



**MALAYSIA
IN THE HIGH COURT IN SABAH AND SARAWAK
AT KOTA KINABALU, SABAH
[CIVIL SUIT NO: BKI-13NCvC-19/12-2014]**

BETWEEN

TELEKOM MALAYSIA BERHAD ... APPLICANT

AND

AMRAN AMBODAI ... 1st RESPONDENT

**MAHKAMAH PERUSAHAAN
MALAYSIA ... 2nd RESPONDENT**

JUDGMENT

Introduction

This is an application by an employer (the applicant) for an order of *certiorari* to quash the decision of the Industrial Court in Award No. 1209 of 2014 which was handed down on 30th October 2014. The Industrial Court

had found that the dismissal of its employee (1st respondent) was without just cause and excuse. The Industrial Court ordered the 1st respondent to be reinstated to his former position without any loss of wages and benefits and further ordered that he be paid backwages.

Background facts

The 1st respondent commenced employment with the applicant as an account assistant in the Sabah Branch in 1993. At the time of dismissal, he held the position of Occupational Safety Health Executive in the Sabah Branch. The 1st respondent was also active in union activities. Between 2001 and 2010, he held the post of President in the Sabah Union of Telekom Employees which is known by its acronym "SUTE". SUTE represents the employees of the applicant in Sabah. He was succeeded by his deputy ie, Hj Jamling Bin Ghani (COW 5) after he had become a bankrupt. The employees in Peninsular Malaysia belong to the National Union of Telekom Employees (NUTE) whose President at the material time was Mohd Japar bin Abd Majid. The SUTE had at that time signed Collective Agreement No. 5 on behalf of its members whereas the NUTE had signed Collective Agreement No. 8. The allegation of misconduct on the part of the 1st respondent is related to an email (referred to as the "NM email" by the Chairman) that the 1st respondent received on 18th April 2010 from the email address at nutemalaysia@gmail.com. No evidence was led as to the owner of this email account and he or she remains unidentified. This "NM email" was also sent to 104 other employees. However, the complaint of the employer was that 1st respondent forwarded the "NM email" on 19th April 2010 by using his own official email address to the Executive Council Members (Exco) of SUTE wherein he also

made some comments. The applicant took the position that this amounted to misconduct and the 1st respondent was suspended from duty on 22nd April 2010 for two weeks with half pay for indiscipline. On 26th April 2010, a show cause letter was issued to the 1st respondent to respond to five charges of misconduct. The 1st respondent replied on 30th April 2010. On 14th May 2010, the applicant preferred nine charges of misconduct against the 1st respondent. However, on 27th May 2010, the number of charges was reduced to only six. The domestic inquiry (DI) on the 1st respondent on the six charges of misconduct was held on 15th and 16th of June 2010. The six charges are as follows:

1st Charge

Bahawa anda semasa menyandang jawatan Pegawai Akaun di Unit OSHE, Sabah mulai tarikh 01 Oktober 2009 sehingga 22 April 2010 telah menyalahgunakan kedudukan anda semasa menjalankan tugas-tugas OSHE di seluruh Sabah telah mengeluarkan kenyataan memfitnah Hj Jamling Bin Ghani menerima rasuah dari pihak syarikat, mempunyai kepentingan peribadi dan menggelar beliau sebagai “kera” dan “Bangkai”. Perbuatan ini adalah bertentangan dengan Fasal 4.1 – Menghormati Individu, Kod Etika Perniagaan TM Berhad.

2nd Charge

Bahawa anda pada 19 April 2010 telah menyebarkan E-mel yang bertajuk “FW:BERITA TERKINI LAGI SENSASI – SAHIH JAAFAR MAJID PERASUAH + ZULKIFLI & KRONI NUTE” yang mengandungi kenyataan berbentuk hasutan untuk menimbulkan kemarahan pembaca E-mel keatas En Jaafar Majid dan NUTE dimana kenyataan dirujuk “*President Nute – Jaafar Majid memaklumkan (semasa sesi tersebut) selepas sign 22 April 2010, kita (Exco NUTE) akan bercuti ke Bali (yehhhhhh!!!! Sorakan bergema oleh kroni mereka) statement in bukan palsu dan kami tidak faham si*

Jaafar nie guna duit TM bagi ke atau duit ahli,, (SPRM sila siasat) dan khabarnya TM akan sponsor,, apa sebabnya???? Rasuah... rasuah...”

