

HYFFNY YUSOF v. AIRASIA BERHAD

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INDUSTRIAL COURT, KUALA LUMPUR

PRAVIN KAUR JESSY

AWARD NO. 1676 OF 2025 [CASE NO: 20-4-1381-23]

30 OCTOBER 2025

[2025] ILR JT(16)

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Abstract – *An employer’s managerial prerogative to discipline an employee for private social media posts made outside of working hours is limited and must be balanced against the employee’s right to privacy and fair comment. Private injudicious remarks do not warrant dismissal unless the employer can demonstrably prove that the posts caused: (i) actual or demonstrable harm to the company’s reputation or operations; (ii) public accessibility or dissemination beyond the employee’s private circle; and (iii) the statement was false, malicious or defamatory. A truthful albeit unflattering statement does not constitute misconduct.*

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LABOUR LAW: *Employment – Dismissal – Misconduct – Personal remarks made on social media posting – Allegation by employer that employee made inappropriate remarks about work and colleagues on social media account – Postings made privately, limited to employee’s circle of friends, not open to public and made outside working hours – Employee dismissed from employment – Balance between employer’s managerial prerogative and employee’s right to privacy – Whether postings caused actual or demonstrable harm to employer’s reputation or operations – Whether there was public accessibility or dissemination beyond employee’s private circle – Whether remarks in postings false, malicious or defamatory – Whether postings constituted misconduct warranting dismissal – Whether penalty of dismissal proportionate to act complained of – Whether employee dismissed with just cause or excuse – Whether there was contributory misconduct by employee – Industrial Relations Act 1967, ss. 20(3) & 30(5)*

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The claimant served with the respondent (‘company’) as a Cabin Crew, drawing a monthly basic salary of RM1,500. The claimant was suspended from duty without prior notice or warning and subsequently received a letter from the company, requiring him to explain allegations concerning postings made on his personal social media accounts. The company averred that the claimant had made inappropriate remarks about his work and colleagues, which was deemed a serious misconduct. The company’s case centred on three elements of the claimant’s postings, namely: (i) the use of the term ‘idiots’ in reference to certain executives; (ii) the reference to a flight delay; and (iii) the mention of the initials ‘AA’ which the company alleged to be an allusion to itself. In his reply, the claimant contended, *inter alia*, that although he may have posted certain comments in a moment of frustration,

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- A they were made without any malice and the postings were made privately, limited to his circle of friends and not open to the public. Having found the claimant's explanation unsatisfactory and after reviewing the evidence and considering the claimant's past disciplinary record, which included three warning letters, the company proceeded to dismiss the claimant from
- B employment. Hence, the present claim. In support of his claim, the claimant submitted that, *inter alia*, (i) the postings were private, contextually limited and made outside working hours. The company's policies could not extend to control or censor private social media use, particularly outside working hours; (ii) the company's policies were overly broad, intruding into private
- C expression and in violation of the principles of equity and good conscience; and (iii) no specific incident or harm was proven and the company acted on suspicion rather than evidence. The company, on the other hand, argued that: (i) the claimant's employment was subject to certain policies of the company and the claimant's conduct was in contravention of (a) item 23(b) of the Disciplinary Policy – Personal Social Media; (b) item 23.0 of the Code of
- D Conduct and Ethics – Use of Social Media; and (c) item 8.20.3 of the Cabin Crew Policy Manual – Social Media; (ii) these policies were disseminated company-wide and made available *via* its system. The claimant had acknowledged receipt and understanding of these policies upon accepting employment; and (iii) the claimant's conduct projected a negative image to
- E the public, eroded trust and was inconsistent with the discipline and professionalism expected of a cabin crew.

Held (allowing claim; awarding claimant RM31,920):

- (1) In a public service industry such as aviation, reputation and discipline are legitimate concerns. However, the exercise of such prerogative must be balanced against the employee's right to privacy, dignity and fair comment. The company's policies, when read together, were designed to curb conduct that caused actual harm to the company's reputation or operations. None of them expressly forbade private/personal remarks made outside working hours, unless those remarks disclosed confidential information, defamed the company or were calculated to cause injury. Their broad wording concerning 'tarnishing the company's image' must be interpreted purposively and applied only to conduct that demonstrably undermined the employer's legitimate interest. (paras 50 & 51)
- (2) The language used may have been injudicious and unprofessional. However, industrial law distinguishes between a lapse of courtesy and insubordination. In reference to (i) the term 'idiots', while intemperate, was a fleeting expression of frustration; (ii) flight delay, the flight was indeed delayed. The contemporaneous evidence fortified the claimant's narrative, displacing any suggestion that his postings were false, exaggerated or malicious. A truthful statement, however unflattering,

- does not constitute misconduct; and (iii) 'AA', the posting in question contained no explicit mention of the company's name but merely the phrase 'Kudos AA'. No evidence was adduced that any reader understood AA to refer to the company, nor that any public backlash ensued. The charge was vague and imprecise, failing to identify which specific words or expressions were deemed offensive or inappropriate. Where a charge is couched in generalities, an employee cannot reasonably be expected to anticipate or defend against meanings never particularised. (paras 55-61) A
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- (3) The company failed to prove that the claimant's postings were publicly accessible or caused reputational harm. No evidence was led to show that the posts were viewed beyond his private circle, nor was any complaint received from passengers, the public or regulators. The company failed to demonstrate that the claimant's conduct caused reputational harm, breached confidentiality or undermined the relationship of trust and confidence. (paras 63 & 77) C
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- (4) The company's case rested solely on unverified screenshots without establishing their source or extent of circulation. In the absence of proof of public dissemination or actual damage, the allegation of reputational injury remained wholly unsubstantiated. The policies could not be stretched to punish every private remark made in irritation. To do so would convert legitimate managerial oversight into a form of moral policing incompatible with industrial equity. While managerial prerogative forms an essential aspect of industrial discipline, it was not without limits. Its exercise must be guided by proportionality and human dignity. The right to discipline does not extend to the surveillance of private thought or speech. (paras 63, 64 & 67) E
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- (5) The company had not established that the claimant's postings constituted a gross misconduct warranting dismissal. The penalty of dismissal was manifestly excessive and disproportionate to the act complained of. Further, the claimant's past disciplinary record, which comprised three warning letters, although cited as indicative of a pattern of indiscipline, were wholly unrelated to the present allegations. The company's reliance on the prior warning did not materially strengthen its justification for dismissal. (paras 81, 84 & 86) G
- (6) The claimant was awarded RM39,900 (backwages of RM32,400 + compensation *in lieu* of reinstatement in the amount of RM7,500). While the dismissal was without just cause or excuse, the claimant's injudicious remarks merited a reduction in compensation. The claimant's conduct was constituted as a contributory misconduct. Therefore, the total compensation was reduced by 20%. The total sum payable by the company to the claimant, after considering the latter's contributory misconduct, was RM31,920. (paras 87, 88, 94 & 95) H
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A Award(s) referred to:

