IN THE INDUSTRIAL COURT OF MALAYSIA
CASE NO.: 5/4-2439/21
BETWEEN
TAN YIH BENG
AND
HSBC BANK MALAYSIA BERHAD
AWARD NO.: 1633 OF 2025

Analysis of the Industrial Court Award

This case involves the dismissal of **Tan Yih Beng (the Claimant)**, a Senior Vice President, by **HSBC Bank Malaysia Berhad (the Company)** for alleged insolent and disrespectful conduct towards her immediate superior.

The Core Dispute:

- **Company's Position:** The dismissal was justified due to serious misconduct. The Claimant used insolent, disrespectful, and confrontational language in emails and during a meeting, breaching professional standards and destroying the trust necessary for the employment relationship.
- **Claimant's Position:** The dismissal was without just cause. Her emails and remarks were defensive reactions to unfounded accusations, undue pressure, and an unwarranted Performance Improvement Plan (PIP) from a new superior with whom she had a strained relationship.

The Court's Key Findings and Reasoning:

1. **Misconduct Was Proven, But Not Serious Enough for Dismissal:** The Court agreed that the Claimant's language was "inappropriate," "discourteous," and demonstrated "poor judgment." It constituted insolent and disrespectful behaviour. However, the Court drew a critical distinction between *misconduct* and *misconduct warranting dismissal*.
2. **Context Matters:** The Court placed significant weight on the context:
   - The Claimant had a clean disciplinary record and good performance reviews under her previous superior.
   - The relationship soured only after a former colleague, Mr. Premkumar (**COW-1**), became her superior.
   - The Court attributed the conflict to "differences in management style, communication approach, and workplace expectations," implying the superior may have contributed to the situation.
   - The Claimant's emails were seen as "defensive reactions" to perceived unfair treatment, not a "deliberate challenge to authority."
3. **Failure to Call a Key Witness:** The Company's failure to call Mr. Arief bin Ahmad Fizal, who was present at the pivotal PIP meeting, was a "significant evidentiary gap." This weakened the Company's ability to prove the gravity of the Claimant's alleged verbal misconduct.
4. **The Principle of Proportionality Was Violated:** This was the decisive factor. The Court held that the punishment of dismissal was too severe for the misconduct. The Company could have and should have applied a lesser sanction, such as a final written warning or suspension, to correct the behaviour. The breakdown in the relationship was not deemed "irreparable."

Final Ruling: The Court found the dismissal to be **without just cause or excuse**.

Key Learnings and Recommendations for Employers

To prevent similar situations and avoid losing cases at the Industrial Court, employers should adopt the following practices:

1. **Apply Proportional Discipline:** Not all misconduct warrants dismissal. Employers must have a graduated disciplinary system (e.g., verbal warning → written warning → final written warning → suspension → dismissal). Dismissal should be reserved for the most severe cases,

such as theft, violence, or gross insubordination that truly destroys trust. In this case, a final warning would have been more defensible.

2. **Manage Interpersonal Conflicts Proactively:** When a reporting line changes, especially between former peers, management must be vigilant. HR and senior leaders should intervene early to mediate conflicts, provide leadership coaching, or facilitate a transfer if the relationship is irreconcilable *before* it escalates to a disciplinary stage.
3. **Conduct Thorough and Fair Investigations:**
   - **Interview All Relevant Witnesses:** The failure to call Mr. Arief was a critical error. Employers must interview all parties present during an alleged incident and be prepared to have them testify if needed.
   - **Be Objective:** The investigation should not just focus on the subordinate's conduct but also consider the superior's actions and management style that may have provoked the situation.
4. **Train Managers on Effective Leadership:** Managers must be trained on how to give constructive feedback, manage performance professionally, and handle difficult conversations without resorting to actions that can be perceived as bullying or making unfounded accusations. A manager's poor conduct does not excuse an employee's insolence, but it is a significant mitigating factor in the eyes of the Court.
5. **Document Performance Issues Objectively:** The PIP was viewed by the Claimant as unwarranted given her past performance. Employers must ensure that performance management tools like PIPs are based on clear, objective, and documented evidence of performance failure, not subjective feelings or interpersonal conflicts.
6. **Consider Reinstatement as a Remedy:** The Court's refusal to order reinstatement highlights that the employment relationship was beyond repair. However, in less acrimonious cases, offering reinstatement can be a powerful way to resolve a dispute, as it shows the employer's primary goal is to preserve the employment relationship, not to punish.

Amount to be Paid to the Claimant

The Court ordered the Company to pay the Claimant a total net award of:

RM 488,334.00

(Ringgit Malaysia: Four Hundred Eighty-Eight Thousand Three Hundred Thirty-Four)

This amount is calculated as follows:

- **Gross Back Wages (24 months max):** RM 24,915 x 24 = **RM 597,960**
- **Compensation in Lieu of Reinstatement (4 months' salary):** RM 24,915 x 4 = **RM 99,660**
- **Total Gross Award:** RM 597,960 + RM 99,660 = **RM 697,620**
- **Less 30% for Contributory Misconduct:** RM 697,620 x 30% = **RM 209,286**
- **Net Award Payable:** RM 697,620 - RM 209,286 = **RM 488,334**

This award is subject to statutory deductions (e.g., EPF, SOCSO, income tax) and must be paid within 30 days from the date of the Award (22 October 2025).