3rd Charge

Bahawa anda pada 19 April 2010 telah menyebarkan E-mel yang bertajuk “FW: BERITA TERKINI LAGI SENSASI – SAHIIH JAAFAR MAJID PERASUAH + ZULKIFLI & KRONI NUTE” yang mengandungi kenyataan berbentuk fitnah untuk membangkitkan kebencian pembaca e-mel ke atas En Jaafar Majid yang merujuk kenyataan *“kalau kau nak ke neraka sekalipun kami tak kisah, tapi pakai duit mak bapak kau dan jangan kau nak pakai duit ahli, celaka punya Jaafar. Apa semua nie,???? Atau pengurusan beli Jaafar ke????*

4th Charge

Bahawa anda pada 19 April 2010 telah menyebarkan E-mel yang bertajuk “FW:BERITA TERKINI LAGI SENSASI – SAHIIH JAAFAR MAJID PERASUAH + ZULKIFLI & KRONI NUTE” yang mengandungi kenyataan berbentuk penghinaan yang boleh kemarahan pembaca e-mel ke atas En Jaafar Majid dan NUTE yang merujuk kenyataan *“bak kata kawe “NUTE nak supik” Jaafar Majid & nute anggap urang sabah ni budu macam babi”*. Tindakan anda menyebarkan e-mel kepada Omarhatta Piong, Adanan Jalil; Hj Taslim Usman; Khalid Azmi; Dk Ribut Pg Mohd Tajuddin @ Dk Rosnah; Asnol Abdullah; Darwin Bin Sarsan; Jumaidin Samsuddin; Jairis Katikan; Sumiati Musi; Hayati Tamrin; Sylvester Severinus Tonggok; Jiporol Monsiang; Julius Onik; Sairah Baudi; serta cc: Jamling Hj Ghani; Makbal Hj Ingatan; Edrus Kunti; Kian Hing @ Cornelius Boon Chee; Amin Wali; Dominic Yasun; Jafli Maton; Pingai Andau @ Mohd Nazri Abdullah; Husen Mada Ali; Mohd Rosli Ibrahim merupakan satu kesalahan yang bertentangan dengan Fasal 4.1 – Menghormati Individu dan Fasal 11.1 (iii) Komputer dan Teknologi Maklumat (Information Technology – IT), Kod Etika Perniagaan TM Berhad.

5th Charge

Bahawa anda pada 19 April 2010 telah menyebarkan E-mel dimana anda telah mengeluarkan kenyataan yang mendorong pembaca e-mel supaya tidak berpuashati ke atas En Jaafar Majid yang merujuk kenyataan “...*tapi sekadar memberitahu semua ahli SUTE yang ahli NUTE nampaknya pun tidak bersetuju dengan PLWS dan seperkara lagi Artikel Overtime SUTE amat berlainan dengan NUTE dan mereka tiada perubahan dalam hal overtime. Kita punya overtime yang jelas pengiraannya akan lebih berkurangan.*” Tindakan anda menyebarkan e-mel kepada Omarhatta Piong, Adanan Jalil; Hj Taslim Usman; Khalid Azmi; Dk Ribut Pg Mohd Tajuddin @ Dk Rosnah; Asnol Abdullah; Darwin Bin Sarsan; Jumaidin Samsuddin; Jairis Katikan; Sumiati Musi; Hayati Tamrin; Sylvester Severinus Tonggok; Jiporol Monsiang; Julius Onik; Sairah Baudi; serta cc: Jamling Hj Ghani; Makbal Hj Ingatan; Edrus Kunti; Kian Hing @ Cornelius Boon Chee; Amin Wali; Dominic Yasun; Jafli Maton; Pingai Andau @ Mohd Nazri Abdullah; Husen Mada Ali; Mohd Rosli Ibrahim merupakan satu kesalahan yang bertentangan dengan Fasal 4.1 – Menghormati Individu dan Fasal 11.1 (iii) Komputer 20 dan Teknologi Maklumat (Information Technology – IT), Kod Etika Perniagaan TM Berhad.

