IZZAH MAISARAH MARTIN ABDULLAH
v.
WELLNESSPRENEUR GROUP SDN BHD

Industrial Court, Kuala Lumpur
Ahmad Razif Mohd Sidek
Award No: 371 of 2026 [Case No: 3/4-1075/24]
2 March 2026

Case(s) referred to:
Abdul Hadee Ahmad v. Tenaga Nasional Berhad [2025] MELRU 891(refd)
Badariah Abdullah Iwn. Malaysia Airports (Sepang) Sdn Bhd [2023] MELRU 1546 (refd)
Chong Jee Fatt v. Tee & C (Malaysia) Sdn Bhd [2023] MELRU 1381; [2023] 3 ILR 204 (refd)
Delcom Services Sdn Bhd v. Parameswara Rajah Krishna [1999] 2 MELR 332; [1999] 3 ILR 7 (refd)
Ferodo Ltd v. Barned [1976] ICR 439 (refd)
Goon Kwee Phoy v. J & P Coats (M) Bhd [1981] 1 MLRA 415; [1981] 2 MLJ 129 (refd)
Kamini Kanagaratnam v. Educate To Learn Sdn Bhd [2019] MELRU 3182 (refd)
International Times & Ors v. Leong Ho Yuen [1980] 1 MLRA 438; [1980] 2 MLJ 86 (refd)
Lai Phui Phui v. ID Network Sdn Bhd [2023] MELRU 2347 (refd)
Lim Giat Eng v. Farlim Group (M) Bhd [2012] 1 MELR 44; [2011] 4 ILR 1; [2011] 6 CLJ 101(refd)
Menara Panglobal Sdn Bhd v. Arokianathan Sivapiragasam [2006] 1 MELR 14; [2006] 1 MLRA 496; [2006] 3 MLJ 493; [2006] 2 CLJ 501; [2006] 3 AMR 555 (refd)
Milan Auto Sdn Bhd v. Wong Seh Yen [1995] 2 MLRA 23; [1995] 3 MLJ 537; [1995] 4 CLJ 449; [1996] 1 AMR 049 (refd)
Mohd Ridzwan Abdul Razak v. Asmah Hj Mohd Nor [2016] 4 MLRA 614; [2016] 4 MLJ 282; [2016] 6 CLJ 346; [2016] 4 AMR 256 (refd)
Nor Azlina Abd Rahim lwn. Jurukur Perunding Services Sdn Bhd [2023] MELRU 1728 (refd)
Ranjit Kaur S Gopal Singh v. Hotel Excelsior (M) Sdn Bhd [2012] 1 MELR 129; [2010] 5 MLRA 696; [2010] 6 MLJ 1; [2011] 1 ILJ 479; [2010] 8 CLJ 629; [2010] 4 ILR 475; [2011] 3 AMR 38 (refd)
Telekom Malaysia Kawasan Utara v. Krishnan Kutty Sanguni Nair & Anor [2002] 1 MELR 4; [2002] 1 MLRA 188; [2002] 3 MLJ 129; [2002] 3 CLJ 314; [2002] 3 AMR 2898 (refd)
Weltex Knitwear Industries Sdn Bhd v. Law Kar Toy & Anor [1998] 4 MLRH 774; [1998] 7 MLJ 359 (refd)
Wong Chee Hong v. Cathay Organisation Malaysia Sdn Bhd [1987] 1 MELR 32; [1987] 1 MLRA 346; [1988] 1 MLJ 92; [1988] 1 CLJ 45(refd)
Wong Chee Hong v. Cathay Organisation Malaysia Sdn Bhd [1987] 1 MELR 32;

[1987] 1 MLRA 346; [1988] 1 MLJ 92; [1988] 1 CLJ (Rep) 298 (refd)
Zaidi Tawang v. Kajang Plaza Medical Centre [2021] MELRU 1007 (refd)

Legislation referred to:
Employment Act 1955, ss 13(2), 15(2)
Industrial Relations Act 1967, ss 20(3), 30(5)

Counsel:
For the claimant: Kohila Yanasekaran, Varathan Panneer Selvam; M/s Kohi & Asscociates
For the company: Chai Wy Keat , Farah Dini Zaini; M/s WY Keat & Co

[Dismissing the Claimant's claim.]

