

**INDUSTRIAL COURT OF MALAYSIA**

**CASE NO: 11/4-223/05**

**BETWEEN**

**MONASH UNIVERSITY SUNWAY CAMPUS MALAYSIA SDN BHD**

**AND**

**ZURIATI BINTI ZULKIFLI**

**AWARD NO: 1114 OF 2008**

**Before : PUAN ZURA BTE YAHYA - *CHAIRMAN***

**Venue : Industrial Court, Kuala Lumpur**

**Date of Reference : 17.2.2005**

**Dates of Mention : 18.5.2005, 30.6.2005, 26.9.2005,  
21.11.2005, 25.11.2005, 24.11.2006,  
8.2.2007 and 25.5.2007**

**Dates of Hearing : 19.4.2006, 20.4.2006, 7.9.2006,  
15.9.2006, 11.1.2007, 17.5.2007 and  
14.6.2007**

**Claimant's Written Submission filed on : 20.11.2007**

**Company's Written Submission filed on : 16.1.2008**

**Representation : Ms Shamimi Manikam of Messrs Shamimi  
Manikam & Associates, counsel for the  
Respondent**

**Cik Rohaya Halil of Messrs Rafida Razak &  
Co, counsel for the Claimant**

**Reference:**

This is a reference under section 20(3) of the Industrial Relations Act 1967, arising out of the dismissal of **Puan Zuriati Binti Zulkifli** (hereinafter referred to as “the Claimant”) by **Monash University Sunway Campus Malaysia Sdn. Bhd.** (hereinafter referred to as “the University”).

**AWARD**

This case is referred by way of a Ministerial reference under section 20(3) of the Industrial Relations Act 1967. It pertains to the dismissal of the Claimant by Monash University Sunway Campus Malaysia Sdn. Bhd. (hereinafter referred to as the University) on 15.5.2004.

Claimant was dismissed after the domestic inquiry panel found her guilty of the four charges levelled against her. The four charges can be seen at page 12 and its reversed side in the Company’s Bundle of Documents marked as COB. Briefly, the first charge was about violating the Sunway Groups’ e-Policy by sending out unnecessary emails either work or non-work related. The sending of the emails had also caused confusion, concerns and anxiety among the management and staff of the University. The dates of the emails that were sent out

were stated in the charge. The second charge was for failure to adhere to the advice from the Management of the University as in the memo dated 17.3.2004 entitled "Outgoing University Mail with Encik Adzharuddin's Approval". The third charge was for making unfounded allegations against Dr. Cheong Siew Yoong, Director of Administration & Registered; Mr Phang Koon Tuck, the CEO; and Professor Marilyn Liddell, Pro Vice-chancellor. These allegations are found in the emails sent to the University's staff and copied to Lembaga Akreditasi Negara (LAN) officers. The fourth charge was for undermining the good intention of the emails entitled "Employee Benefits -ING Insurance" and "Sunway Petting Zoo - Staff tickets".

To establish its case against the Claimant, three witnesses had been called by the University. The University too had filed its Bundle of Documents which had been marked as 'COB'. The emails which the University relied to draft the four charges can be found in the several pages in COB.

The three witnesses for the University were the General Manager of Group Human Resources in Sunway Holdings Bhd. (COW-1), the University's former Government Manager (COW-2), and a panel member of the domestic inquiry (COW-3).

COW-1's evidence was that the Claimant and other University's staff were informed of the Sunway Group e-policy concerning sending of emails. This was made known to them *via* the University internet <http://mymum>. A hard copy of this e-policy (exhibit CO-1) was given to the Claimant together with the memo dated 17.3.2004 (page 6 of COB). In this memo (entitled "Outgoing University Mail with Encik Adzharuddin's Approval") Claimant was advised that as a requirement of employment she was not to use her Yahoo email address for any outgoing University mail, and all emails which she sent out *via* her University email address must have approval of her immediate superior, Encik Adzharuddin Mohd. Nor (COW-2) and be copied to him, and in his absence, to seek the approval of the Director of the Administration and Registrar, Dr. Cheong Siew Yoong.

Further evidence from COW-1 was that two show-cause letters dated 17.3.2004 and 23.3.2004 were issued to the Claimant. The Claimant, however, did not give any reply to them. Hence on 25.3.2004 Claimant was suspended from the employment. On 2.4.2004 a notice of inquiry was issued to the Claimant. Following the inquiry which was held on 8.4.2004, the University then decided to dismiss the Claimant because the misconduct committed by her was considered as serious.

In his Witness Statement, COW-1 also stated that the Claimant had been given a final warning letter on 5.8.2002 for her misconduct of sending offensive email to colleagues and superiors in the University as far back as July 2002.