6th Charge

Bahawa anda pada 19 April 2010 telah menyebarkan E-mel dimana anda telah mengeluarkan kenyataan berbentuk fitnah yang boleh membangkitkan kebencian dan kemarahan pembaca e-mel yang merujuk kenyataan “*Persoalannya sekali lagi PERLUKAH KITA MENGGADAIKAN NASIB AHLI SUTE HANYA MENGHARAPKAN SECEBIS HARAPAN PERIBADI, TIDAK PERLULAH ADA YANG DIPANGGIL “PAKEJ RUNDINGAN” KONON kalau menggadaikan kebajikan anggota. Biarlah rundingan dari satu artikel ke satu artikel “NON PACKAGE”.*” Tindakan anda menyebarkan e-mel kepada Omarhatta Piong, Adanan Jalil; Hj Taslim Usman; Khalid Azmi; Dk Ribut Pg Mohd Tajuddin @ Dk Rosnah; Asnol Abdullah; Darwin Bin Sarsan; Jumaidin Samsuddin; Jairis Katikan; Sumiati Musi; Hayati Tamrin; Sylvester Severinus Tonggok; Jiporol Monsiang; Julius Onik; Sairah Baudi; serta cc: Jamling Hj Ghani; Makbal Hj Ingatan; Edrus Kunti; Kian Hing @ Cornelius Boon Chee; Amin Wali;

Dominic Yasun; Jafli Maton; Pingai Andau @ Mohd Nazri Abdullah; Husen Mada Ali; Mohd Rosli Ibrahim merupakan satu kesalahan yang bertentangan dengan Fasal 4.1 – Menghormati Individu dan Fasal 11.1 (iii) Komputer dan Teknologi Maklumat (Information Technology – IT), Kod Etika Perniagaan TM Berhad.

Under the 1st charge, the 1st respondent is alleged to have accused Hj Jamling Bin Ghani who is the President of SUTE of accepting bribes and had called him names. The 2nd and 6th charges stem from the “NM email” that the 1st respondent forwarded to the Exco of SUTE. The 2nd to 4th charges refer to different parts of the same “NM email”. In general, the “NM email” contains defamatory allegations against the Japar Majid and NUTE. It insinuates that Japar Majid and NUTE had been bought by the management and that Sabah employees were given unfavourable treatment. The 5th and 6th charges are in respect of the comments added by the 1st respondent when he forwarded the said “NM email”. In the 5th charge, the 1st respondent is alleged to have commented that SUTE members are also unhappy about the overtime allowance. In the 6th charge, the 1st respondent is alleged to have added a comment that the interests of the SUTE members had been sacrificed. The case of the applicant is that the forwarded “NM email” has the potential to incite hatred and anger among the recipients who are employees of the applicant. The central allegation is that the 1st respondent had circulated the “NM email” with defamatory content to incite the Exco of SUTE by insinuating that the Sabah employees received less favourable terms than the members of NUTE. The DI found the 1st respondent guilty of the “first component” stated in the 1st charge. However, the DI did not find the 1st respondent guilty of the “second component” of the 1st charge, ie, the charge that the 1st respondent called Hj Jamling Bin Ghani “kera and bangkai”. In respect of the 2nd to 6th charges, the DI found him guilty of misconduct and dismissed him

on 2nd August 2010. His appeal to the Jawatankuasa Rayuan Tataterib was dismissed on 18th August 2010. At the conclusion of the Industrial Court hearing, the learned Chairman found the 1st respondent's dismissal to be without just cause and excuse and ordered the applicant to be reinstated to his former position from 28th November 2014 and awarded 24 months back wages minus 40% contributory misconduct amounting to RM52,992.00.

