

IN THE INDUSTRIAL COURT OF MALAYSIA

CASE NO. 20/4-693/25

BETWEEN

AMIRUZZAKI BIN KHAIRIEL

AND

FLASH MALAYSIA EXPRESS SDN. BHD.

AWARD NO: 385 OF 2026

BEFORE : **Y.A. PUAN PRAVIN KAUR JESSY**
- **CHAIRMAN**

VENUE : Industrial Court Malaysia, Kuala Lumpur

DATE OF REFERENCE : 11.04.2025.

DATES OF MENTION : 29.05.2025, 04.08.2025, 07.10.2025,
& 18.12.2025.

DATES OF HEARING : 29.10.2025 & 03.11.2025.

REPRESENTATION : Claimant - Acting In Person

Mr. Muhammad Afiq Bin Ismal Hisham
- Employee Relation Specialist
Mr. Tan Yi Zien - IR Manager
Representatives for the Company

REFERENCE

This is a reference by the Director General of Industrial Relations Malaysia pursuant to Section 20 (3) of the Industrial Relations Act 1967 ("The Act") arising out of the alleged dismissal of **Amiruzzaki Bin Khairiel** ("the Claimant") by **Flash Malaysia Express Sdn. Bhd.** ("the Company") on 14.12.2024.

AWARD

1. The reference by the Director General of Industrial Relations ("*DGIR*") in this case required the Court to hear and determine the Claimant's complaint of dismissal by the Company on 14.12.2024.
2. This Court in handing down this Award considered inter alia the following cause papers and/or documents: -
 - (i) Statement of Case (**SOC**);
 - (ii) Statement In Reply (**SIR**);
 - (iii) Rejoinder (**Rejoinder**);
 - (iv) Claimant's Bundle of Documents (**CLB-1 & CLB-2**);
 - (v) Company's Bundle of Documents (**COB-1 & COB-2**);
 - (vi) Witness Statement of Amiruzzaki Bin Khairiel (**CLWS-1**);
 - (vii) Witness Statement of Siti Aisyah Binti Rosli (**CLWS-2**);

- (viii) Witness Statement of Nor Afiqah Binti Nor Akmal (**COWS-1**);
- (ix) Witness Statement of Nur Iffa Aisyah Binti Wahid (**COWS-2**);
- (x) Witness Statement of Nurul Syafiqah Binti Mohd Abdul Muttalib (**COWS-3**);
- (xi) Witness Statement of Muhammad Azrin Bin Mohd Asri (**COWS-4**);
- (xii) Claimant's Additional Written Submission;
- (xiii) Claimant's Additional Submission;
- (xiv) Company's Written Submission; and
- (xv) Notes of Proceedings – 03.11.2025 (**NOP**).

FACTS OF CASE

3. Claimant commence employment on 05.06.2023 as a DC Officer. On 01.03.2024, Claimant was promoted to the position of Branch Supervisor wherein his basic salary was revised to RM2,500.00 (**CLB-1 page 1**).

4. Pursuant to a letter dated 06.12.2024, the Claimant was suspended from duty on half pay pending the Company's investigation into an alleged act of misconduct, as reflected at **CLB-1 page 2**.

5. By a Show Cause Letter dated 07.12.2024 (**CLB-1 page 3**), the Company alleged that Claimant had breached the Company's rules and regulations. The allegation levelled against the Claimant was as follows (verbatim):-

a) ***Salah Laku Kerja (16.2.6) - Gangguan tertentu bergantung kepada sesuatu sifat atau keadaan (gangguan juga mungkin merupakan salah laku yang serius)***

Salah Laku Kerja (16.3.8) - Melakukan keganasan dan atau gangguan personal terhadap pekerja

Pada 22 Julai 2024 di antara pukul 4 hingga 5 petang, anda telah dituduh melakukan gangguan seksual secara lisan terhadap rakan sekerja anda, melalui panggilan telefon.