Hanis Naz Azniza Hamzah v. Malaysia Airport Sdn Bhd [2024] 2 ILR 408 (Award No. 596 of 2024)

Ireka Construction Berhad v. Chantiravathan Subramaniam James [1995] 2 ILR 11 (Award No. 245 of 1995)

Kamal Rafidi Mohd Zakaria lwn. Alam Flora Sdn Bhd [2019] ILRU 2219; [2019] 2 LNS 2219 (Award No. 2219 of 2019)

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Mohd Azizi Sohan v. Asian Kitchen (M) Sdn Bhd [2017] 4 ILR 376 (Award No. 1407 of 2017)

Case(s) referred to:

C *Crystal Crown Hotel & Resort Sdn Bhd (Crystal Crown Hotel Petaling Jaya) v. Kesatuan Kebangsaan Pekerja-pekerja Hotel, Bar & Restoran Semenanjung Malaysia* [2021] 2 ILR 177

Dreamland Corporation (M) Sdn Bhd v. Choong Chin Sooi & Anor [1988] 1 CLJ 1; [1988] 1 CLJ (Rep) 39

Milan Auto Sdn Bhd v. Wong Seh Yen [1995] 4 CLJ 449

Norizan Bakar v. Panzana Enterprise Sdn Bhd [2013] 4 ILR 477

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Telekom Malaysia Kawasan Utara v. Krishnan Kutty Sanguni Nair & Anor [2002] 3 CLJ 314

The Jupiter General Insurance Co Ltd v. Ardeshir Bomanji Shroff [1937] CLJU 88; [1937] 1 LNS 88

Wong Yuen Hock v. Syarikat Hong Leong Assurance Sdn Bhd [1995] 3 CLJ 344

E**Legislation referred to:**

Federal Constitution, arts. 5(1), 10(1)(a)

Industrial Relations Act 1967, ss. 20(3), 30(5)

For the claimant - Ismail Nasaruddin; National Union of Flight Attendants Malaysia (NUFAM)

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For the company - Sebastian Tay Hanxin & Rebecca Sonali Alfred; M/s T Thavalingam & Co

Reported by Najib Tamby

AWARD
(No. 1676 of 2025)

G**Pravin Kaur Jessy:**

H [1] The reference by the Director General of Industrial Relations (“DGIR”) in this case required the court to hear and determine the claimant’s complaint of dismissal by the company on 2 February 2023.

[2] This court in handing down this award considered, *inter alia*, the following cause papers and/or documents:

- (i) statement of case dated 4 June 2024 (SOC);
- I** (ii) statement in reply dated 9 August 2024 (SIR);
- (iii) the claimant’s bundles of documents (CLB1 & CLB2);

- (iv) the company's bundle of documents (COB1 & COB2); A
- (v) witness statement of Hyffny bin Yusof (CLWS-1);
- (vi) witness statement of Arnab Dutta (COWS-1);
- (vii) witness statement of Shafinaz binti Shamsuri (COWS-2); B
- (viii) witness statement of Kuleswary a/p Tanabarlal (COWS-3);
- (ix) notes of proceedings (NOP);
- (x) the company's written submission and bundle of authorities dated 11 July 2025; C
- (xi) the claimant's written submission and bundle of authorities dated 29 August 2025; and
- (xii) the company's written submission in reply and additional bundle of authorities dated 4 August 2025. D

Background

[3] The claimant commenced employment with the company on 25 September 2017 as a flight attendant/cabin crew on a fixed-term contract for a period of one year.

[4] The claimant was subsequently offered permanent employment as cabin crew *vide* a letter dated 27 December 2018. His last drawn monthly basic salary was RM1,500. E

[5] The company is engaged in the business of air transportation and employs cabin crew as part of its operational and service teams. F

Claimant's Case

[6] The claimant pleaded that he had been employed continuously since 25 September 2017 and was at all times a diligent and competent employee.

[7] He contends that he was suspended from duty on 3 January 2023 without prior notice or warning, and subsequently received a letter dated 6 January 2023 requiring him to explain allegations concerning postings made on his personal social media accounts namely Facebook and Instagram. G

[8] The claimant avers that the said postings were made privately, limited to his circle of friends, and not open to the public. H

[9] He further asserts that the company had accused him of making inappropriate remarks about his work and colleagues, which the company deemed to constitute serious misconduct.

[10] The claimant claims that the company's allegations were vague and unparticularised, as the letter failed to identify any specific flight, incident, or context in which the postings were made. I

- A [11] He contends that the company's action was irrational and based solely on an unverified screenshot of private postings, obtained without disclosure as to how they were acquired.
- B [12] By his letter of explanation dated 14 January 2023, the claimant replied that he was unable to respond effectively as the company had not identified the specific incident complained of. He nevertheless acknowledged that he may have posted certain comments in a moment of frustration, but without any malice.
- C [13] The claimant states that he lodged a police report on 17 January 2023 alleging unauthorised intrusion into his private social media account.
- [14] He avers that no official complaint was ever lodged by any individual against him and that other employees had similarly made personal posts without consequence, which he contends demonstrates discriminatory treatment.
- D [15] On 2 February 2023, the company dismissed the claimant by letter citing serious misconduct arising from the social media postings.
- [16] The claimant contends that the dismissal was harsh, unjustified, and disproportionate, as the company had failed to issue any warning or adopt corrective measures.
- E [17] He asserts that his postings were expressions of opinion made off-duty and within a private forum. He argues that the company's policy cannot extend to control or censor private social media use, particularly outside working hours.
- F [18] The claimant denies that his postings were public or damaging to the company's image. He asserts that they were private, contextually limited, and made outside of working hours.
- [19] He reiterates that no specific incident or harm was proven and that the company acted on suspicion rather than evidence.
- G [20] He maintains that the disciplinary action was excessive and that the company's policies are overly broad, intruding into private expression and violating the principles of equity and good conscience.
- H [21] The claimant claims that the dismissal caused him emotional distress, financial hardship, and depression, as he was the sole breadwinner of his family.
- I [22] He therefore prays that this Honourable Court finds his dismissal to be without just cause or excuse and orders reinstatement or, in the alternative, compensation and backwages.