COW-2, who was the Claimant's immediate superior, stated that the Claimant did receive a hard copy of the e-policy together with the letter dated 17.3.2004 (page 6 of COB). The handwritten note as seen on page 6 of COB was his. Prior to this letter, Claimant had been issued with a written warning about the emails sent by her. He had also given her verbal counselling regarding the sending of emails before the written warning in 2002 was issued to her.

In cross-examination, COW-2 stated that after 17.3.2004, all emails that the Claimant wanted to send out must get prior approval from him. The Claimant, however, did not do so and COW-2 identified several emails such as pages 57, 60 and 61 of COB which had been sent out by her without his approval. When other emails such as at pages 34, 35 and 30 of COB were shown, COW-2 stated they contained unnecessary words and comments, accusations and threats. And in one of the emails, Claimant had expressed her opinion in a provocative manner. As the result of some of the emails which had been sent by Claimant, COW-2 stated he felt confused, concern,

anxious and upset. COW-2 also stated that he knew of people who were disturbed by the Claimant's emails.

In re-examination COW-2 identified sentences like "Don't show off you are smart & advised me" and "PLS KEEP UP YOUR MOUTH SHUT" in the email at page 36 of COB as being unnecessary remarks and rude. Also the remarks and messages in the email at pages 30, 33 and 47 of COB were unnecessary and not proper.

The relevant emails in each of the charges levelled against the Claimant were identified by COW-3 when she testified during the hearing of this case. For charge no.1, COW-3 had identified the emails at pages 29 and 47 of COB as being sent on 10.3.2004, pages 33, 31 and 32 of COB as emails sent on 11.3.2004, pages 34, 36 and 41 of COB as emails sent on 12.3.2004, page 59 of COB as email sent on 19.3.2004, page 64 of COB as being the email sent on 20.3.2004, page 69 of COB as being the email sent on 21.3.2004, and page 87 as the email sent on 22.3.2004. When sending these emails the Claimant had copied them to other users/peoples as well. COW-3 went on to point out which of these emails were inappropriate, defamatory and embarrassing and hence were in breach of the e-policy.

As to charge no. 2, COW-3 referred to the emails at pages 93, 59, 56, 57, 61, 64, 65, 66 and 69 of COB as the emails sent without

the approval of Encik Adzharuddin (ie, COW-2), COW-3 went on to testify that the Claimant in the email as in page 88 COB stated that she was using the Yahoo email address, and this email by the Claimant was dated 24.3.2004.

For charge no. 3, COW-3 had referred to the email at page 75 of COB where the Claimant had made unfounded allegation against Dr. Cheong Siew Yong. As for the allegation against Mr. Phang Koon Tuck, it could be seen in the email at page 74 of COB. The allegation against Professor Marilyn could be seen at the second paragraph in the email at page 74 of COB. In the emails at pages 74 and 75 of COB the sender's email address was aisyahyan@yahoo.com. According to COW-3 this sender's email address was also that of the Claimant as can be seen in the email at page 73 of COB.

COW-3 had identified the emails at pages 41 and 64 of COB where the Claimant was said to have undermined the intention of the University employees who in their respective email had informed the University staff about a briefing on the ING Hospitalisation and Surgical Insurance policy, and the discounted tickets given to staff for the "Sunway Petting Zoo".

In cross-examination, COW-3 agreed that none of the staff in the IT Department was called as a witness during the domestic inquiry to

testify that the sending of the email at page 31 of COB (in charge no.1) had caused a “jam” in the University computer system. COW-3 also agreed that none of the recipients of the Claimant’s emails were called as witnesses during the domestic inquiry to testify that they were confused, concerned or anxious over emails sent by the Claimant. As regard to the senders of the emails in charge no.4, COW-3 also agreed that they were not called as witness during the inquiry.

In cross-examination COW-3 agreed that the email at page 74 of COB (in respect of charge no.3) was not sent to LAN officers. However, during the re-examination, COW-3 stated the email at page 75 of COB (the other email to support the allegation in charge no.3) was sent to the LAN officers.

In her Witness Statement, Claimant stated that she worked for the University for about four years ie, from 15.3.2000 until 15.4.2004. Throughout her employment with the University, she was not given bonus for the years 2002, 2003 and 2004. When she was not given any bonus in 2004 she felt dissatisfied. Claimant went on to state that in 2004 she was issued with a show-cause letter which she refused to reply. The reason for not replying to the show-cause letter was because it would take up her time as she had a lot of work to complete and to meet the datelines with the University and LAN.