AWARD

Ahmad Razif Mohd Sidek:

Reference:

This is a reference dated 3 September 2024 made by the Director General of Industrial Relations pursuant to s 20(3) of the Industrial Relations Act 1967 [Act 177] arising out of the dismissal of Izzah Maisarah Martin Abdullah ("the Claimant") by Wellnesspreneur Sdn. Bhd. ("the Company") on 11 March 2024.

Award

Brief Facts

[1] The Company is involved in the business relating to providing activities of sauna, steam baths, massage salons, retail sale of products, equipment, furniture, fittings and fixtures including renovation and internal design relating to spa services.

[2] The Claimant commenced work with the Company on 16 June 2023 and vide a Confirmation of Employment Letter dated 7 October 2023 (pages 1–6 of COB1), issued by the Company, the Claimant's employment was confirmed with effect from 1 October 2023.

[3] On 16 October 2023, the Claimant applied for one month of unpaid leave for the period from 01 January 2024 to 31 January 2024, but the Claimant later withdrew her application in November 2023 and subsequently resumed work in January 2024.

[4] Thereafter, on or about 05 January 2024, the Claimant submitted a second leave application vide the Company WhatsApp Group for the period from 1 March 2024 to 31 March 2024. The Company contended that the leave application was acknowledged by the operations department, but it was neither approved nor signed by the management, whereas the Claimant

contended that the Company had replied to her application with the symbol signifying that her application for leave was approved. Through a letter dated 21 February 2024 (page 11 of COB1), the Company had rejected the Claimant's leave application on the grounds that the Claimant had insufficient leave balance, and the requested period exceeded the Company's policy limits.

[5] The same letter invited the Claimant to review her leave balance and resubmit her application for alternative dates, but the Claimant did not take any action on it and proceeded to be absent from work. The Claimant was absent from work beginning the 1 March 2024 and on 07 March 2024, the Company issued a letter (pages 18 & 12 of COB1) requiring the Claimant to explain her absence.

[6] The Company contended that the Claimant had refused, failed and/or neglected to provide any explanation and continued to remain absent without permission and that the Claimant's conduct amounted to abandonment of employment. As a result of it, the Company issued a termination letter dated 11 March 2024 (page 13 of COB1), against the Claimant citing misconduct and/or abandonment of duties.

[7] The Claimant alleges that she was unfairly terminated and/or dismissed by the Company. The Claimant had then lodged a representation under s 20(3) of the Industrial Relations Act 1967. In her Statement of Case, the Claimant contends that she was dismissed by the Company with effect from 11 March 2024.

[8] The Company further contended that it was the Claimant who had abandoned her employment when she failed to attend work for more than seven (7) consecutive days and that, the Claimant's allegation of unfair dismissal is an afterthought and ought to be dismissed by this Honourable Court.

[9] The Court has gone through the evidence as given through testimony in Court and the documents and submission that have been filed. Those documents and submissions are listed for ease of reference as follows: -

(i) Statement of Case dated 25 October 2024;

(ii) Statement in Reply dated 13 December 2024;

(iii) Rejoinder dated 09 January 2025;

(iv) Claimant's Bundle of Documents filed on 05 November 2024 and marked as exhibit CLB-1;

(v) Additional Claimant's Bundle of Documents filed on 14 January 2025 and marked as exhibit CLB-2;

(vi) Company's Bundle of Documents filed on 17 December 2024 and marked as exhibit COB-1;

(vii) Company's Bundle of Documents (2) filed on 13 August 2025 and marked as exhibit COB-2;

(viii) Company's Witness Statement of Siti Nur Laily Binti Ishak signed on 9 September 2025 marked as exhibit COWS-1;

(ix) Company's Witness Statement of Gavin Foo Eng Liang signed on 9 September 2025 marked as exhibit COWS-2;

(x) Claimant's Witness Statement of izzah Maisarah Martin Abdullah signed on 10 September 2025 marked as exhibit CLWS-1;

(xi) Agreed Notes of Proceedings filed on 18 November 2025;

(xii) Company's Written Submission (After Trial) filed on 30 December 2025;

(xiii) Company's Written Submission In Reply (After Trial) filed on 30 December 2025;

(xiv) Hujahan Bertulis Pihak Yang Menuntut filed on 27 January 2026; and

(xv) Hujahan Balas Pihak Yang Menuntut filed on 27 January 2026.