6. Claimant replied via his letter dated 07.12.2024 wherein he denied making or receiving any call on 22.07.2024 between 4pm to 5pm to or from a colleague. He further said that at the material time, he was carrying out scanning and bagging works and he did not commit any sexual harassment. He furnish the Company his phone log for 22.07.2024 as proof (**COB-1 pages 4-5**).

7. By way of another Show Cause Letter dated 09.12.2024 (**CLB-1 page 6**), the Company alleged that Claimant had breached the

Company's rules and regulations, wherein three (3) allegations levelled against the Claimant namely (verbatim):-

a) ***Salah Laku Kerja (16.2.6) - Gangguan tertentu bergantung kepada sesuatu sifat atau keadaan (gangguan juga mungkin merupakan salah laku yang serius)***

Salah Laku Kerja (16.3.8) - Melakukan keganasan dan atau gangguan personal terhadap pekerja

1. Pada 23/05/2024 jam 8.37 pagi, anda telah menghantar mesej Whatsapp kepada seorang DCO di SP_TLM iaitu "x pyh syg, Dengau diaorang ckp ja". Dalam mesej tersebut anda memanggil beliau dengan panggilan sayang.

2. Pada 22/07/2024 di antara jam 4 petang hingga 6 petang, anda telah memanggil DCO yang sama untuk duduk di meja anda dan anda memberitahu beliau bahawa anda bermimpi melakukan hubungan seks dengan beliau dan kemudian bertanya sama ada anda betul-betul boleh melakukan hubungan seks dengan beliau dan jangan beritahu orang lain.

3. Pada 10/11/2024 jam 7.25 malam, anda telah menghantar mesej Whatsapp berbaur seksual kepada DCO yang sama iaitu "Nk buat maksiat kat SP ke".

8. Claimant replied to the second show cause letter via his letter dated 10.12.2024 (**CLB-1 pages 7-9**). In substance, Claimant replied as follows:

- (i) As to the 1st allegation, the Claimant admitted that on 23.05.2024 at 8.37 a.m., he had in a WhatsApp communication used the word “*syg*” [being an abbreviation for “*sayang*” (darling)], as the closing word in a sentence in lieu of addressing the recipient as “*cik*” (ms) or “*awak*” (you) and so forth. The Claimant maintained that the usage of the word “*syg*” was not intended to convey any sexual connotation or element of impropriety (*lucah*) but was merely colloquial in nature.
- (ii) As to the 2nd allegation, the Claimant categorically denied having committed the alleged misconduct. He maintained that the location of the purported incident was an open working area where two (2) other staff members were present at the material time. In those circumstances, he contended that it would have been impossible for him to have uttered any improper or obscene words (*perkataan lucah*). The Claimant further asserted that his conversation with his colleague was confined strictly to work-related matters.

(iii) As to the 3rd allegation, Claimant admitted that he used the phrase “*nak buat maksiat dekat SP ke*”. He asserted that the statement was not intended to be obscene or improper. According to the Claimant, the remark was made by way of a purported reminder to the recipient, as he understood that she and a courier of the Company were in a romantic relationship (*pasangan kekasih*) and were frequently seen together. He contended that his intention was to caution them against being alone at SP and to avoid any conduct of an immoral nature occurring.

(iv) Claimant alleged that the complaint against him arose not because the employee felt threatened but because she was dissatisfied that her “*kekasih*” had been dismissed from service and she wanted the Claimant to suffer the same fate.

9. By a letter dated 10.12.2024 titled Notis Siasatan Dalaman (Domestic Inquiry) (**COB-1 page 14**), the Claimant was informed that his replies to the Show Cause Letters were found to be unsatisfactory. The Company accordingly notified him that a Domestic Inquiry would be convened on 12.12.2024. The charges preferred at the Domestic Inquiry were identical to those set out in paragraph 7 above. The Claimant was further advised of his right

to call witnesses and to adduce any supporting documents in his defence.

10. Pursuant to the Domestic Inquiry conducted, by a letter dated 14.12.2024 (**CLB-1 page 10**), the Company dismissed the Claimant from service having found him guilty of the charges levelled against him.
11. The Claimant contends that his dismissal was without just cause or excuse. The Company contends that the dismissal was justified on grounds of misconduct amounting to sexual harassment.