Claimant's response to the charges levelled against her can be seen in the Answer to Question no. 18 in her Witness Statement. In respect of charge no.1 Claimant stated that she was not able to reply since the charge did not specify the time, and a lot of emails were sent out in each day. She also referred to her Answer to Questions no. 28 and 63 in her Witness Statement. In her Answer to Question 28 she stated that the charge was baseless and that she did not agree with the memo where she was not allowed to send email without COW-2's approval. Question no. 63 was whether COW-2 had called her over her dissatisfaction of not getting a bonus and her Answer was "No". As for charge no.2 Claimant stated that Dr. Cheong blocked her email without the knowledge of COW-2 whereas she had to do her work to get the accreditation for Bio Medical Science, Electrical and Computer Engineering. Further, Claimant stated that she did not agree with the memo hence she did not acknowledge by signing on it. Also it caused her hardship when she wanted to perform her job when her University email was blocked.

Regarding charge no.3, Claimant stated that Dr. Cheong herself said she did not want to go to jail if no approval was obtained for the courses conducted by the University. As to Dr. Cheong's husband having a Degree in Science-Zoologist, Claimant stated that it was based on the resume which she had sent to LAN, and this was raised as an issue by the LAN officers. As to the allegation against Mr. Phang Koon

Tuck, Claimant stated it was one Juliana Chan, a staff of the University, who said he was an “empty tin”. Regarding what was said about Professor Marilyn Liddell, Claimant stated that she was told by the staff from the publication about their dissatisfaction with the said Professor for not helping them.

In respect of charge no.4 Claimant stated that she felt that anyone could openly give an opinion in a democratic country.

In her Witness Statement Claimant also stated that she knew of the existence of the University’s e-policy but she did not know what was the content of the e-policy since she had not received a copy of it or had attended any briefing about it. And after she was given the memo at page 6 of COB, Claimant stated she continued to send the emails because most of them were work-related.

As for charge no. 3, Claimant also stated the emails were sent to LAN officers since these officers had to know about the development/progress of the accreditation and approval that had been given to the University.

In the Answer to Question no. 65 in her-Witness Statement Claimant gave her explanation about the various emails which were referred to in charge no.1.

In the cross-examination Claimant agreed that the emails in COB which had been shown to her were sent out by her. Claimant also agreed that after receiving the memo as in page 6 of COB, she had sent out emails without the approval of COW-2. Claimant disagreed that the two emails which were the subject matter in charge no. 4 were rude and “sabotaging” in nature.

From the evidence adduced it cannot be denied that all the emails mentioned in the charges had been sent out by the Claimant. That being so, the next issue to be considered is whether basing on the content of the emails which were sent to her superiors, colleagues as well as third parties Claimant had committed a misconduct.

Counsel for the University in her submission had gone through each of the emails stated in charge no.1 and had given comment on their contents. After going through the emails mentioned the Court agrees with the submission made by the counsel for the University. The Court has the same opinion with the counsel that the emails sent on 10.3.2004 as in pages 29 and 47 of COB show that the Claimant was not only rude but hostile towards her colleague (ie, Ms. Josephine) and Professor Ian Prince (Head of School of Engineering & Science). Both of them were also put in bad light because the emails were copied to other employees of the University. In her email sent on 11.3.2004 (ie, page 33 of COB) Claimant had sent a rude reply to her immediate

superior (COW-2), and the other email (page 31 of COB) which was forwarded to “staff” was chain e-mail which was non-work related. As to the emails sent on 12.3.2004 they were those on page 36 of COB (which had been mentioned earlier) and page 37 of COB. They were her replies to the emails sent by her colleagues advising and requesting her to stop emailing to all the staff. The colleagues’ emails to her were written in very careful words but Claimant’s response as seen in the emails were rude and sarcastic. In another email which the Claimant sent out on 12.3.2004 Claimant had written “Dear Colleagues. This insurance is for such minded staff ..... or ?????” (see page 41 of COB). This was the Claimant’s response to an email dated 4.3.2004 sent to all the staff of the University informing them about a briefing on an insurance policy as an employee’s benefit. By sending out such email the Claimant was insulting and being provocative to the staff and disrespectful to the sender of the email.

As to the email on 17.3.2004 which was sent to Professor Ian Prince, Claimant had attached another email which she had sent to Josephine which contained statement “Dr Cheong is a very cunning woman too, .....”. The email can be seen at page 30 of COB.

Another email to Professor Ian Prince was sent by the Claimant on 19.3.2004. This email which is at page 59 of COB contained many inappropriate statements amongst which are “you may ask Josephine

her diploma/degree. FYI She doesn't have any qualifications to be the head in Human Resources, not qualify and doesn't know the labour law .....".