Company's Case

[23] The company admits that the claimant was employed as cabin crew but disputes that he was dismissed without cause.

[24] The company avers that the claimant's employment was subject at all times to the company's policies, including:

- (i) the Disciplinary Policy (AA/PPL/S/005);
- (ii) the Code of Conduct and Ethics (AA/PPL/S/004); and
- (iii) the Cabin Crew Policy Manual (MAA/CCD/M/001).

[25] These policies, the company asserts, were disseminated company-wide and made available *via* its Redicons system. The claimant had acknowledged receipt and understood these policies upon accepting employment.

[26] The company contends that in or around December 2022, it came to its attention that the claimant had posted inappropriate comments and remarks on social media that disparaged the company and its staff.

[27] Given the seriousness of the allegations, the claimant was suspended from duty on 3 January 2023 with half pay for 14 days, pending investigation.

[28] Following its investigations, the company issued a notice to explain on 6 January 2023, charging the claimant with the following misconduct:

That you, as a cabin crew of the company, on 29 December 2022, had posted two inappropriate postings on your social media platforms, venting dissatisfaction and frustration towards the company with inappropriate remarks.

[29] The company stated that such conduct contravened:

- (i) item 23(b) of the Disciplinary Policy - "Personal Social Media";
- (ii) item 23.0 of the Code of Conduct and Ethics - "Use of Social Media"; and
- (iii) item 8.20.3 of the Cabin Crew Policy Manual - "Social Media".

[30] The claimant's reply dated 14 January 2023, according to the company, did not deny the postings. The company maintains that the claimant's explanation was unsatisfactory.

[31] After reviewing the evidence and considering the claimant's past disciplinary record, including three warning letters issued between 2021 and 2022, the company concluded that the misconduct was serious and warranted dismissal.

A [32] The dismissal letter was issued on 2 February 2023 following a meeting at which the claimant was informed of the reasons for termination.

[33] The company asserts that it had observed procedural fairness throughout, affording the claimant the opportunity to explain and to appeal against the dismissal, an option he declined.

B [34] The company contends that the claimant's conduct projected a negative image to the public, eroded trust, and was inconsistent with the discipline and professionalism expected of cabin crew.

C [35] Accordingly, the company submits that the dismissal was carried out with just cause and excuse.

Function Of The Industrial Court

[36] The Federal Court in *Milan Auto Sdn Bhd v. Wong Seh Yen* [1995] 4 CLJ 449 held as follows:

D As pointed out by this court recently in *Wong Yuen Hock v. Syarikat Hong Leong Assurance Sdn Bhd & Another Appeal* [1995] 3 CLJ 344; [1995] 2 MLJ 753, the function of the Industrial Court in dismissal cases on a reference under s. 20 is two-fold firstly, to determine whether the misconduct complained of by the employer has been established, and secondly whether the proven misconduct constitutes just cause or excuse for the dismissal. Failure to determine these issues on the merits would be a jurisdictional error.

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(emphasis added)

Burden Of Proof

F [37] Whenever a company has caused the dismissal of the workman, it is then incumbent on the part of the company to discharge the burden of proof that the dismissal was with just cause or excuse (*Ireka Construction Berhad v. Chantiravathan Subramaniam James* [1995] 2 ILR 11 (Award No. 245 of 1995)).

G *Standard Of Proof*

[38] In *Telekom Malaysia Kawasan Utara v. Krishnan Kutty Sanguni Nair & Anor* [2002] 3 CLJ 314, the Court of Appeal established the principle that the standard of proof required to prove a case in the Industrial Court is based on the balance of probabilities.

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Domestic Inquiry

[39] It is undisputed that the company did not convene a domestic inquiry prior to the dismissal of the claimant. The absence of such an inquiry, however, is not *per se* fatal to the company's case. The law is settled that a failure to conduct a domestic inquiry does not, by itself, render the dismissal

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void or unlawful, as the Industrial Court is empowered to cure any procedural defect through a full hearing on the merits. This principle was firmly established in *Dreamland Corporation (M) Sdn Bhd v. Choong Chin Sooi & Anor* [1988] 1 CLJ 1; [1988] 1 CLJ (Rep) 39; [1988] 1 MLJ 111 and reaffirmed by the Federal Court in *Wong Yuen Hock v. Syarikat Hong Leong Assurance Sdn Bhd* [1995] 3 CLJ 344; [1995] 2 MLJ 753. The function of this court, therefore, is not to review the absence of an inquiry in isolation but to determine, on the totality of the evidence, whether the dismissal was effected with just cause or excuse in accordance with s. 20(3) of the Industrial Relations Act 1967.

[40] The court now turns to the issues for determination.

Issues For Determination

[41] The issues to be determined in this case are as follows:

- (i) what was the reason for the termination of the claimant's employment?
- (ii) has the reason for termination been proven by the company?
- (iii) whether the punishment of dismissal imposed was appropriate or proportionate to the misconduct alleged? and
- (iv) whether the dismissal is with just cause and excuse?

Evaluation Of Evidence And Findings

Reason For The Termination

[42] In determining the reason for the claimant's termination, this court begins with the notice to explain dated 6 January 2023 (CLB1, pp. 3 to 5). It is this document that sets out the foundation of the company's case and the alleged misconduct forming the basis of the dismissal. For clarity and completeness, the said notice is reproduced below:

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PRIVATE & CONFIDENTIAL

6 JANUARY 2023

ALLSTAR NAME : HYFFNY BIN YUSOF
 ALLSTARS ID : 1018761
 DESIGNATION : CABIN CREW
 DEPARTMENT : FLIGHT OPERATIONS, CCD (KUL)

BY EMAIL: hyffnyyusof@airasia.com

Dear Hyffny,

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NOTICE TO EXPLAIN

It has been brought to the attention of the Company that you have allegedly committed the following acts of misconduct:

1. That you, as a Cabin Crew of the Company, on 29 December 2022 had posted 2 inappropriate postings on your social media platforms (refer Appendix A), when you had:

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- 1.1 vented out your dissatisfaction and frustration towards the Company with an inappropriate remarks as per the following details:

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No	Social Media Platform	Social Media Profile Name	Date of posting	Inappropriate remarks
(a)	Facebook	@Hyffny Yusof	29 December 2022	'Sign On yesterday at 0635. Stranded at airport for more than 12hours. back to base at near 0230. Reached home almost 0300. Add another 3hours to it will be like 24hours. None of the so called Exec's (idiots to me) call & checked on our situation..! We had to called & informed them on our situation. No hotel given to us except stay at the airport Lounge & food provided after our Capt fight for us..Kuddos AA..'; and
(b)	Instagram	@hyffnyyusof	29 December 2022	'Fatigue is not even qualified to describe us..!'