The defence

The defence of the 1st respondent can be summarized as follows. The email from nutemalaysia@gmail.com was also sent by the unknown sender to 104 employees. The 1st respondent said he is not the author of the "NM email". The members of NUTE were also unhappy with their collective agreement. In respect of the 1st charge, his counsel submitted that it was defective because of lack of material particulars. He said no particulars as to time and place were given in respect of the allegation of bribery that the 1st respondent made against Hj Jamling Bin Ghani (COW 5). As for the 2nd to 5th charges, the defence is that they were derived from the same "NM email" and that Jaafar Majid and Hj Jamling Bin Ghani had agreed that many employees of the applicant were not happy with Collective Agreements No. 5 and No. 8 especially with respect to overtime and salary increment. The 1st respondent said that few days before he received the "NM email" in question from a disgruntled member of NUTE, few employees had to come to see him because they were not happy with the SUTE negotiating team. Therefore, the 1st respondent wanted to share the information in the email in question with the 25 members of the Exco of SUTE to show that their counterparts in Peninsular Malaysia were also dissatisfied with their own Collective Agreement.

Summary of Findings of Industrial Court

The Chairman held the DI was flawed for the following reasons:

- (a) the rules of natural justice were not followed at the DI;
- (b) the 1st respondent was not given sufficient opportunity to be heard;
- (c) the notes of proceedings are accurate;
- (d) that the finding of the DI was flawed in that the fact on which the Claimant was found guilty on first offence in the First Charge by the DI Panel was not stated in this charge.

In the premises, the Chairman decided to hear the case afresh. At the trial before the Industrial Court, it was established that the 1st respondent received the “NM email” in question on 18th April 2010 and that he forwarded it to other recipients the following day. It was also established that the “NM email” did not originate from the National Union of Telekom Employees (NUTE) but from an unidentified person. The “NM email” alleged that Japar Majid who is the President of NUTE is corrupted and had been bought by the applicant.

The learned Chairman found that the 1st charge was defective because it did not give particulars as to time and place. He said that it also did not specify the incidents in which the 1st respondent misused his position. In respect of the 2nd to 6th charges, he found the content of the “NM email” to be “seditious, defamatory, humiliating in nature”. He also said that the reader would be dissatisfied with Japar Majid. However, he found that the charges were not proved because some of the witnesses who had read the email said they were not angry with Japar Majid but with the sender of the email. Thus the learned Chairman was not sure whether

the “NM email” forwarded by the 1st respondent incited hatred. This part of his finding is as follows:

Based on para 32, 33 and 34 above I am not sure whether:

- a) After reading the e-mails, the readers were angry with COW4 and/or NUTE.
- b) After reading the e-mails, the readers hated COW4.
- c) After reading the e-mails the readers were dissatisfied with COW4.
- d) After reading the e-mails the reader had the feeling of hatred and anger.

However, when considering contributory misconduct when assessing back wages, the Chairman again reiterated that the 1st respondent committed misconduct as the email is “seditious and defamatory”.

Grounds of review

I bear in mind that judicial review is not an appeal from a decision but a review of the manner in which the decision was made and that the High Court is not entitled on an application for judicial review to consider whether the decision itself, on the merits of the facts, was fair and reasonable (see *Menara Panglobal Sdn Bhd v. Arokianathan Sivapiragasam* [2006] 2 CLJ 501). In the instant case, counsel for applicant has submitted that there are grounds for interference as the Industrial Court has committed an error of law, had taken into account irrelevant considerations and had reached a decision that no reasonable tribunal similarly circumstanced would have arrived at.

Counsel for applicant firstly submitted that the finding of the Industrial Court that the first charge was “void ab initio” was wrong in law. To recapitulate, the DI

found that the 1st respondent had committed misconduct under the 1st charge. However, the Industrial Court had dismissed the allegation of misconduct stated in the first charge on the sole ground that the charge was defective because of insufficient particulars.