In response to an email regarding the Sunway Petting Zoo ticket promotions, the Claimant had sent an email (page 64 of COB) on 20.3.2004 to her colleagues in various departments in the University stating "..... Only sick minded ppl send to the staff to get money. Oppressor should go to hell ...."..This shows the Claimant's rudeness as well as undermining the business of the Petting Zoo. Another email whereby the Claimant incited the employees to take action on employment issues with the University can be seen at page 69 of COB and it was sent on 21.3.2004 to the staff and several third parties.

Another email by the Claimant which has rude and disrespectful statements can be seen at page 88 of COB. This email was sent on 24.3.2004.

Having comes to the opinion that the all abovementioned emails sent by the Claimant were rude, disrespectful, insulting, embarrassing, inappropriate as well as unnecessary, she therefore has contravened provisions in the Sunway Group's e-policy as in paragraphs 3.1.1 and 3.5.1. Paragraph 3.1.1 is in regard to inappropriate or unlawful material which is not to be sent by email or other form of electronic

communication. Among the materials stated were those that were fraudulent, harassing, embarrassing, intimidating, defamatory and inappropriate. Paragraph 3.5.1 which is regarding the “Use of E-mails”, besides stating about the materials mentioned earlier which are not to be sent by email, also states that chain email is not to be forwarded or to initiate chain email.

Claimant’s evidence that she only knew about the existence of the e-policy but not its content therein is not a reason or excuse to absolve her of her action in sending all of the abovementioned emails. Such an excuse is not acceptable since she had stated during the hearing that in the course of her work at the University she had to use and rely a lot on the emails. That being so, it can reasonably be expected that the Claimant who was then holding an executive position to make herself knowledgeable about the content of the e-policy. The University had placed great emphasis on the e-policy since according to the Claimant a briefing was given about the e-policy and she was invited to attend it but she did not do so. Hence it is incumbent on the Claimant herself to find out and get to know what the e-policy was all about. By not doing so Claimant’s claim of ignorance is no defence to charge no.1.

In respect of charge no.2 Claimant had completely disregarded the instruction given by the University to get the prior approval of her immediate superior (COW-2) or in his absence that of Dr. Cheong Siew

Yoong. When her University email address was blocked Claimant resought to use the Yahoo email address to send out her emails. Claimant had outrightly disregarded the instructions contained in the letter of 17.3.2004 (page 6 of COB). She not only went ahead to send out the emails without obtaining the approval but she showed her disdain for the content in the said letter by sending an email to an employee of the University (as can be seen at page 88 of COB) stating “.....Registrar ordered Lai to block my email & I do not fell upset at all ‘coz I’m not stupid as her where I still can use Yahoo .....”

Furthermore, the Claimant’s statement about her not agreeing to the said letter (page 6 of COB) does not provide her any basis to ignore the University’s instruction. The instruction to obtain the approval of either her immediate superior or in his absence from the Director of Administration and Registrar, Dr. Cheong Siew Yoong, is not unreasonable. Also, if it is true that she did not agree to the said letter, she should at least made it known to her immediate superior (COW-2) as soon as possible. This was not done by her nor was it put across to the University’s witnesses especially to COW-2 during the cross-examination. As such the Claimant’s statement about her disagreement which was raised when she was giving evidence can be considered as an afterthought.

Basing on the factors mentioned above Claimant had been shown to have wilfully disregard the advice and instruction of the University as in its letter of 17.3.2004 (page 6 of COB). Thus she has committed an act of insubordination.

Allegations made against Dr. Cheong Siew Yoong, Mr. Phang Koon Tuck and Professor Merilyn Liddell seen in the emails sent out by the Claimant to the University's staff and LAN's officers were indeed damaging to the reputation and the integrity of the employees mentioned. By stating in the emails that Dr. Cheong Siew Yoong as "a cunning woman, and should be sent to jail", to Mr. Phang Koon Tuck as being "nothing here - empty tin", "that he does not know how to do his work", and "Give a damn", and to Professor Merilyn Liddell questioning her authority and responsibility, Claimant had made remarks which were insulting, defamatory, irresponsible, rude, disrespectful and inappropriate. Even if it was true that the remarks about these three peoples were made by other staff and Claimant merely repeated them in the emails she could be held liable since she was responsible in making them known to others. By sending the emails to the University's staff and among them the heads of the departments in the University, and to LAN's officers, the Claimant had brought disrepute and damage to the image and reputation of the University's senior management team since the three persons mentioned were members



of the said team. As such the Claimant: was guilty of committing the misconduct in charge no.3.

