of it related areas. This work required will be one-off, temporary or not permanent in nature and employee shall not unreasonably refuse to carry out these instructions where directed to do so.

[16] An employer's right to transfer its employee has been settled in several cases and recognized as trite law. The case of *Ladang Holyrood v. Ayasamy Manikam &Ors* [2004] 1 MELR 19; [2004] 1 MLRA 341; [2004] 3 MLJ 339; [2004] 2 CLJ 697; [2004] 4 AMR 62, is particularly instructive. The Court of Appeal held that:

> [13] We now turn to the next issue, that is, whether the appellant has any right under the contract of service to transfer the respondents to the Main Division. In *Soon Seng Cement Products Sdn. Bhd &Anor. v. Non-Metallic Mineral Products Manufacturing Employees's Union*

[1990] 3 MELR 187; [1996] 1 ILR 414 award no 17 of 1997 the same issue came to be considered by the Industrial Court. There the court made the following observation which we think is highly pertinent to the issue before us:

> It is well established in Industrial Law that the right to transfer an employee from one department to another or from one post of an establishment to another or from one branch to another or from one company to another within the organisation is the prerogative of the management and the Industrial Court will ordinarily not interfere. But if the transfer is actuated with improper motive, it will attract the jurisdiction of the Court. The power to transfer is, therefore, subject to, according to Ghaiye's Misconduct in Employment (at pp 254 and 255), the following well recognised restrictions:
>
> (a) there is nothing to the contrary in the terms of employment;
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> (b) the management has acted *bona fide* and in the interests of its business;
>
> (c) the management is not actuated by any indirect motive or any kind of *mala fide*;
>
> (d) the transfer is not made for the purpose of harassing and victimising the workmen; and
>
> (e) the transfer does not involve a change in the conditions of service.
>
> And this right of transfer is also embodied in the Industrial Relations Act 1967, where it states that the company has the right to transfer its employees within the organisation so long as such transfer 'does not entail a change to the detriment of an employee in regard to the terms of employment' — s 13 of the Industrial Relations Act 1967.

[17] From the principles enunciated, it therefore goes without saying that the employee is obliged to obey the transfer order, regardless of his reasons for being unable to comply. It is not open to him to dictate to his employer to accept his reasons for refusing to be transferred. The Company is not obliged to entertain the Claimant's appeal, more so when he had been informed prior to the issuance of the transfer order. Transfer of employees remains the prerogative of the company.

[18] The conclusion of the Industrial Court that the Claimant never refused to be transferred but merely appealed against the Company's decision to transfer him to Labuan was plainly wrong. By failing to report for duty by 1 April 2021, the Claimant had clearly shown by his conduct, that he refused to be

transferred.

[19] The Industrial Court also clearly erred when it held that the Claimant was entitled to know the outcome of his appeal first before the Company hastily dismissed him one day after he failed to report for duty. The Claimant cannot expect the Company to respond to his appeal before the transfer order takes effect.

[20] Whilst it is open to the Claimant to appeal, it does not excuse his obligation to report to the Labuan base by 1 April 2021, in accordance to the transfer order. He acted in direct disobedience with the transfer order. To hold that his appeal ought to be considered first before his transfer, is to effectively allow an employee to undermine the authority of the employer. This is where the Industrial Court erred.

[21] It also failed to consider that by not reporting for duty, the Claimant was actually absent without permission and that constituted misconduct justifying the discharge of a workman from service. (See: *Pan Global Textiles Bhd Pulau Pinang v. Ang Beng Teik* [2001] 1 MELR 39; [2001] 1 MLRA 657; [2002] 2 MLJ 27; [2002] 1 CLJ 181; [2002] 1 AMR 469)

[22] Further, the Industrial Court's finding that the Company's actions showed that it was adamant to get rid of and dismiss the Claimant to me, is a perverse finding.

[23] The Company adduced evidence to rebut any suggestion of *mala fide* in the decision to transfer the Claimant. It is the Company's case that due to the COVID-19 pandemic, it faced financial constraints and underwent significant restructuring to address revenue losses stemming from reduced operations. This restructuring included retrenchment and salary cuts affecting all employees, not just the Claimant.