The Role Of The Court

[10] Before proceeding with the full award, the Court reiterates its stand regarding the role of the Court in a matter referred under s 20(3) Industrial Relations Act 1967 [Act 177] in the reported cases of *Badariah Abdullah Iwn. Malaysia Airports (Sepang) Sdn Bhd* [2023] MELRU 1546, *Nor Azlina Abd Rahim lwn. Jurukur Perunding Services Sdn Bhd* [2023] MELRU 1728, and *Chong Jee Fatt v. Tee & C (Malaysia) Sdn Bhd* [2023] MELRU 1381; [2023] 3 ILR 204 .

[11] The Court refers to the oft-cited Supreme Court case of *Wong Chee Hong v. Cathay Organisation Malaysia Sdn Bhd* [1987] 1 MELR 32; [1987] 1 MLRA 346; [1988] 1 MLJ 92; [1988] 1 CLJ 45 and *Goon Kwee Phoy v. J & P Coats (M) Bhd* [1981] 1 MLRA 415; [1981] 2 MLJ 129 . The accepted principles in those cases are clear and need no further elaboration. It would not be prudent to repeat the same and as such, parties are welcome to view the said case for an explanation of the cases above.

[12] The main and only function of the Industrial Court in dealing with a reference under s 20 of the Industrial Relations Act, 1967 [Act 177] 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.

The Burden And Onus Of Proof

[13] Before venturing further into the Award, the Court would like to highlight first the issue of burden of proof for this case, the Federal Court in the case of *Goon Kwee Phoy v J & P Coats (M) Bhd* [1981] 2 MLJ 129, *inter alia*, held that:

> "**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"
>
> [Emphasis Added]

[14] The Supreme Court in the case of *Wong Chee Hong v. Cathay Organisation(M) Sdn. Bhd.* [1988] 1 CLJ (Rep) 298 held *inter alia* that:

> "When the Industrial Court is dealing with a reference under s. 20, the first thing that the court will have to do is **to ask itself a question whether there was a dismissal, and if so, whether it was with or without just cause or excuse**."
>
> [Emphasis Added]

[15] Furthermore, the Court relies on the High Court case of *Weltex Knitwear Industries Sdn Bhd v. Law Kar Toy & Anor* [1998] 4 MLRH 774; [1998] 7 MLJ 359, where the High Court states as follows:

> "Next is the burden of proof on the issue of forced resignation raised by the first Respondent. The law is clear that if the fact of dismissal is not in dispute, the burden is on the company to satisfy the court that such dismissal was done with just cause or excuse. This is because, by the 1967 Act, all dismissal is *prima facie* done without just cause or excuse. Therefore, if an employer asserts otherwise the burden is on him to discharge."

[16] It is trite law that the burden of proof in establishing that there was just cause or excuse for dismissing the Claimant is on the Employer. The Court of Appeal in the case of Menara Panglobal Sdn Bhd v. Arokianathan Sivapiragasam [2006] 1 MELR 14; [2006] 1 MLRA 496; [2006] 3 MLJ 493; [2006] 2 CLJ 501; [2006] 3 AMR 555 upheld the Industrial Court's decision on this point when it determined as follows:

> "12. To summarise this Court therefore has to:
>
> (a) determine if the Claimant has been dismissed, and

(b) if the Court finds that the Claimant has been dismissed it has to go on to determine whether it was with just cause or excuse.

13. In doing so, this Court has to consider the reasons put forward by the Company for the Claimant's dismissal and determine whether the Company has proved them to the Court on a balance of probabilities. Even if the Company does succeed in proving these reasons, the Court has to determine in the final analysis whether they constitute just cause and excuse for dismissing the Claimant. **In a dismissal case of this nature where the Claimant was dismissed for misconduct, the Company must produce convincing and cogent evidence that the Claimant committed the offence that he was alleged to have committed for which he was dismissed. The burden of proof lies on the Company on probabilities, and it must adduce evidence to discharge this legal burden**."