Reading the emails which were referred to in charge no.4, the Court is of the opinion that the content of the emails were rude, insulting and disparaging. Claimant's response to this charge was that she was expressing her opinion. The Court, however, is of the view that the Claimant in her emails were belittling, ridiculing and discrediting the senders of emails who were informing the staff of the University about the "Employee Benefits - ING Insurance" and "Sunway Petting Zoo - Staff tickets".

In the submission, counsel for the Claimant had stated that the University had failed to prove charge no.1 and 3 because no witnesses were called to show that due to the emails sent out by the Claimant there had been disruption of the work schedules, confusing, concern and anxiety among the management and the staff, (in respect of charge no.1) and the image and reputation of the three persons in charge no.3 were damaged. The reply by the counsel for the University on this point was by referring to the cases like *I Bhd. v. K A Sandurannehru Ratnam & Anor* [2004] 5 CLJ 460, *Telekom Malaysia Kawasan Utara v. Krishnan Kutty a/l Sanguni Nair & Anor* [2002] 3 CLJ 314 and *Ferodo Ltd. v. Barnes (E.A.T)* [1976] I.C.R. 439. In *Ferodo Ltd's* case it is stated 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?”

In *Telekom Malaysia Kawasan Utara*’s case, the Court of Appeal has held as follows:

“The Industrial Court should not be burdened with the technicalities regarding the standard of proof, the rules of evidence and procedure that are applied in the court of law. The Industrial Court should be allowed to conduct its proceedings as a ‘court of arbitration’, and be more flexible in arriving at its decision, so long as it gives special regard to substantial merits and decide a case in accordance with equity and good conscience”.

Since the above authorities have so stated, this Court therefore is not required to place much emphasis on the evidence about the actual effect the emails had on others when considering whether the charge had

been proven. Hence the non-calling of the witnesses by the University is not fatal in proving charge no.1 and 3 against the Claimant.

Counsel for the Claimant had also referred to the case of *Malaysia National Insurance Berhad v. Ratnawati Mohamed Nawawi* [2007] 1 ILR 189 where the Industrial Court has decided that it was normal for employees to gossip with friends about the senior officers in their company. This cited case can be distinguished from the case before the Court. In that case the emails sent were chit-chat between the claimant and her friends. They were not sent to other employees in the company. In the present case, the Claimant sent the emails not only to her colleagues but to staff, officers, head of the various schools in the University as well as to the third party (ie, LAN's officers). Further, the content of the emails in the decided case were mild compared to what was stated in the emails by the Claimant in the present case.

Counsel for the University had referred to the case of *Roche Diagnostics (M) Sdn. Bhd. v. Shue Sen* [2005] 1 ILR 542 where the learned Chairman had found that the claimant had committed insubordination based on the content of her letter which showed her attitude and lack of respect for her superior.

Another issue raised by counsel for the Claimant in the submission was pertaining to the domestic inquiry. The view of the

Court on this issue is that even assuming that the domestic inquiry held by the University was defective and panel's findings were flawed, any defect in the inquiry is curable by the hearing held in the Industrial Court. (See *Wong Yuen Hock v. Syarikat Hong Leong Assurance Sdn. Bhd. v. Another Appeal* [1995] 3 CLJ 344).

After considering the evidence and submissions by both sides the Court holds that the University had successfully proved on the balance of probabilities that the Claimant had committed the misconduct in the four charges levelled against her.

Having found the Claimant to have committed the misconduct as in the four charges, the next issue to be considered is whether the proven misconduct constitutes just cause or excuse for the dismissal of the Claimant. From the evidence before the Court it can be seen that the Claimant had "habitually" been sending the emails which are improper ie, rude, insulting, disrespectful etc. She had been advised in the past as far back as in the year 2002 not to send out improper emails by COW-2. Also a written warning to that effect was given to her. The documentary evidence regarding the advice and warning given to her can be seen at pages 3, 4 and 5 of COB. After a lapse of a year and half, Claimant resumed to send the emails which became the subject matter of the charges in this case. Such persistent conduct of the Claimant and her disregard to the instruction to get approval of her

immediate superior before sending out the emails go to show that she was uncontrollable and also disruptive to the industrial harmony at the workplace. As such the University was justified in dismissing the Claimant. Thus the Court holds that Claimant's dismissal was with just cause or excuse.

Accordingly the claim of the Claimant is hereby dismissed.

**HANDED DOWN AND DATED 27<sup>TH</sup> JUNE 2008**

**(ZURA BINTI YAHYA)**  
CHAIRMAN  
INDUSTRIAL COURT