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Based on the foregoing, you are alleged to have committed acts of serious misconduct which are in breach of the express and implied terms and conditions of your employment. Furthermore, the allegations above have projected a negative impression to the public and illicit adverse perceptions towards the Company, and if proven, are also in breach of the following Company policies:

- I. **Disciplinary Policy (AA/PPL/S/005)** - 11.2.2 Major Misconduct under Item 23(b) - Personal Social Media;
- II. **Code of Conduct and Ethics (AA/PPL/S/004)** - Item 23.0 - Use of Social Media; and
- III. **Cabin Crew Policy Manual** - Item 8.20.3 - Social Media.

The above allegations, whether taken individually or together, are viewed seriously by the Company, unless satisfactorily explained.

Therefore, you are hereby required to provide your explanation in writing to the undersigned within **five (5) days from the date of this letter** and show cause as to why disciplinary action should not be taken against you. Should you fail to provide any explanation within that stipulated time, you shall be deemed to have no explanation to offer and the relevant disciplinary action, which may include the punishment of dismissal, will be taken against you in accordance with the Company's disciplinary procedures.

We wish to place on record that the Company's investigation is still on-going and the Company reserves its rights to levy further allegations against you.

Please do not hesitate to contact the undersigned at people_er@airasia.com should you require any clarification on the above.

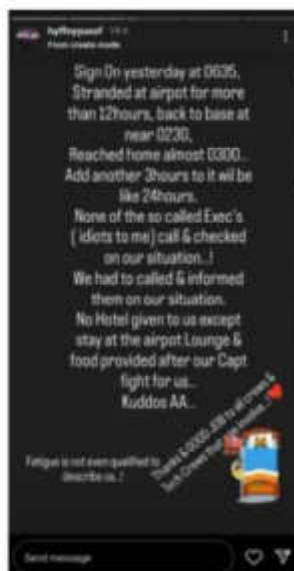
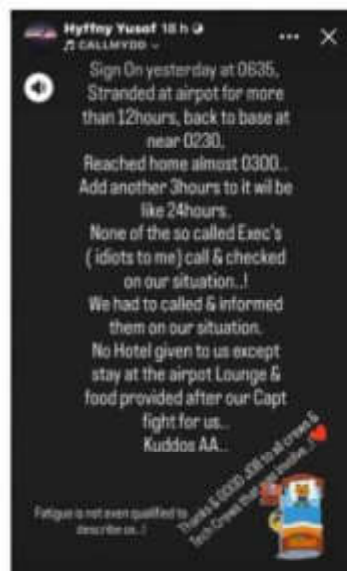
Yours truly,
For and on behalf of
AirAsia Berhad



Shafinaz Shamsuri
Employee Relations

cc: Flight Operations, CCD (KUL); Staff Record.
/SS

Appendix A



A [43] The claimant replied to the notice to explain by his letter dated 14 January 2023 (CLB1 pp. 6 to 9) wherein he said, *inter alia*:

My Response Are As Below:

- B (a) Firstly, I could not reply specifically to the allegation letter since there was nothing specific mentioning of which flight or date of incident implied or would have breached such policy.
- (b) It was never brought to my knowledge that having to post any comments on my personal social media account which was done “out of work and duty time” could be considered as a severe misconduct.
- C (c) For the company’s knowledge, those accounts on Instagram and Facebook are only limited to my personal friends and not open to the public or to any strangers.
- (d) I am also disturbed and surprised that my personal comments are now being used against me by someone.
- D (e) In all honesty, there were many awkward postings and comments posted on the social media daily by other staffs, but I am surprised why I have been singled out amongst others.
- (f) I was surprised that my personal online postings were also screen grabbed by someone unknown to me and that material is now being used against me.
- E (g) To this effect, I will be filing a police report as well a complaint to MCMC for the intrusion of privacy as well to be certain that my personal postings on these accounts are not being used by any persons against me.
- F (h) I also deemed this issue to be serious as any such invasion of personal social media account can be considered as a criminal offence.
- (i) I merely came back from work and felt very tired and exhausted while the same time wanting to let go some steam on my social media account. It was nothing more.
- G (j) After letting off my frustrations *via* the postings, I felt a huge relief and fell asleep right after since I did not get much proper rest during the entire week at work.
- H (k) I must stress that I had no intentions whatsoever to disrepute the company nor anyone specifically as this has always been my way to vent out my frustrations which is only limited to those who knew me.

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(l) I must admit I was very annoyed and angry while facing some personal issues. I was merely ranting over those problems which I have been facing for quite some time.

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(m) Again, nothing specific was aimed at any persons within the company.

(n) I would have named the persons involved if so, I was very much being personal against them. But in this case, I was merely letting go my frustrations which I believed is never a crime.

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I am currently facing some personal family issues which I am not able to disclose at this moment. I will somehow take note of the issues highlighted by the company.

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[44] The claimant subsequently lodged a police report dated 17 January 2023 (CLB1 p. 10) alleging unauthorised access to, and misuse of, his private social media postings.

[45] By a letter dated 2 February 2023, the company terminated the claimant's employment with immediate effect. The dismissal was grounded on the company's finding that the claimant's explanation was unsatisfactory. In substance, the company stated that the claimant "had failed to demonstrate professionalism as the company's representative when [he] inappropriately expressed [his] anger and/or disappointment against the company on accessible Facebook and Instagram platforms". The company concluded that the claimant had committed a serious breach of the express and implied terms of his employment, specifically the following:

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(i) Disciplinary Policy (AA/PPL/S/005) – 11.2.2 Major Misconduct under item 23(b) – Personal Social Media;

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(ii) Code of Conduct and Ethics (AA/PPL/S/004) – item 23.0 – Use of Social Media; and

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(iii) Cabin Crew Policy Manual – item 8.20.3 – Social Media.