[Emphasis Added]

[17] The Court also refers to its previous case with regard to the burden of proof as well as adducing evidence in the case. In the case of *Lai Phui Phui v. ID Network Sdn Bhd* [2023] MELRU 2347, this Court refers to the Court of Appeal case of *Telekom Malaysia Kawasan Utara v. Krishnan Kutty Sanguni Nair & Anor* [2002] 1 MELR 4;[2002] 1 MLRA 188; [2002] 3 MLJ 129; [2002] 3 CLJ 314; [2002] 3 AMR 2898 and the case of *International Times & Ors v. Leong Ho Yuen* [1980] 1 MLRA 438; [1980] 2 MLJ 86. Both the cases cited in the *Lai Phui Phui v. ID Network Sdn Bhd* [2023] MELRU 2347 are the standard and burden of proof required by the Court, based on balance of probabilities.

[18] The Courts have stated that all applications under s 20(3) are deemed to be *prima facie* dismissal without just cause or excuse. It is also incumbent on the parties asserting the facts that it must be proven based on the balance of probabilities. Since this is a misconduct case, hence the Company has to prove their case first.

The Termination & The Legal Test

[19] This is a case of termination due to misconduct. Referring to the case law above, the burden of proof is on the Company to prove that the Claimant had done the acts the Company claimed and subsequently if proven whether it warrants a termination.

[20] This was clearly enunciated in the Federal Court case of *Milan Auto Sdn Bhd v. Wong Seh Yen* [1995] 2 MLRA 23; [1995] 3 MLJ 537; [1995] 4 CLJ 449; [1996] 1 AMR 049, where Mohd Azmi bin Kamaruddin FCJ (delivering the judgment of the Court) held as follows:

> "[1] **The function of the Industrial Court in dismissal cases on a reference under s. 20 is two-fold. It has 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 is a jurisdictional error that merits interference by the High Court by way of certiorari. Further, the Industrial Court would be acting in excess of jurisdiction if it changed the scope of reference by substituting its own reason, that is to say a reason not relied upon by the employer for the dismissal.".
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> [Emphasis Added]

[21] It is a principle of industrial relations jurisprudence that in a dismissal case, the employer must produce convincing and cogent evidence that the workman committed the offence or offences he is alleged to have committed for which he had been dismissed. The burden of proof lies on the Company on a balance of probabilities to establish this. In the case of *Ferodo Ltd v. Barned* [1976] ICR 439 it was held as follows:

> "It seems to this appeal tribunal, therefore, that the law is quite plain and that **what the industrial tribunal ought to do is**, not to ask itself the question which this tribunal did – "Are we satisfied that the offence was committed?" – but **to ask itself the question , "Are we satisfied that the employers had, at the time of the dismissal, reasonable grounds for believing that the offence put against the employee was in fact committed**?""
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> [Emphasis Added]

[22] In the case of *Abdul Hadee Ahmad v. Tenaga Nasional Berhad* [2025] MELRU 891, the Industrial Court concluded that:

> "[34] The duty of the Industrial Court to consider a reference under s. 20 of the Act are:
>
> (a) Whether a misconduct or irregularities complaint of was in fact on balance of probabilities committed by the Claimant; and
>
> (b) **If the Claimant did commit the misconduct or irregularities whether it constituted just cause or excuse to dismiss the Claimant or in other words whether the punishment of dismissal is justified based on the proven facts of the case."**
>
> [Emphasis Added]

The Court Decision

[23] The Company contended that the Claimant has in fact failed to prove her pleaded case by referring to the Claimant's Statement of Case, where the Claimant pleaded that:

> "8. The Claimant is a mother whose child lives in Sabah. On the 16th October 2023, the Claimant submitted an application form for one months unpaid leave from the 1 st to the 31st of January 2024 to both the Manager and the Boss through WhatsApp.
>
> ...
>
> 10. The Manager informed the Boss of the Claimant's wish verbally on the 20th of October 2023. The Claimant was present during this discussion. It is averred and shall be so contended that the Boss approved the Claimant's leave application claiming that she was entitled to take the leave as she was asking for it.
>
> 11. On the 5th of August 2023, the Claimant submitted her second Staff Leave Application Form via the Company's whatsApp Group Chat. The Boss had responded to this application with the "OK" hand symbol, and the Excel spreadsheet Schedule at the Company's front desk reflected the Claimant's leave application."