FUNCTION OF THE INDUSTRIAL COURT

12. The Federal Court in **MILAN AUTO SDN. BHD. v. WONG SEH YEN [1995] 4 CLJ 449** held as follows:-

*“As pointed out by this Court recently in **WONG YUEN HOCK v. SYARIKAT HONG LEONG ASSURANCE SDN. BHD. & ANOTHER APPEAL [1995] 3 CLJ 344; [1995] 2 MLJ 753**, the function of the Industrial Court in dismissal cases on a reference under s. 20 is two-fold firstly, to determine whether the misconduct complained of by the employer has been established, and secondly whether the proven*

misconduct constitutes just cause or excuse for the dismissal. Failure to determine these issues on the merits would be a jurisdictional error ...”

Burden Of Proof

13. Whenever a Company has caused the dismissal of the workman, it is then incumbent on part of the Company to discharge the burden of proof that the dismissal was with just cause or excuse (**IREKA CONSTRUCTION BERHAD v. CHANTIRAVATHAN A/L SUBRAMANIAM JAMES [1995] 2 ILR 11**)

Standard Of Proof

14. In **TELEKOM MALAYSIA KAWASAN UTARA v. KRISHNAN KUTTY SANGUNI NAIR & ANOR [2002] 3 CLJ 314**, the Court of Appeal established the principle that the standard of proof required to prove a case in the Industrial Court is based on the balance of probabilities.

Reasons for Termination

15. An employer is confined strictly to the reasons stated in the letter of dismissal, and cannot subsequently improve or embellish its case. The Federal Court in **MARITIME INTELLIGENCE SDN BHD**

v. TAN AH GEK [2021] 4 ILR 417 laid down the principle in terms that brook no equivocation:

“The duty of the Industrial Court is to determine the reason stated in the letter of termination. The Court is not entitled to go outside that reason or to discover for the employer some other ground to justify the dismissal. The employer must stand or fall by the reason he gives.”

Domestic Inquiry

16. It is undisputed that the Company did convene a Domestic Inquiry prior to the dismissal of the Claimant. His Lordship Raus Shariff J (as His Lordship then was) in **BUMIPUTRA COMMERCE BANK BHD v MAHKAMAH PERUSAHAAN MALAYSIA & ANOR [2004] 7 CLJ 77**, held:

“[1] The Industrial Court's jurisdiction, in instances where a domestic inquiry has been held, was limited to considering whether there was a prima facie case against an employee. Thus, in the present case, the Industrial Court should have first considered whether or not the domestic inquiry was valid and the inquiry notes accurate. In the absence of such considerations, the Industrial Court's action in proceeding to decide the matter without any regard to the notes of inquiry could not be described

as anything more than an error of law. Accordingly, the conclusion of the Industrial Court that all charges preferred against the second respondent were not proven could not be supported and was, in fact, contrary to the clear evidence of the case. Since it was apparent from the records that the Industrial Court had misconstrued and misapplied the principles of law pertaining to the relevance of a valid domestic inquiry, this court was compelled to exercise its powers of judicial review to issue an order of certiorari to quash the award.” (pp. 82 gh, 83 h & 85 cd)

Law On The Misconduct Of Harassment / Sexual Harassment

17. Sexual harassment has been defined in the **Employment Act 1955** as follows: "*... any unwanted conduct of a sexual nature, whether verbal, non-verbal, visual, gestural or physical, directed at a person which is offensive or humiliating or is a threat to his well-being, arising out of and in the course of his employment*".

18. And the **Anti-Sexual Harassment Act 2022** defined it as: "*... any unwanted conduct of a sexual nature, in any form, whether verbal, non-verbal, gestural or physical, directed at a person which is reasonably offensive or humiliating or is a threat to his well-being*".