[46] The Disciplinary Policy (AA/PPL/S/005), specifically para. 11.2.2 – Major Misconduct under item 23(b): Personal Social Media (COB1, p. 35), which the company relied upon in preferring the charge against the claimant, is reproduced below for ease of reference:

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	Disciplinary Policy Procedures	Doc. No. AA/PPL/S/005 Date 22 Mar 22 Issue 04 Rev 00 Page 32
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11.2.2 Major Misconduct

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23 Inappropriate Remarks

Posting inappropriate remarks / comments or sensitive issues (e.g. politics, religion, race) to / about the Company, Superiors, Allstars and/or Third party through:

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a. Company's official platform (e.g. email, WorkPlace, Eko Chilli, WorkChat).

b. Personal social media (e.g. Instagram, Facebook, Twitter, TikTok, LinkedIn).

c. Work related group chat or personal chat (e.g. Whatsapp, Telegram, WeChat).

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[47] The Code of Conduct and Ethics (AA/PPL/S/004), particularly item 23.0 – Use of Social Media (COB1, pp. 37 to 39), which the company likewise relied upon to support the charge of misconduct, is reproduced below for the record:

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23.0 Use Of Social Media

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23.1 Social Media means forms of electronic communication through which users create online communities to share Information, ideas, personal messages and other content including but not limited to Facebook (and its associated Facebook Messenger), YouTube, Instagram, Twitter, WhatsApp, Facebook Messenger, WeChat, Snapchat, Instagram, QQ, Zone, TikTok, Sina Weibo, Tumblr, Telegram, Reddit, LINE, Pinterest, Viber and LinkedIn.

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23.2 Allstars are strictly prohibited from engaging the following activities, during and after his employment with the company, in his/her personal social media activities:

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a. disclosing the company's non-public or confidential information and/or engaging in rumours or speculations about the company;

b. posting defamatory, disrespectful, negative and/or offensive comments: derogatory language or graphics about the company; and/or disparaging colleagues, vendors and/or customers;

- c. participating in conversations or postings that are inconsistent with the company's objectives or image; and
 - d. Associating, endorsing, linking and/or connecting the company with any matter whatsoever.
- 23.3 The Allstars must:
 - a. only publish on his/her personal social media site or account, content which is true and not misleading;
 - b. exercise good judgement and personal responsibility whenever using personal social media sites and tools;
 - c. be respectful and professional when using a personal social media site or account that may identify him as an employee of the company; and
 - d. adhere to the company's Code of Conduct pertaining to information, communication and contact with the media.
- 23.4 The Allstars undertake to update his/her employment information on the personal social media sites once he/she has left the employment of the company including removing any profile picture of himself/herself in the company's uniform or taken at the company's premises or in any manner such that the company may be associated to himself/herself.
- 23.5 The company reserves the right to monitor the employee's public posting on his/her personal Social Media site or account to ensure that the employees do not act in a manner which is prejudicial to the company's business, interest and/or reputation.
- 23.6 The company maintains a wide variety of electronic communications equipment and systems ("Company's Systems"). The Company's Systems shall be used to assist Allstars in carrying out the company's business only. No Allstars should have any expectation of privacy when using the company's systems.
- 23.7 This provision shall survive the termination of the employment agreement between the company and the Allstar or the resignation or dismissal of the Allstar.
- 23.8 Any violation of this Provision may be deemed as a breach of the Allstar's implied duty of trust and confidence owed to the company and may render the Allstar open to disciplinary proceedings and dismissal from employment.
- 23.9 Any failure to comply with Provision 23.4 post-employment shall be a breach of the Allstar's undertaking and the Allstars agree to the company obtaining an injunction against the Allstar to enforce the said Provision and obtaining judgment against the Allstar for any loss incurred or damage suffered by the company and the Allstar shall indemnify the company on a solicitor and client basis for all costs incurred by the company in the enforcement of this undertaking.

A [48] The Cabin Crew Policy Manual, particularly item 8.20.3 - Social Media (COB1, p. 41), was likewise cited by the company in support of the charge against the claimant. For completeness, the relevant extract is reproduced below:

- B 8.20.3 Social Media
- B 8.20.3.1 CC members must exercise good judgment and discretion when posting photos and remarks on social media.
- 8.20.3.2 Some photos that may be meant only for private or internal use have been picked up members of the public. These photos can put the company or its employee in an unfavorable light.
- C company has the rights to take disciplinary action against CC members who have found tarnishing company's image.

Has The Reason For Termination Been Proven By The Company?

D [49] Upon a full consideration of the evidence, the court finds that there is no dispute that the claimant did in fact upload the postings in question on his personal Facebook and Instagram accounts. In his explanation dated 14 January 2023 (CLB1 pp. 6 to 9), the claimant candidly admitted as much, stating that he had made the postings after duty hours in a moment of exhaustion and frustration, and that they were visible only to his friends on restricted accounts. The act of posting is therefore not in dispute. The issue for determination is whether such postings amounted to misconduct of sufficient gravity to justify dismissal.

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F [50] The company justified its decision by reference to the internal policies namely the Disciplinary Policy (AA/PPL/S/005), the Code of Conduct and Ethics (AA/PPL/S/004), and the Cabin Crew Policy Manual (MAA/CCD/M/001). Collectively, these policies seek to uphold professional standards and to protect the company's image. The court acknowledges that in a public service industry such as aviation, reputation and discipline are legitimate concerns. However, the exercise of such prerogative must be balanced against the employee's right to privacy, dignity, and fair treatment.

G

H [51] This court is of the considered view that the policies, when read together, are designed to curb conduct that causes actual harm to the company's reputation or operations. None of them expressly forbids private or personal remarks made outside of working hours, unless those remarks disclose confidential information, defame the company, or are calculated to cause injury. Their broad wording concerning "tarnishing the company's image" must therefore be interpreted purposively and applied only to conduct that demonstrably undermines the employer's legitimate interests.