[24] This was in fact agreed to by the Claimant in his cross-examination. In addition, the Claimant's own Statement of Case pleaded that Mr Sheikh Muzafar had informed him several times that the Company intended to transfer him to Labuan due to low operation in Kemaman Terengganu.

[25] In my view, the transfer was therefore a business decision made in good faith. If the Claimant contends otherwise, the onus is on him to prove that the transfer was actuated with *mala fide* and/or victimization. (See: *Tokio Marine Insurans (Malaysia) Berhad v. Tan Kooi Luang &Anor* [2014] MLRHU 1301; [2015] 3 AMR 713).

[26] There was no evidence of *mala fide* adduced. The Industrial Court appeared to be influenced by the fact that he was hastily dismissed. The Industrial Court held that instead of replying to his appeal, the Company was in a hurry to issue the letter of release on 2 April 2021 the very next day after he was supposed to have reported for work. It then went on to conclude that the conduct of the Company proved its lack of *bona fides* and that the letter was issued with the ulterior motive of dismissing the Claimant.

[27] I find the finding to be unjustified. As the Claimant was to report at the station by 1 April 2021, his failure to do so was a defiance of the transfer order. The Company was entitled to act immediately. It would have not made any difference to have delayed in taking action. To my mind, the Industrial Court drew a wrong inference merely on account of the Company issuing the letter the next day and concluded therefrom that the transfer was not *bona fide.*

[28] Apart from this reason, the Industrial Court had no other reason to find *mala fides* on the part of the Company. Having found the conclusion to be wrong, it must follow that *mala fides* in transferring the Claimant is not established.

Show Cause And Right To Be Heard Before Dismissal

[29] The Industrial Court found that no show cause letter was issued and the Claimant was therefore not given an opportunity to be heard prior to dismissal.

[30] The Company contends that the failure to report for work at Labuan Warehouse amounted to a misconduct. It referred to several cases which had referred to s 14 of the Employment Act 1955 in support which held that in cases of misconduct, an employer may summarily dismiss the employment and a show cause is unnecessary.

[31] I find merit in the contention of the Company.

[32] In any event, no useful purpose would have been served by issuing the Claimant a show cause. He was fully aware of the transfer order and he appealed against it. He ought to have known the consequences of his failure to turn up for work. It is inexcusable for him not to report for duty and to expect a favourable response to his appeal. In cross-examination he candidly stated that he did not turn up for work as he was awaiting a reply on his appeal.

[33] A show cause is to inform an employee of the charge against him and to afford him an opportunity to explain himself. In this case, there is nothing more to inform him which was not already within his knowledge.

[34] In any event, the undisputed evidence was that prior to the transfer order dated 16 March 2021, the Company had informed him of the decision to transfer. There were several meetings held with the Claimant by the Company's Chief Operating Officer and the Human Resource Manager. The Claimant then made an appeal in his letter dated 22 March 2021. In the light of this evidence, to my mind, a show cause is not necessary when the Claimant failed to report for work. It was a clear case of defying orders, and amounts to insubordination.

[35] To conclude, the absence of show cause in a case where employee fails to report at the station he was transferred to constitutes a wilful disobedience. In such a case, if he is dismissed without a show cause, the absence of a show

cause cannot render the dismissal to be without just cause and excuse. The Industrial Court made an error of law and fact in finding it to be so.

Conclusion

[36] Premised on the foregoing reasons, I am of the view that appellate intervention is warranted. The Industrial Court arrived at a decision that was plainly wrong as transfer is a management prerogative. It drew the wrong inference of fact when it found that the Claimant did not refuse to be transferred, but merely appealed. Finally, to find that a show cause was warranted demonstrated an insufficient judicial appreciation of the evidence. The Claimant was aware of the misconduct and there was no necessity to give him a right to be heard.

[37] In the circumstances, the appeal is therefore allowed with costs of RM3,000.00 to be paid to the Appellant.