19. The Federal Court in **MOHD RIDZWAN ABDUL RAZAK v ASMAH HJ MOHD NOR [2016] 6 CLJ 346** adopted the definition of harassment as “a persistent and deliberate course of unreasonable and oppressive conduct, targeted at another person, which is calculated and does cause that person alarm, fear or distress”. Where such conduct is further tainted by constant and objectionable sexual characteristics, the tort of sexual harassment is made out.
20. The Federal Court emphatically affirmed that sexual harassment, in whatever form it manifests, constitutes a very serious misconduct which cannot be tolerated. Such conduct demeans the dignity and self-worth of the victim and adversely affects the victim’s mental and emotional well-being. The Court cautioned that perpetrators who escape sanction are likely to persist in intimidating, humiliating and traumatising victims, thereby fostering an unhealthy and hostile working environment.
21. In **VASUTHEVAN ATHALY v. FREESCALE SEMICONDUCTOR (M) SDN BHD [2013] 1 ILR**, the Industrial Court stated that sexual harassment may constitute verbal harassment, *ie*, making sexually suggestive comments such as jokes, jesting, kidding, sounds and

questioning, for example, subjecting a female worker to sexually suggestive comments, and/or psychological harassment, *eg*, repeated unwanted social invitations, relentless proposals for dates or physical intimacy.

ISSUES FOR DETERMINATION

22. The issues to be determined in this case are as follows
- (i) Whether the Domestic Inquiry was valid and the Notes of Inquiry accurate?
 - (ii) What was the reasons for the termination?
 - (iii) Have the reason for termination been proven?
 - (iv) If yes, whether the punishment of dismissal imposed was proportionate?

EVALUATION OF EVIDENCE AND FINDINGS

Whether the Domestic Inquiry was valid and the Notes of Inquiry accurate

23. Whenever a Domestic Inquiry is conducted by a Company, it is incumbent upon the Company to discharge the duties imposed upon it to ensure that the inquiry is carried out in accordance with procedural fairness and that the conclusions reached are properly supported by the evidence (**METROPLEX ADMINISTRATION**

SDN BHD v MOHAMED ELIAS [1998] 3 MELR 184; [1998] 2 MLRH 858; [1998] 5 CLJ 467).

24. This Court is also that the Industrial Court is not bound by the findings of the Domestic Inquiry Panel whenever this Court is called upon to decide whether the Claimant was dismissed from his employment with just cause or excuse (**HONG LEONG EQUIPMENT SDN BHD v. LIEW FOOK CHUAN & OTHER APPEALS [1997] 1 CLJ 665**).

25. Guided by the aforesaid principles, and having carefully perused the Notes of the Domestic Inquiry contained in **COB-1 pages 15–23**, this Court is satisfied that the Inquiry was conducted in conformity with the rules of natural justice. The Claimant was duly notified of the charges, afforded the opportunity to be heard, and apprised of his right to call witnesses and produce documents in his defence. There is no indication of procedural impropriety, bias, or denial of an opportunity to be heard. The Notes of Inquiry are coherent and contemporaneous and there is no material inconsistency or omission apparent on their face. In the premises, this Court finds no reason to impugn the validity of the Domestic Inquiry or the accuracy of its recorded proceedings.

What was the reason for the termination

26. As per the letter of dismissal (**CLB-1 page 10**), Claimant was dismissed after being found guilty of all the charges levelled against him in the Domestic Inquiry. It follows, that the Court's evaluation shall be confined to the three (3) charges.

Has the reason for termination been proven by the Company?

27. Before addressing the individual charges, the Court notes that although the written charges did not expressly state the name of the DCO concerned, the identity of the said DCO was never in issue. The evidence establishes that the Claimant was fully aware that the reference was to **COW1**, Nor Afiqah Binti Nor Akmal, who was at all material times his subordinate. At no stage during the Domestic Inquiry nor in the proceedings before this Court did the Claimant assert any uncertainty, prejudice or confusion as to the identity of the complainant. In the premises, the omission of the name in the formulation of the charge did not occasion any miscarriage of justice or denial of a fair opportunity to defend.

Charge 1

Pada 23/05/2024 jam 8.37 pagi, anda telah menghantar mesej Whatsapp kepada seorang DCO di SP_TLM iaitu "x pyh syg,

Dengau diaorang ckp ja". Dalam mesej tersebut anda memanggil beliau dengan panggilan sayang.