I [52] According to COW1 (NOP, p. 5), when pressed under cross-examination as to what, in particular, the company considered inappropriate about the claimant's postings, he stated:

- CLC : You said inappropriate. What part the company took offence? **A**
- COW1 : Refer to COB1, p. 35. This is from our disciplinary manual which mentioned inappropriate remarks and sensitive issues.
- CLC : What is inappropriate from this posting?
- COW1 : Based on the post by the claimant, it mentions none of the so called execs (idiots) to me. **B**
- CLC : Only that part?
- COW1 : Disagree.
- CLC : Another thing, claimant is talking about delay. Is that a fact that it was delay? **C**
- COW1 : Yes.
- CLC : So why inappropriate? Was it not true that the flight was delayed? So it's a fact. What exactly the company took offence with is just the word idiot? **D**
- COW1 : Disagree.
- CLC : What others? Besides calling "Idiot", what other point? Point to me.
- COW1 : That's all. **E**
- CLC : Claimant said that the word idiot that's why the company took offence and dismissed him?
- COW1 : Disagree.
- CLC : Explain why you disagree. **F**
- COW1 : Based on the soc media post, he mentioned the company's name as well.
- [53]** In short, the company's case centred on three elements of the claimant's posting, namely: **G**
- (i) the use of the term "idiots" in reference to certain executives;
 - (ii) the reference to a flight delay; and
 - (iii) the mention of the initials "AA", which the company alleged to be an allusion to itself.
- [54]** In order to ascertain precisely what the company found inappropriate, it is necessary also to consider what the claimant himself said was the basis for his posting. His explanation provides the surrounding context and emotional backdrop in which the words complained of were written. The claimant, in his evidence (NOP pp. 20 to 21), gave the following account: **H**
- CLC : Can you tell us a little bit more about why you said that the company did not relay any kind of info to you on that flight? **I**

- A CLW1 : When I mentioned that none of the execs called, they (Executives) did check with the Senior Cabin Crew, Aimy. They did check, the Execs did call and check but I mentioned that none of them called us personally and talked to us. That is what I meant.
- B CLC : So the executive didn't call you personally?
CLW1 : Yes, they did not call me.
CLC : What did you expect out of that?
CLW1 : Because the delay is 12 hours.
- C CLC : Why do they need to call you?
CLW1 : To see how we feel, are we tired, are we fatigued, because the delay is very long - 12 hours is half a day.
- ...
- D CLC : Was your intention to directly post on IG to fire someone?
CLW1 : I was very tired, we were frustrated with delay. That's why I posted in my private social media.
CLC : Your social media is within your friends?
- E CLW1 : Yes, not open to public, less than 1,750 followers.

Use Of The Word "Idiots"

- [55] The court notes that COW1 identified the word "idiots" as the principal reason the company took offence. While the term is intemperate, the evidence shows it was a fleeting expression of frustration. The posting was not public and did not identify any individual. Industrial discipline must distinguish between insolence and emotional release. The language used was unguarded, not insubordinate. Absent proof of malice or reputational harm, the conduct cannot amount to serious misconduct.

Reference To The Flight Delay

- G [56] The company's own witness confirmed that the flight was indeed delayed. Although the duration varied slightly 11 hours by COW1, 12 hours by the claimant, the essential fact stood admitted. The delay resulted in the crew exceeding the flight duty period (FDP) limitation and being unable to operate the return sector.

- H [57] The photographs at COB2 pp. 7 to 7A, speak louder than conjecture. They unmistakably depict the crew resting in the lounge, corroborating the claimant's account that they were not provided hotel rooms despite an extended delay. The same photographs bear the timestamp 3.31pm and record the delivery of a McDonald's meal with the caption "Alhamdulillah", an expression of gratitude that, when read contextually, lends weight to the claimant's assertion that food was only provided after the captain's
- I

intervention and long after normal lunch hours. If lunch had been furnished promptly and without difficulty, there would have been no occasion for such expression of relief. The contemporaneous evidence therefore fortifies the claimant's narrative, displacing any suggestion that his posting was false, exaggerated, or malicious.

[58] The court finds that a truthful statement, however unflattering, does not constitute misconduct. To sanction a truthful statement merely because it embarrasses the employer would subvert the very equity the Industrial Court is mandated to protect.

Reference to "AA"

[59] The posting in question contained no explicit mention of the company's name, but merely the phrase "Kudos AA". The claimant credibly explained that "AA" was a reference to his colleagues; Senior Cabin Crew, Aymi and Cabin Crew, Adam, who were operating the same flight. The company dismissed this explanation as an afterthought on the ground that it was not contained in his reply to the notice to explain. However, upon close scrutiny of the notice to explain (CLB1, pp. 3 to 5), this court finds that the charge itself was vague and imprecise, failing to identify which specific words or expressions were deemed offensive or inappropriate. Where a charge is couched in generalities, an employee cannot reasonably be expected to anticipate or defend against meanings never particularised. The burden of clarity and precision in disciplinary proceedings lies squarely with the employer, and an employee cannot be condemned on conjecture or inferred insinuation. Procedural fairness demands that an allegation be stated with sufficient particularity to enable an intelligible defence; this was plainly not done.

[60] No evidence was adduced that any reader understood AA to refer to the company, nor that any public backlash ensued. The court therefore rejects the contention that the post disparaged the employer.

[61] The court accepts that the language used may have been injudicious and unprofessional. However, industrial law distinguishes between a lapse of courtesy and insubordination. The claimant did not identify or name any particular officer; his remarks were general, spontaneous, and made in a private forum. Truthful, *albeit* crude, expression of workplace frustration on restricted social media cannot be equated with wilful disobedience or malice. This court takes guidance from the decision of another division of the Industrial Court wherein YA Tuan Jeyaseelen T Anthony in *Hanis Naz Azniza Hamzah v. Malaysia Airport Sdn Bhd* [2024] 2 ILR 408 (Award No. 596 of 2024) made reference to the pronouncement by the Privy Council in *The Jupiter General Insurance Co Ltd v. Ardeshir Bomanji Shroff* [1937] CLJU 88; [1937] 1 LNS 88; [1937] 1 MLRA 369 where Lord Maugham in speaking on behalf of the Council had this to say:

- A Their Lordships recognise that the immediate dismissal of an employee is a strong measure, and they have anxiously considered the evidence with a view to determine the question whether the trial judge was right in his finding the respondent was guilty of gross negligence, which, coupled with his conduct at the interview of 21 December was sufficient to justify his dismissal.
- B On the one hand, it can only be in exceptional circumstances only that an employer is acting properly in summarily dismissing an employee on his committing a single act of negligence; on the other, their Lordships would be very loath to assent to the view that a single outbreak of bad temper, accompanied, it may be, with regrettable language, a sufficient ground for dismissal. The learned Chief Justice was stating a proposition of mere good sense when he observed that in such cases **one must apply the standards of men, and not of angels, and remember that men are apt to show temper** when reprimanded.
- C
- D (emphasis added)
- E [62] This *dictum*, long accepted as a touchstone of industrial fairness, reminds the court that discipline must be tempered with human understanding rather than moral absolutism. The claimant's explanation as recorded in his witness statement CLWS-1 (Q&A 18 to 19) was that he had endured persistent flight delays, shortage of crew, prolonged duty hours, and fatigue, compounded by the absence of proper rest facilities and the lack of timely meals. The incident occurred after yet another 12-hour delay, during which the crew waited in the airport lounge without relief or sustenance until late afternoon. Viewed in this context, the claimant's posting was an impulsive outburst born of exhaustion, not a calculated act of defiance or malice.
- F
- G [63] The court finds that the company failed to prove that the claimant's postings were publicly accessible or caused reputational harm. No evidence was led to show that the posts were viewed beyond his private circle, nor was any complaint received from passengers, the public, or regulators. The company's case rested solely on unverified screenshots without establishing their source or extent of circulation. In the absence of proof of public dissemination or actual damage, the allegation of reputational injury remains wholly unsubstantiated.
- H [64] When these facts are examined against the three company policies, the essential ingredient of "misuse of social media" namely, publication to the public or harm to the company's reputation has not been proven. The policies cannot be stretched to punish every private remark made in irritation. To do so would convert legitimate managerial oversight into a form of moral policing incompatible with industrial equity.
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[65] This court is statutorily mandated by s. 30(5) of the Industrial Relations Act 1967 to decide disputes according to equity, good conscience, and the substantial merits of the case. The IRA, being social legislation, was enacted to preserve industrial harmony and to safeguard the dignity of labour. It follows that the court must construe its provisions and employer policies made pursuant thereto in a manner consistent with fairness and humanity.

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[66] In *Crystal Crown Hotel & Resort Sdn Bhd (Crystal Crown Hotel Petaling Jaya) v. Kesatuan Kebangsaan Pekerja-pekerja Hotel, Bar & Restoran Semenanjung Malaysia* [2021] 2 ILR 177, the Federal Court affirmed that when the interests of labour and capital collide, the court must give effect to the social purpose of the IRA and ensure that employee protection is achieved, not eroded.

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[67] Applying that principle, this court finds that while managerial prerogative forms an essential aspect of industrial discipline, it is not without limits. Its exercise must be guided by proportionality and human dignity. The right to discipline does not extend to the surveillance of private thought or speech.

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[68] This purposive approach reinforces the long-established principle that industrial justice must be tempered with compassion and contextual fairness. The Industrial Court, as a tribunal of social conscience, is not to apply rules of discipline mechanistically but with sensitivity to the circumstances in which the act occurred, the employee's intent, and the realities of working life. It is through this balanced exercise of judgment that equity and good conscience, as mandated by s. 30(5) of the Industrial Relations Act 1967, are truly achieved.

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[69] The court therefore views the company's reliance on its social media policies as overly expansive. These policies, in purporting to sanction any "negative" or "critical" comment concerning the company or its staff regardless of audience, timing, or intent, intrude upon private autonomy and are inconsistent with arts. 5(1) and 10(1)(a) of the Federal Constitution.

G

[70] The modern inclination towards monitoring employees' private online behaviour, the so-called "big brother" paradigm has no place in industrial justice. Fidelity ends where personal autonomy begins. The Industrial Court cannot condone perpetual oversight that transforms discipline into domination.

H

[71] Industrial harmony is sustained not through censorship but through mutual trust and open dialogue. To penalise private venting of frustration is to engender fear rather than loyalty. Discipline must build confidence, not suppress dissent.

I

- A [72] The company relied on *Kamal Rafidi Mohd Zakaria lwn. Alam Flora Sdn Bhd* [2019] ILRU 2219; [2019] 2 LNS 2219 (Award No. 2219 of 2019) and similar awards where dismissals for online postings were upheld. The court is of the considered view that those cases are factually and contextually different, decided at a time when digital privacy concerns were less pronounced and when the offending conduct involved public, identifiable and damaging content.
- B [73] Industrial justice must evolve with social realities. Employees do not surrender constitutional freedoms upon entering employment. A fair equilibrium must be maintained between the employer's right to discipline and the employee's right to dignity.
- C [74] In this respect, the court prefers a balanced and purposive interpretation consistent with *Crystal Crown (supra)*, which gives due weight to both managerial interests and employee welfare.
- D [75] A mechanical reliance on prior awards without regard to context, would amount to adjudicating with horse-blinkers focusing solely on managerial sensitivities while disregarding the constitutional and equitable dimension that this court is duty-bound to uphold. On this score, the court finds useful guidance in the reasoning of YA Tuan Anderson Ong Wai Leong in *Mohd Azizi Sohan v. Asian Kitchen (M) Sdn Bhd* [2017] 4 ILR 376 (Award No. 1407 of 2017). In that case, the learned Chairman considered the tension between an employee's constitutional right to freedom of expression and the employer's legitimate interest in maintaining discipline and reputation. The court in *Mohd Azizi Sohan (supra)* affirmed that the constitutional right to free expression endures within employment and that not every injudicious remark amounts to grave misconduct. The postings in that case, though improper, were confined to a private digital space and did not cause tangible harm to the employer's reputation. The learned Chairman held that discipline must be balanced with fairness, and that dismissal is warranted only where the misconduct destroys the foundation of mutual trust and confidence.
- E [76] This court finds the reasoning in *Mohd Azizi Sohan (supra)* both persuasive and apposite to the present case. Like the claimant there, the claimant before this court expressed a personal frustration in his private social media space without malice, defamation, or public fallout. His posting was injudicious but not destructive. Consistent with the principles of proportionality and social justice, such conduct warrants corrective rather than terminal action.
- F [77] When considered against the totality of evidence, the company has failed to demonstrate that the claimant's conduct caused reputational harm, breached confidentiality, or undermined the relationship of trust and confidence.
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[78] The court is of the considered view that dismissal is warranted only when misconduct destroys the bond of trust. Here, no such destruction was proven. The claimant's post, though ill-advised, reflected a transient lapse of discretion, not an act of defiance. A

[79] Disciplinary action must be evidence-based, not reactive. To punish mere impropriety without proof of harm would offend the principles of proportionality and equity that underlie the IRA. B

[80] In summary, while the claimant's words were intemperate, the postings were primarily true, made privately, without public dissemination or harm to the company's reputation. C

[81] On the balance of probabilities, the court finds that the company has not established that the claimant's postings constituted a gross misconduct warranting dismissal.