In respect of the 2nd to 6th charges, the principal ground advanced by counsel for applicant is that the Industrial Court fell into error by asking the wrong question. The said charges stem from the “NM email” forwarded by the 1st respondent to Exco of the SUTE which the Industrial Court found had the tendency to “incite” (menghasut) employees against the management in respect of the Collective Agreement No. 5. Counsel for applicant submitted that the Industrial Court asked the question whether some of the readers of the email called to the witness stand were actually angry or dissatisfied with Jaafar Majid or NUTE. He submitted that the correct question that the Industrial Court should have asked in relation to the 2nd to 6th charges is that whether the defamatory content of the “NM email” forwarded by the 1st respondent has the tendency or potential to incite anger, hatred and dissatisfaction.

Decision

The essence of the misconduct alleged against the 1st respondent in the first charge is that he abused his position as Occupational Safety and Health Executive (OSHE) to defame Hj Jamling Bin Ghani by alleging that he is corrupt and calling him names such as “Kera” and “Bangkai”. The DI found that the 1st respondent defamed Hj Jamling Bin Ghani. However, it did not find evidence to support the charge that the 1st respondent called Hj Jamling Bin Ghani “Kera” and “Bangkai”. The learned Chairman did not examine the evidence at all in considering whether

the 1st respondent committed misconduct by misusing his position as stated in the first charge. Instead he found that the charge is defective because it did not state the time and place at which the 1st respondent misused his position. He also said that the charge did not specify the incidents in which the 1st respondent misused his position. His reasoning is stated in paragraph 30 of the Award as follows:

I find the First Charge is defective because it does not state the time and the place at which the Claimant had misused his position. Besides that the charge does not specify the incidents in which the Claimant had misused his position. This is admitted by the Company in para 4.4 of its submission. The two incidents are also not pleaded. As such the First Charge is *void ab initio*.

As submitted by counsel for applicant, the time-frame of the offence that was stated in the charge is between 1st October 2009 and 22nd April 2010. The disciplinary offence in question, ie, issuing defamatory statements against Hj Jamling Bin Ghani was clearly stated in the charge. It was also stated that the offence fell under Clause 4.1 (Menghormati Individu) of the Code of Business Conduct TM Berhad. The Industrial Court Chairman said that the specific incidents whereby the 1st respondent misused his office were not stated. However, the charge states that during period in question when the 1st respondent travelled throughout Sabah as an Occupational and Safety Health Officer, he committed the offence in question. Furthermore, the Industrial Court Chairman had pronounced that he would inquire into the misconduct afresh as the DI proceedings were flawed. In the premises, any lack of particulars in the charge should not have been an impediment to the main function of the Industrial Court in determining whether there was misconduct on the part of the employee upon the evidence presented at the Industrial Court hearing. However, upon reviewing the evidence before the

Industrial Court on the merits, I am of the view that there is no evidence to hold that the first charge was proved. Hj Jamling Bin Ghani and the other witnesses did not refer in their witness statement to any instance (apart from the “NM email” which is the subject matter of the 2nd to 6th charges) whereby the 1st respondent had defamed him by alleging that he is corrupt or had called him a “kera” and “bangkai”. In the DI, Hj Jamling Bin Ghani only referred to hearsay evidence that he was defamed. Other allegations against the 1st respondent in the evidence of the applicant’s witnesses such as his behaviour during meetings are not strictly relevant to the first charge. It is elementary that if the employer had given a reason for dismissal, that reason must be examined by the Industrial Court (see *Goon Kwee Phoy v. J. & P. Coats (M) Bhd* [1981] 2 MLJ 129). However, the allegation of misconduct under the first charge was not the only reason the 1st respondent was dismissed. He was also dismissed because the 2nd to 6th charges were proved against him at the DI. I shall now examine whether the Industrial Court fell into error in holding that the said charges were not proved.