28. The Claimant does not dispute that he sent the said WhatsApp containing the words "*x pyh syg, Dengau diaorang ckp ja*". His explanation is that the term "*syg*", being short for "*sayang*", was merely a casual figure of speech and a substitute for forms of address such as "*Cik*" or "*awak*".
29. This Court is unable to accept that explanation. The use of the word "*syg*" in a workplace communication directed by a superior to a female subordinate is not neutral in character. It carries a connotation of personal familiarity and endearment which is plainly inappropriate in a professional environment. The attempt to characterise it as innocuous does not withstand objective scrutiny.
30. In this regard, the Court adopts the principle articulated in **FREESCALE SEMICONDUCTOR (supra)**, that sexual harassment may manifest in verbal form and includes the making of sexually suggestive comments, whether by way of jesting, joking or questioning. It is not necessary that the words be overtly

obscene; it suffices if they are unwelcome and reasonably capable of being perceived as inappropriate in the circumstances.

31. The Claimant's subjective intention is therefore not determinative. The proper inquiry is whether, viewed objectively from the standpoint of **COW1**, the words were unwelcome. **COW1** testified that she felt "*tidak selesa, tambahan pula mesej dihantar oleh ketua saya*". The hierarchical relationship between the parties is a material consideration. Expressions of personal endearment from a superior to a subordinate, within the context of workplace authority, carry an inherent imbalance of power and are reasonably capable of causing discomfort.
32. This Court finds that **COW1**'s perception of discomfort was reasonable and justified. The use of the term "syg" in the circumstances amounted to inappropriate verbal conduct within the meaning recognised by the authorities. The Claimant's explanation is rejected. The charge is accordingly established.

Charge 2

Pada 22/07/2024 di antara jam 4 petang hingga 6 petang, anda telah memanggil DCO yang sama untuk duduk di meja anda dan

anda memberitahu beliau bahwa anda bermimpi melakukan hubungan seks dengan beliau dan kemudian bertanya sama ada anda betul-betul boleh melakukan hubungan seks dengan beliau dan jangan beritahu orang lain.

33. In respect of this charge, the Claimant denied the allegation and produced a pen drive containing the CCTV recording of the day, the alleged incident was said to have occurred. Upon viewing the footage and considering the oral evidence, the Court notes that, apart from the Claimant and the complainant (**COW1**), there were four (4) other persons present in the immediate vicinity, namely **COW2** (a fellow DCO), one Ammar Mubarak and **CLW2** (the Claimant's wife) together with their child. The evidence establishes that **COW2** was working in close proximity to both the Claimant and **COW1**. Although **COW2** claimed to have heard portions of the conversation, there was no contemporaneous reaction on her part. Equally, there was no visible reaction from **COW1** consistent with a person who had just been subjected to an explicit and highly offensive proposition of a sexual nature.
34. Of particular significance is the presence of the Claimant's wife, who was seated directly opposite the Claimant on a pallet with their

child. The Court finds it improbable that the Claimant's position would have uttered such explicit and incriminating words in an open area, within earshot of colleagues, and in the presence of his own spouse and child. The surrounding circumstances militate strongly against the plausibility of the allegation.

35. The conduct of **COW1** immediately after the alleged incident is also material. From the CCTV recording, she can be seen walking away in a composed manner, packed her belongings and left the premises. No complaint was made to Ammar Mubarak or the Claimant's wife, who was seated directly opposite. Such behaviour is inconsistent with the natural reaction one would reasonably expect from a person who had just been subjected to a direct and explicit sexual proposition and bears the hallmarks of an afterthought. The Company has therefore failed to discharge its burden of proof on a balance of probabilities and the Claimant is found not guilty of Charge 2.

Charge 3

Pada 10/11/2024 jam 7.25 malam, anda telah menghantar mesej Whatsapp berbaur seksual kepada DCO yang sama iaitu "Nk buat maksiat kat SP ke".