[24] Following this, the Company contended that there was significant defect in the Claimant's pleadings as in paragraph 8, the Claimant states that the First Leave Application was submitted in 16 October 2023, but in paragraph 11, the Claimant claimed that the Second Leave Application was submitted through the Company's WhatsApp Group Chat on 05 August 2023. According to the Company, this chronological impossibility strikes a fundamental inconsistency in the Claimant's pleaded case.

[25] The Counsel for the Company further submitted that such contradictory dates render the Claimant's version of events inherently unreliable, raise serious doubts as to the authenticity and sequence of the alleged application forms, and indicate that the Claimant has failed to properly particularise her case.

[26] The Claimant during her cross-examination however admitted that the date 5 August 2023 was an error and the Claimant, couldn't remember the exact date when she had applied for the second leave.

> Notes of Proceedings dated 10 September 2025 at page 149 L10 - page 150, L1-L11
>
> CLWS1
>
> "Q : Ok. Anak guam kami telah mendakwa bahawa dia tidak pernah meluluskan application form ini. Ok? Pn Izzah, application form kamu ini adalah bertarikh 5 Januari 2024. Betul tak?

A : Ya, Betul.

Q : Dalam untuk leave date adalah 1hb Mac hingga 31hb Mac. Betul tak? 31 hari.

A : Ya, betul.

Q : Tengok itu approved or not approved by. Siapa yang actually menandatangani dokumen itu?

A : Selepas Mdm Cozzi, direktor, memberi respons ok, manager terus meluluskan dan tangani.

Q : Ada satu arrow sini. So, manager ialah –

A : Pn Murni.

Q : Siapa? So, Pn Murni yang hantar dokumen ini kepada kamu?

A : Ya, betul.

Q : Secara macam mana? Macam mana dia serahkan?

A : Face to face.

Q : Face to face?

A : Ya.

Q : So, mereka telah, so, it means you ada itu salinan asal.

A : Cuma saya tidak ingat saya ambil yang borang original itu ataupun saya hanya gambar. Saya ambil gambar macam itu. Saya tak ingat saya ambil ke ataupun saya hanya ambil gambar. Dia bagi saya peluang untuk ambil gambar."

Notes of Proceedings dated 10 September 2025 at page 150, L25-L37

CLWS1

"Q : Ok. My next question. Tengok itu tarikh approved by. Apa tarikh itu yang dinyatakan dalam itu? Apa tarikh yang tulis pada sini –

A : 07 Disember 2023.

Q : Application form kamu ialah bertarikh bila?

A : 05 Januari 2024.

Q : So, macam mana dia approve satu application sebelum kamu 35 menghantarkan itu application form?

A : Saya tidak tahu."

[27] It is the Court findings that the Claimant's pleadings and evidence raise doubts as to the authenticity and sequence of the alleged application forms, and for the Claimant who is unable to indicate the actual time of her submitting the second leave is fatal to her own case.

[28] In short it undermines the credibility of the Claimant's entire claim. This Court does sympathize with the need of the Claimant to go back to Sabah, but the Claimant had failed to get the necessary approval. The Claimant should have taken necessary action to the letter dated 21 February 2024 (page 11 of COB1), issued by the Company.

[29] The Claimant also has failed to call Puan Murni to testify and to support her contention. Further, the Claimant had also agreed that she had no evidence to show that Madam Cozzi has indeed approved her leave application. As such this Court agrees with the learned Counsel for the Company that the Claimant has failed to prove her case to the requisite standard.