The applicant tendered abundant evidence to support the 2nd to 6th charges. The evidence was apparently accepted by the Industrial Court Chairman. It was proved that the official email of the 1st respondent was used to forward the “NM email”. It was proved that it was sent to the Exco of SUTE. It was proved that the applicants’ IT Governance Policy required that the employees to use the company email facility only for official use. In respect of the 5th and 6th charges, it was proved that the 1st respondent had added his own comments to the offending email about the overtime package offered to the Sabah employees and had alleged that their interests were being sacrificed. The words used in the “NM email” are scurrilous and highly defamatory. The “NM email” insinuates that Japar Majid who is the President of NUTE is corrupt because he had either used the members’

funds to arrange a holiday package to Bali or had been bribed by the employer who funded the said holiday. It also stated that Japar Majid had treated the Sabah members as if they were stupid like pigs (budu macam babi) and that their interests had been sacrificed. The Industrial Court found as a fact that the “NM email” that was forwarded by the 1st respondent to the Exco of SUTE was “seditious” or had the tendency to “incite” hatred and anger among the employees. This finding is clear from the following passages:

[36] *I find the content of the NM email as quoted in the charges is seditious, defamatory, humiliating in nature. It also can make the reader dissatisfy with COW4. Therefore the Company has established the ingredients of the charges which are highlighted in para 31 above. However based on para 35 above I hold that the Company has failed to establish the ingredients of the charges which are not highlighted in para 31 above.*

.....

[38] The portion of the e-mail quoted in the Second Charge contain statements *which are seditious in nature to make the reader angry* (yang mengandung kenyataan berbentuk hasutan untuk menimbulkan kemarahan pembaca). *The portion of the e-mail quoted in the Third Charge contain statements which are defamatory in nature to cause the reader to hate* (yang mengandung kenyataan berbentuk fitnah untuk membangkitkan kebencian pembaca). *The portion of the e-mail quoted in the Fourth Charge contain statements which are humiliating in nature to make the reader angry* (yang mengandung kenyataan berbentuk penghinaan yang boleh membangkitkan kemarahan pembaca). The portion of the e-mail quoted in the Fifth Charge is your statements make the reader dissatisfy with COW4. [dimana anda telah mengeluarkan kenyataan yang mendorong pembaca e-mail supaya tidak berpuas hati ke atas Jaafar Majid (COW4)]. *The portion of the e-mail quoted in the Sixth Charge is defamatory in nature which can incite hatred and anger on the part of the reader* (dimana anda telah mengeluarkan kenyataan berbentuk fitnah yang boleh membangkitkan kebencian dan kemarahan pembaca).

(emphasis supplied)

However, the learned Chairman found that the 2nd to 6th charges were not proved for the sole reason that “he was not sure” whether the readers were angry or hated Japar Majid after reading the NM email that was forwarded to them. He referred to the evidence of one of the witnesses called by the 1st respondent who said that she did not feel anything against Japar Majid after reading the “NM email”. In my opinion, counsel for applicant is correct in his submission that the learned Chairman fell into serious error by asking the wrong question and took into account an irrelevant consideration in determining whether there was misconduct. In the 2nd to 4th charges, the misconduct alleged against the 1st respondent was that he forwarded an email which has the tendency to incite hatred (berbentuk menghasut), tendency to defame (berbentuk fitnah) and tendency to humiliate (berbentuk menghina). It was forwarded to 25 recipients who are members of the Exco of SUTE. In the premises, it is erroneous to ask the question whether the “NM email” had actually incited hatred or hatred among the recipients. It must be determined objectively as envisaged by the charges whether the “NM email” had the tendency incite and cause disharmony among employees as well as defame Japar Majid who is the President of NUTE. The 5th and 6th charges pertain to the portion of same NM email where the 1st respondent incited the recipients about unfavourable overtime package offered to Sabah employees compared to the Peninsular employees and the allegation that their interests were being sacrificed. It is highly significant that the 2nd to 6th charges did not state the “NM email” had actually aroused feelings of anger and hatred towards Japar Majid or NUTE or the applicant. Therefore, the 1st respondent was not dismissed from employment for actually inciting hatred towards Japar Majid or NUTE or the applicant. He was dismissed because the scurrilous “NM email” that he forwarded to the Exco of SUTE had the tendency to cause such a reaction. In the premises, it is thoroughly irrelevant if some of the readers of the email did not hate Japar Majid or NUTE