36. The Claimant admits that he sent the WhatsApp message. His purported justification that it was intended as a cautionary reminder is rejected. The phrase is explicit, sexually suggestive and wholly inappropriate within the confines of a professional relationship, particularly where the sender is in a position of authority over the recipient.
37. A superior has no legitimate basis to transmit such a message to a subordinate. The content intrudes into the personal sphere of the complainant and exploits the inherent power imbalance in the employment relationship. Assessed objectively, and in light of the surrounding circumstances, the communication was unwelcome and sexual in nature.
38. The Court is therefore satisfied that the conduct amounts to verbal sexual harassment. Such behaviour strikes at the core of workplace discipline and trust and constitutes gross misconduct warranting serious disciplinary sanction. Claimant is guilty of Charge 3.

Whether the punishment of dismissal was proportionate

39. Having found that the charges 1 and 3 have been established, the remaining question is whether the punishment of dismissal was commensurate with the gravity of the misconduct.
40. Sexual harassment in the workplace is a serious breach of discipline. It undermines the dignity of the employee concerned, erodes mutual trust and confidence and compromises the integrity of the working environment. Where the perpetrator occupies a supervisory position, the misconduct is aggravated by the inherent imbalance of power and the legitimate expectation that a superior will conduct himself with restraint, professionalism and propriety.
41. The Claimant was not an ordinary employee but a Branch Supervisor. His conduct towards a subordinate, involving explicit and sexually suggestive communication, represents a fundamental departure from the standards of behaviour expected of a person in authority. Such conduct strikes at the root of the employment relationship and destroys the trust and confidence necessary for its continuation. In **PEARCE V. FOSTER [1886] 17 QBD 536** Lord Isher MR enunciated as follows:

"The rules of law is that where a person has entered into the position of servant, if he does anything incompatible with due or faithful discharge of his duty to his master the latter has a right to dismiss"

42. In the present case, the established misconduct is not trivial, inadvertent or technical in nature. It is deliberate, inappropriate and incompatible with the maintenance of discipline in the workplace. Having regard to the findings already made in this Award and the principles laid down by the Federal Court in **MOHD RIDZWAN ABDUL RAZAK** (supra), this Court concludes that the punishment of dismissal was neither excessive nor disproportionate. It constituted an appropriate punishment to the established misconduct.

JUDICIAL OBSERVATIONS

43. This Court considers it necessary to record that the evidence disclosed the presence of explicit stickers and images circulated within the Company's work-related WhatsApp group, with no apparent intervention taken to curb such conduct. An employer's official communication platforms must not be allowed to deteriorate into a breeding ground for sexually explicit or suggestive material.

44. Workplace communication channels exist for legitimate operational purposes. The tolerance of inappropriate content, risks normalising a culture of impropriety and blurring professional boundaries. Employers bear a continuing responsibility to regulate and supervise such platforms to ensure that standards of decency, discipline and mutual respect are maintained. In the case of **ABU OSMAN V. MELEWAR CORPORATION BHD [1994] 2 ILR 807**, the Industrial Court held:

"In law an employer owes a contractual obligation to his employees, female or otherwise to ensure that he provides a safe and conducive working environment in which they can function."

45. It follows that an employer's failure to regulate and enforce professional standards within its official communication platforms may embolden individuals to disseminate explicit material with impunity, thereby trivialising and normalising sexually suggestive language in workplace interactions. Such abdication of oversight undermines discipline and erodes the culture of respect that must prevail in any professional environment.

DECISION

46. Having considered the totality of the evidence, the respective pleadings, the submissions of both parties, guided by the statutory mandate under **Section 30(5) of the Industrial Relations Act 1967** and the applicable principles of industrial jurisprudence, the Court finds that the Company has discharged its burden of proving that the Claimant's dismissal was for just cause and excuse. Accordingly, the Claimant's claim is hereby dismissed.

HANDED DOWN AND DATED THIS DAY 2ND OF MARCH, 2026.

-SIGNED-

**(PRAVIN KAUR JESSY)
CHAIRMAN
INDUSTRIAL COURT OF MALAYSIA
AT KUALA LUMPUR**