Notes of Proceedings dated 10 September 2025 at page 146 L27-L37, page 147, L2- L11

CLWS1

"J : Jadi, Tarikh 5 hb Ogos itu tidak tepatlah?

A : Ya, Betul.

Q : Adalah bercanggah dengan kenyataan saksi kamu jawapan dalam kenyataan saksi kamu. Betul tak?

A : Betul.

Q : Saya juga cadangkan kepada kamu kerana cuti kedua tidak mungkin mendahului cuti pertama. Betul Tak?

A : Betul

Q : Ok. Sekarang saya merujuk kamu kepada permohonan cuti kedua. Permohonan cuti kedua telah dipohon pada 05 Januari 2024. Betul tak?

A : Saya Tak Ingat.

J : Tidak Ingat?

A : Ya."

Notes of Proceedings dated 10 September2025 at page 154, L3-L6

CLWS1

"Q : So, dalam kata lain, kamu tak ada bukti bertulis bahawa Mdm Cozzi telah luluskan aplikasi kamu. Betul tak?

A : Ya, betul."

[30] In the the case of *Ranjit Kaur S Gopal Singh v. Hotel Excelsior (M) Sdn Bhd* [2012] 1 MELR 129;[2010] 5 MLRA 696; [2010] 6 MLJ 1; [2011] 1 ILJ 479; [2010] 8 CLJ 629; [2010] 4 ILR 475; [2011] 3 AMR 38, where it was held that:

"[29]...Pleadings in the Industrial Court are as important as in the civil courts. The appellant must plead its case and the Industrial Court must decide on the appellants pleaded case."

[31] The Company further contended that it is the principal duty of an employee to be present and available at his workplace to render the services that is expected of the employee. If the employee is unable to attend, then the employee must inform the employer and get the permission to take leave.

[32] Failure to be present at the workplace is a breach of contract of employment that also amounts to a misconduct. Since no evidence was given in Court that the Claimant's leave was approved by the Company, the Court has no choice but to agree with the learned Counsel for the Company's submission that the Claimant had failed to be present at her workplace for more than three days without approval.

[33] In the case of *Zaidi Tawang v. Kajang Plaza Medical Centre* [2021] MELRU 1007, it was held that:

"[67] The seriousness of an employee's frequent and continuous absent was contemplated in the case of *Crowne Plaza Riverside Kuching v. Mohamad Zulkarnaen Suhaili* [2000] 1 MELR 636; [2000] 2 ILR 148 where the Court had held: "The claimant had failed to comply with a basic obligation of an employee whose principal duty is to be present at his employer's workplace to render the services expected of him; and even if he had an excuse for being absent, to undertake that basic duty which is pure common sense and the legitimate expectation of any employer to inform the hotel of his inability to turn up for work for three days at a time when the hotel needed all available staff."

[34] This Court agrees with the learned Counsel for the Company that the Claimant who had failed to turn up for work continuously for several days without permission from the employer is deemed to have abandoned her

employment. Abandonment of employment is an act of repudiation of the employment contract. In the case of *Kamini Kanagaratnam v. Educate To Learn Sdn Bhd* [2019] MELRU 3182, it was held that:

> "[33] The Company's contention was that the Claimant has abandoned her employment as of 18 February 2016. The law on abandonment of employment has been vividly explained in the case of *Afzal Amran v. Etiqa Insurance Berhad* [2017] 2 MELR 194; [2017] 2 ILR 512 as follows:
>
> > [27] On the issue of abandonment of service, OP Malhotra in his distinguished text "*The Law of Industrial Disputes*", 6th edn, vol. 1 at pp. 248 and 249 stated as follows:
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> > > In order to constitute an abandonment, therefore, there must be a total or complete giving up of the duties, so as to indicate an intention not to resume the same. Abandonment must be total and under circumstances which clearly indicate an absolute relinquishment. A failure to perform the duties pertaining to an office, must be with an actual or imputed, intention on the part of the officer to abandon and relinquish the office. It has been held that: Abandonment or relinquishment of service is always a question of intention, and, normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. However, the 'intention may be inferred from the acts and conduct of the party'. The question as to whether the job, in fact has been abandoned or not, is a question of fact which is to be determined in the light of the surrounding circumstances of each case.
> >
> > It is further stated that:
> >
> > > Under common law, an inference that an employee has abandoned or relinquished service, is not easily drawn, unless from the length of absence and from the other surrounding circumstances, an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon his service.
> >
> > [28] The question of whether the claimant had abandoned his employment and job was a matter of intention which could be inferred from the claimant's acts and conduct. The duty of this court is to examine the facts of this case and thereafter to determine if the company had established the reason stated in the letter of abandonment, namely that the claimant had abandoned his services with the company due to his continued absence from work without obtaining prior leave or approval