upon reading the said email. In fact as I noted earlier when assessing damages, the Chairman actually acknowledged that the 1st respondent had committed misconduct. He said as follows:

With regard to contributory misconduct, *I think the Claimant had committed such misconduct.* The content of the NM email is seditious, defamatory, humiliating in nature. It also can make the reader dissatisfy with COW4. (emphasis supplied)

In the premises, I am of the view that, had the Industrial Court Chairman not fallen into error by asking the wrong question whether some of the readers of the NM email were actually angry or hated Japar Majid or NUTE upon reading the email, he would have found that the 1st respondent had committed misconduct by forwarding the said email to all the members of the Exco of SUTE just after Collective Agreement No. 5 was signed. For all the above reasons, the decision of the Industrial Court Chairman to find that the termination of the 1st respondent was without just cause and excuse merely because he was not sure that the readers of the email were angry is erroneous.

The next issue that arises is whether the misconduct of the 1st respondent justifies dismissal from employment. In *Wong Yuen Hock v. Hong Leong Assurance Sdn Bhd* [1995] 2 MLJ 753, the Federal Court said that the function of the Industrial Court in dismissal cases on a reference under section 20 of the Industrial Relations Act 1967 is twofold, first, 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. In the instant case, the Industrial Court did not address the question whether the misconduct justified dismissal because the learned Chairman was “not sure” if the 2nd to 6th charges were proved.

However, the members of the DI panel obviously thought that dismissal was a suitable punishment for the 1st respondent. Unless, the punishment is wholly disproportionate to the disciplinary offence in question, the High Court exercising review jurisdiction should be slow to interfere with the punishment meted out by the employer (see *Southern Bank Bhd v. Kamarudin Othman & Anor* [2005] 6 CLJ 379). In any event, I do not find that the punishment offends the proportionality principle. The 1st respondent was a former President of SUTE who had to resign because he had become a bankrupt. However, he forwarded the “NM email” which contained highly defamatory allegations the President of NUTE who represented Peninsular Malaysia employees. I am mindful that counsel for 1st respondent submitted that his client was not the author but that he merely forwarded the said email. Nonetheless, given the fact that the “NM email” is highly defamatory and the fact the forwarded email also contained the 1st respondent’s own comments that the interests of Sabahan employees were being sacrificed, the act of the 1st respondent had the potential to cause serious disharmony in the workplace. In the premises, one is hard put to say that the punishment imposed by the DI is disproportionate to the misconduct committed by the 1st respondent.

I shall therefore allow prayer (1) of the judicial review application. I shall also order the 1st respondent to pay costs of RM3000.00 to the applicant.

(RAVINTHRAN PARAMAGURU)

Judge
High Court



Date of Grounds of Judgment: 1 OCTOBER 2015

Date of Delivery of Decision: 17 AUGUST 2015

Date of Hearing:
19 JANUARY 2015
22 APRIL 2015
25 MAY 2015
26 JUNE 2015
23 JULY 2015

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Cases referred to:-

Menara Panglobal Sdn Bhd v. Arokianathan Sivapiragasam [2006] 2 CLJ 501

Goon Kwee Phoy v. J. & P. Coats (M) Bhd [1981] 2 MLJ 129

Wong Yuen Hock v. Hong Leong Assurance Sdn Bhd [1995] 2 MLJ 753

Southern Bank Bhd v. Kamarudin Othman & Anor [2005] 6 CLJ 379

Notice: This copy of the Court's Reasons for Judgment is subject to editorial revision.

