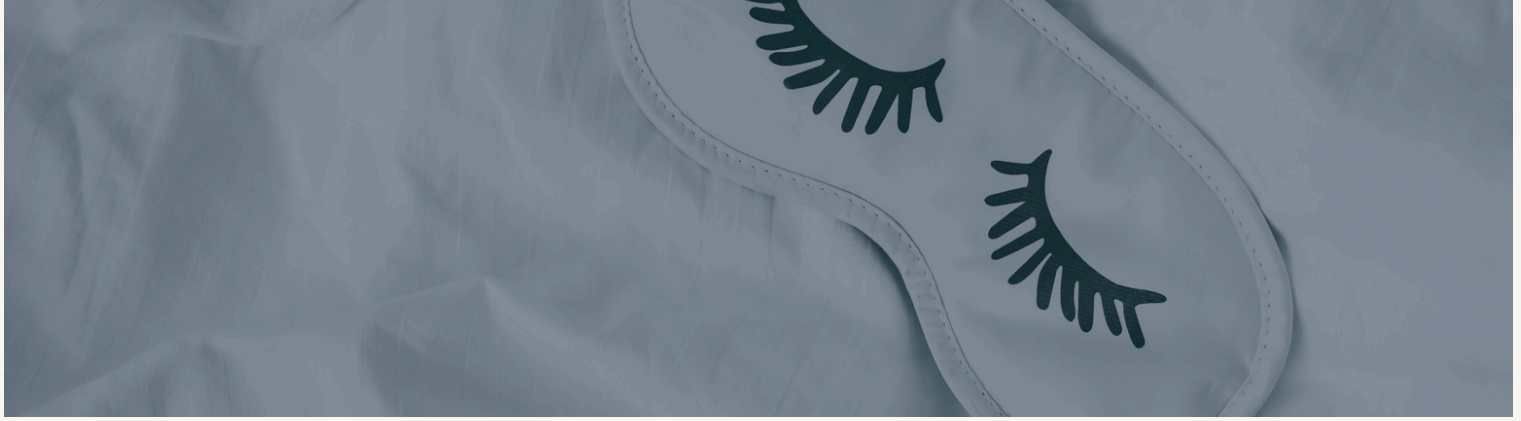


PERSPECTIVES

WORKPLACE NAPPING AND DISMISSAL: A CASE LAW PERSPECTIVE

It is not uncommon for employers to observe employees taking short naps during working hours, whether intentionally or otherwise. This raises a recurring dilemma: can disciplinary action be taken against employees for sleeping at work? Established case laws from the Industrial Court affirms that sleeping on the job constitutes misconduct. However, such misconduct does not automatically justify dismissal.

In the recent case of **Mohd Fauzi Mohd Shariff v. Bank Islam Malaysia Berhad, Award No. 25 of 2025 [Case No: 18-4-1600-22]**, the Industrial Court examined whether sleeping at the workplace warranted lawful termination of employment.



Brief Facts

The Claimant served as a Branch Manager at one of Bank Islam's branches. The employee was alleged to have been sleeping/napping at the workplace on 11 separate occasions between October 2020 and April 2021. Photographic evidence presented by the bank showed him asleep in his office, sometimes immediately after morning briefings, and at other times during lunch hours.

The Claimant denied the allegations of misconduct, asserting that he suffered from sleep apnea, a medical condition that causes involuntary "micro-sleep." He further argued that he would only doze off (terlelap) briefly between two to four minutes and did not disrupt operations, noting that the branch consistently met its business targets.

Following a domestic inquiry, the Claimant was found guilty and dismissed for misconduct. He subsequently filed a claim under Section 20 of the Industrial Relations Act 1967, alleging dismissal without just cause or excuse.



Industrial Court's Findings

The Industrial Court held that the Claimant had indeed been asleep at work, which constituted misconduct under the bank's disciplinary code. However, it found that dismissal was a disproportionate response.

Applying the doctrine of proportionality, the Industrial Court emphasized that termination is typically justified only in cases of serious misconduct ie theft, fraud, or violence, that fundamentally undermine the employment relationship.

The Industrial Court considered several mitigating factors:

- The Claimant was a first-time offender with no prior disciplinary record.
- There was medical evidence in the form of medical reports from Klinik Selvam and Kedah Medical Centre confirming his medical condition which was categorised as “severe obstructive sleep apnea”.
- The branch continued to meet its sales targets despite the incidents.



Industrial Court's Findings

The bank's HR policy provided for lesser sanctions, including demotion, deferment of salary increments, or issuance of a warning. In the Industrial Court's view, dismissal was unnecessarily harsh and amounted to the "capital punishment" of Industrial law.

Furthermore, reinstatement was deemed inappropriate due to the Claimant's proximity to retirement (due to retire in February 2025) and the fact that his position had already been filled. Hence, the Industrial Court awarded backwages and compensation in lieu of reinstatement.

Nonetheless, the Court found contributory misconduct on the part of the Claimant. Given his managerial role, he ought to have sought treatment earlier and exercised greater professionalism. Accordingly, the total award was reduced by 50%.



Conclusion

Sleeping at work is generally considered misconduct, but it doesn't always justify dismissal. The Industrial Court has emphasized that disciplinary action must be proportionate to the severity of the offense. While serious misconduct such as theft or violence may warrant termination, less severe infractions, like occasional workplace napping, should be assessed in its context. HR professionals are encouraged to evaluate the nature of the incident, its impact on operations, and whether it truly undermines the employment relationship.

Moreover, medical conditions and personal circumstances play a critical role in determining the appropriate response. In this case, the employee suffered from sleep apnea, a legitimate health issue that contributed to the behavior. The Industrial Court also considered his clean disciplinary record and consistent achievement of business targets as mitigating factors. For HR teams, this highlights the importance of conducting thorough investigations and considering alternative disciplinary measures ie warning letters, performance coaching, or medical referrals, before resorting to termination.