> from his immediate superior nor informing or attempting to inform his immediate superior of the reasons for his absence from work."

[35] Under s 15(2) of the Employment Act 1955 [Act 265], an employee is deemed to have broken his contract of service if he has been continuously absent from work for more than 2 consecutive working days without prior leave from his employer. In the case of *Zaidi Tawang v. Kajang Plaza Medical Centre* [2021] MELRU 1007, it was held that:

> "[66] The High Court had in the case of Lim Giat Eng v. Farlim Group (M) Bhd [2012] 1 MELR 44; [2011] 4 ILR 1; [2011] 6 CLJ 101 citing s 15(2) EA 1955, enunciated the following:
>
> > "An employee shall be deemed to be broken his contract of service with the employer if he has been continuously absent from work for more than two consecutive working days without prior leave from his employer; unless he has a reasonable excuse for such absence and has informed or attempted to inform his employer of such excuse prior to or at the earliest opportunity during such absences.
> >
> > The Employment Act 1955 is the law of the land regulating conduct of employers and employees. The Defendant is therefore perfectly entitled to use the provision in their dealings with the plaintiff."
>
> [67] The seriousness of an employee's frequent and continuous absence was contemplated in the case of *Crowne Plaza Riverside Kuching v. Mohamad Zulkarnaen Suhaili* [2000] 1 MELR 636; [2000] 2 ILR 148 where the Court had held:
>
> > "The Claimant had failed to comply with a basic obligation of an employee whose principal duty is to be present at his employer's workplace to render the services expected of him; and even if he had an excuse for being absent, to undertake that basic duty which is pure common sense and the legitimate expectation of any employer to inform the hotel of his inability to turn up for work for three days at a time when the hotel needed all available staff.""

[36] In the case of *Lim Giat Eng v. Farlim Group (M) Bhd* [2012] 1 MELR 44; [2011] 4 ILR 1; [2011] 6 CLJ 101, it was held *inter alia*:

> "[11] DW1 further stated that the defendant company had adopted the Employment Act 1955. Section 15(2) of the Employment Act 1955 provides the following:
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> > An employee shall be deemed to have broken his contract of

> service with the employer if he has been continuously absent from work for more than two consecutive working days without prior leave from his employer, unless he has a reasonable excuse for such absence and has informed or attempted to inform his employer of such excuse prior to or at the earliest opportunity during such absence.
>
> [12] The Employment Act 1955 is the law of the land regulating conduct of employers and employees. The defendant is therefore perfectly entitled to use the provision in their dealing with the plaintiff. That provision had in fact been used by the defendant saying that because of plaintiff's absence from work for two consecutive days, he was deemed to have broken his contract of service with the defendant. As such, he had resigned on his own accord.
>
> [13] With the facts and the law as stated above, I have come to a conclusion that this is not a case of unlawful dismissal by the defendant but rather the plaintiff had brought it upon himself the consequences of his absence from work. Therefore, there is no need for the defendant to hold a Domestic Inquiry as this is not a case of misconduct leading to unlawful termination or dismissal of the plaintiff."

[37] Further in the case of *Delcom Services Sdn Bhd v. Parameswara Rajah Krishna* [1999] 2 MELR 332; [1999] 3 ILR 7, it was held that:

> "The necessity for employees to be present for duty at the time and place required is obvious. No enterprise of any kind could function if employees were able to come and go as they choose. Without knowing the size of its labour force, no employer could plan any productive undertaking. As one Canadian Arbitration panel observed: If an employee regularly and for a long or short period of time absents himself or herself from the employment, it is readily understood that such absence throws into confusion the organisation of the work in any modern plant and necessitate the redistribution of the working force in a manner which detracts materially from the efficiency of the particular force."