[82] Accordingly, the court holds that the reason for termination has not been proven to justify dismissal. D

Whether The Punishment Of Dismissal Imposed Was Proportionate?

[83] Even if it were to be accepted that the claimant's postings amounted to a measure of impropriety, the court must still consider whether the punishment of dismissal was proportionate to the gravity of the offence. The doctrine of proportionality is deeply embedded in Malaysian industrial jurisprudence. In *Norizan Bakar v. Panzana Enterprise Sdn Bhd* [2013] 4 ILR 477, the Federal Court unequivocally held that the Industrial Court is duty-bound to apply the doctrine of proportionality when determining whether a proven misconduct constitutes just cause or excuse for dismissal. The Federal Court further observed that this doctrine is inbuilt within the Industrial Relations Act 1967, empowering the Industrial Court to substitute its own view of the appropriate penalty where dismissal is found to be too harsh. E F

[84] Applying that principle, this court finds that while the claimant's comments were imprudent, they were made privately, and without causing demonstrable injury to the company. The postings were limited to his personal followers, contained no confidential material, and reflected an emotional outburst rather than an act of calculated insubordination. The factual core of the posting; the delayed flight and late meal was true. The penalty of dismissal was therefore manifestly excessive and disproportionate to the act complained of. G H

[85] Industrial discipline is not an end in itself; it is a means of ensuring harmonious employment relations. The court must always weigh the severity of the penalty against the degree of wrongdoing. As a tribunal of social justice, the Industrial Court's function is corrective rather than punitive. To dismiss an employee for a private moment of frustration, devoid of public harm, is to punish beyond the limits of fairness and humanity. I

- A [86] The company submitted that, in determining the appropriate sanction, it had taken into consideration the claimant's past disciplinary record, which comprised of three warning letters dated 3 November 2021, 31 March 2022, and 20 May 2022. These earlier warnings, although cited as indicative of a pattern of indiscipline, were wholly unrelated to the present allegation. They
- B concerned matters such as absence from duty and failure to submit medical certificates within 48 hours, infractions of an administrative nature. They did not involve any form of insubordination, dishonesty, reputational harm, nor did they relate in any way to postings on social media. The misconduct alleged in this case is specific and distinct. Accordingly, the court finds that
- C the company's reliance on the prior warnings does not materially strengthen its justification for dismissal; at best, they may be considered in mitigation when assessing contributory misconduct.
- [87] Nonetheless, the court cannot overlook the claimant's own lapse in judgment. His description of the company's executives as "idiots", though
- D made in a private context, was intemperate and inconsistent with the decorum expected of a cabin crew member. While the posting was not malicious or defamatory, the language used was regrettable and deserving of censure. The court therefore regards the claimant's conduct as constituting contributory misconduct, but not a dismissible offence.
- E [88] The doctrine of contributory misconduct is well-established. Where the workman's conduct partly contributed to the situation leading to his dismissal, it is equitable to reduce the relief awarded. While the dismissal was without just cause or excuse, the claimant's injudicious remarks merit a reduction in compensation.
- F [89] This case exemplifies the fine balance that must be maintained between managerial prerogative and human dignity. Employers are entitled to preserve discipline and protect their corporate image; employees, equally, retain their constitutional freedoms and personal integrity. The equilibrium lies in ensuring that discipline does not descend into domination, and that
- G liberty does not devolve into licence.
- [90] Hence in the upshot, this court after having considered all the evidence led before it, the pleadings filed, written submissions of the parties and keeping in mind s. 30(5) of the IRA which behoves upon this court to act according to equity, good conscience and the substantial merits of the case
- H without regard to technicality and legal form, finds that the company has failed to prove on a balance of probability that the dismissal of the claimant was done with just cause and excuse.

I

[91] This court therefore find that the dismissal of the claimant to be without just cause and excuse. A

Relief

[92] As for the relief sought, the court finds it undesirable to order the claimant's reinstatement given the circumstances of his dismissal and the breakdown of the employment relationship. Accordingly, the court awards compensation *in lieu* of reinstatement. The established formula is one month's wages for each completed year of service. While the company asserted that the claimant's permanent employment commenced in 2018, its own document, the claimant's payslip (CLB1 p. 1), records his date of joining as 25 September 2017. The court therefore accepts that the claimant had five completed years of service at the time of dismissal. B C

[93] In assessing the quantum of backwages, the court is guided by para. 3 of the Second Schedule to the IRA, which requires that "where there are post-dismissal earnings, a percentage of such earnings, to be decided by the court, shall be deducted from the backwages given". The evidence shows that the claimant was earning RM1,500 per month at the time of dismissal and only secured brief employment one year later, from May to July 2024, earning RM2,500 per month. Thereafter, he remained unemployed. Applying the said provision, the court deems it fair to impose a 10% reduction in backwages. D E

[94] Since the court has already found that claimant contributed to his dismissal, pursuant to para. 5 of the Second Schedule of the IRA, which provides: Any relief given shall take into account contributory misconduct of the workman, the court reduces the total compensation payable to the claimant by 20%. F

[95] Accordingly, this court orders the company to pay the claimant as follows:

- (i) backwages, based on his last drawn basic salary, from the date of dismissal (2 February 2023) to the last date of hearing (19 March 2025), but limited to a maximum of 24 months, as follows: G

RM1,500 x 24 months = RM36,000

Less 10% for post-dismissal earning = (RM3,600)

= RM32,400 H

- (ii) compensation *in lieu* of reinstatement, based on the formula of one month salary for every completed year of service: RM1,500 x 5 years of completed service (25 September 2017 to 2 February 2023 = RM7,500). I

- A The total sum of RM39,900 (RM32,400 + RM7,500) is to be deducted by another 20% for the claimant's contributory misconduct which led to his dismissal.

Total sum = RM39,900

- B Less contributory misconduct of 20% = (RM7,980)

Total = RM31,920.

- [96] The sum of RM31,920 less any statutory deductions, if any, is to be paid by the company to the claimant within 30 days from the date of this award together with interest at 8% per annum to take effect on the 31st day after the date of this award until the date of full realisation.
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