[38] From the evidence gathered, it is clear that the Claimant was absent from work without any approved leave or permission from the Company continuously from 1 March 2024 until 11 March 2024, when the Company issued the Claimant with her termination letter (page 13 of COB1). The Claimant in this present case also has failed to show any evidence that she had obtained any written approval from the Company authorising her absence during this period.

[39] The Claimant, in paragraph 11 of her Statement of Case, alleged that the Director of the Company had responded to her second leave application with an "OK" hand symbol which she construed as an approval. The Claimant

further alleged in paragraph 13 that on 21 February 2024, the Company "abruptly and unilaterally revoked" the leave she claimed had already been approved.

[40] This Court agrees with the learned Counsel of the Company that, the "" symbol in the WhatsApp conversation cannot reasonably be construed as leave approval. At most, it indicates that the Director had acknowledged receipt of the leave application. It does not constitute a formal written approval as required under Company policy.

[41] Further, the Claimant had tendered a photograph of a staff leave application form dated 5 January 2024, alleging that the form had been duly approved by the manager, Puan Murni (page 12 of CLB1). However, the purported "approval date" stated on the form is stated as 7 December 2023, a date before the date of the leave application. Such situation raises doubt that need to be cleared by the Claimant.

[42] Unfortunately, the Claimant, during her cross-examination, was unable to explain such situation or to clear the doubt. To make things worst, Puan Murni was not even called by the Claimant to corroborate her allegation or at least to clear up the situation. Further from the evidence of the Company's witness, Gavin Foo Eng Liang (COWS-2), it shows that Puan Murni had no authority to approve such leave, as she was merely a trainer. As such, the evidence of Puan Murni is highly appreciated.

Notes of Proceedings dated 10 September 2025 at page 81-82

COWS2

"Q : Understanding. So it's not stated. So for her, for a normal staff, a manager is also management. Correct?

A : But Murni is not the role to approve, Yang Arif.

Q : No, there aren't -

A : Murni is not the role to approve the leave.

Q : No, my question is for her understanding, manager is also management. Correct?

A : She –

Q : For her understanding -

A : She was not -

Q : As a staff.

A : She was not manager.

Q : I'll rephrase the question, Yang Arif. Manager is part of management in your company?

A : I never said Murni was our manager. She was our trainer."

[43] In light of the above, this Court finds that it was the Claimant herself who had abandoned her employment and repudiated the contract of service. As such, the Company was entitled to treat the contract as terminated and acted reasonably and lawfully in issuing the termination letter dated 11 March 2024 (page 13 of COB1).

[44] Accordingly, the Claimant's employment did not end by way of an unlawful dismissal. It ended because the Claimant had repudiated the contract of service when she was absence without permission. This is fully consistent with the provision of s 15(2) of the Employment Act 1955 [Act 265], under which an employee who is absent for more than two consecutive working days without permission is deemed to have broken her contract of service; and s 13(2) of the Employment Act 1955 [Act 265], which entitles an employer to terminate the contract without notice in the event of a wilful breach by the employee.

Conclusion

[45] In view of all the above and after taking into consideration the evidence adduced in Court as well as the submissions by both parties, this Court is satisfied that there was in fact no dismissal by the Company. The Claimant had, by her own conduct, abandoned her employment and thereby repudiated the contract of service. The Company merely acted upon that repudiation by issuing the termination letter dated 11 March 2024.

[46] Pursuant to s 30(5) of the Industrial Relations Act Act 1967 [Act 177] and after having considered the totality of the evidence adduced, this Court is of the view that on the balance of probabilities, the Claimant had repudiated the contract of service and the decision of the Company issuing the termination letter dated 11 March 2024 was merely action on the repudiation of the contract of service by the Claimant.

[47] In the circumstances, in the light of the particular facts of the present case and guided by the principles of equity, good conscience and substantial merits of this case without regard to technicalities and legal forms, the Claimant's claim is hereby dismissed.