

IN THE INDUSTRIAL COURT OF MALAYSIA

CASE NO.: 22/4-1404/24

BETWEEN

LEE HSIN YING

AND

SLEEKFLOW TECHNOLOGIES SDN BHD

AWARD NO. 55 OF 2026

BEFORE : Y.A. TUAN PARAMALINGAM A/L J. DORAISAMY
- Chairman

VENUE : Industrial Court of Malaysia, Kuala Lumpur

DATE OF REFERENCE : 11.11.2024

DATES OF MENTION : 18.12.2024; 28.02.2025 & 18.09.2025

DATE OF HEARING : 16.10.2025

REPRESENTATION : Mr. Ryan Chu Soon Wei
together with Ms. Goh Xin Wei
Messrs. Lee & Poh Partnership
Counsel for the Claimant

Ms. Leong Yen Khee
Messrs. Lavinia Dell Akhbar Tee & Partners
Counsel for the Company

REFERENCE :

This is a reference made under Section 20 (3) of the Industrial Relations Act 1967 (Act 177), arising out of the dismissal of **Lee Hsin Ying** (hereinafter referred to as "*the Claimant*") by **Sleekflow Technologies Sdn Bhd** (hereinafter referred to as "*the Company*") on 27 February 2024.

AWARD

[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 27 February 2024.

I. Procedural History

[2] The Court received the letter pertaining to the DGIR's reference under Section 20(3) of the Industrial Relations Act 1967 on 15 November 2024.

[3] The matter was fixed for mention on 18 December 2024, 28 February 2025 and 18 September 2025.

[4] The trial proceeded on 16 October 2025 and concluded on the same day.

II. The Parties Position On The Merits

a. The Claimant

[5] The Claimant commenced employment with the Company on 7 September 2022 as a salesperson drawing a salary of RM6,500.00 per month (excluding incentive payment). She was confirmed in her position *vide* letter issued by the Company on 25 January 2023.

[6] Throughout her tenure (or a large part thereof), the Claimant was supervised by one En. Asnawi Jufri.

[7] Throughout her employment, the Claimant had never received any written warning letters or show cause letters in relation to her performances at work.

[8] On 12 February 2024, the Claimant was placed under a Performance Improvement Plan (PIP) which was to end on 13 March 2024.

[9] On 27 February 2024, without consultation, the Claimant was terminated by the Company.

b. The Company

[10] The Claimant commenced employment on 7 September 2022 as an Enterprise Account Executive. Her initial probation was for 3 months. However, her probation was extended in December 2022 due to unsatisfactory performance.

[11] In January 2023, the Claimant was demoted to Growth Account Executive, a move undertaken to give her a more suitable portfolio and additional time to improve.

[12] As the Claimant's performance remained below expectations throughout the course of her employment, despite repeated coaching sessions, reviews and clear targets, she was placed on a formal PIP in February 2024, with specific milestones and measurable action items, including outbound leads, call activity, follow-ups, and deal progression.

[13] Even after being placed on PIP, the Claimant demonstrated a lackadaisical attitude, including being late to work at 10.12am on 27 February 2024 despite company working hours being 9.00am to 6.00pm, a conduct wholly inconsistent with an employee undergoing performance rehabilitation.

[14] On 27 February 2024, following continued underperformance and failure to meet the PIP expectations, the Claimant's employment was terminated in accordance with her contract.

III. The Function Of The Industrial Court & The Burden Of Proof

[15] It is established law that the function of the Industrial Court in a Section 20(3) Industrial Relations Act 1967 is two-fold, i.e. to determine:-

- (i) whether there is a dismissal on the facts; and
- (ii) if so, whether the dismissal was with or without just cause or excuse.

[16] In the case of **Wong Yuen Hock v. Syarikat Hong Leong Assurance & Another Appeal [1995] 3 CLJ 344** it was held by the Federal Court (*vide* judgment of Mohd Azmi bin Dato' Haji Kamaruddin FCJ):-

"On the authorities, we were of the view that the main and only function of the Industrial Court in dealing with a reference under s. 20 of the Act (unless otherwise lawfully provided by the terms of the reference) is to determine whether the misconduct or irregularities complained of by the management as the grounds of dismissal were in fact committed by the workman, and if so, whether such grounds constitute just cause or excuse for the dismissal. In our opinion, there was no jurisdiction by the Industrial Court to change the scope of reference by substituting its own reason".

[17] And in the case of **Goon Kwee Phoy v. J & P Coats (M) Bhd [1981] 2 MLJ 129** the Federal Court (*vide* the judgment of Raja Azlan Shah CJ) held:-

"Where representations are made and are referred to the Industrial Court for enquiry, it is the duty of that court to determine whether the termination or dismissal is with or without just cause or excuse. If the employer chooses to give a reason for the action taken by him, the duty of the Industrial Court will be to enquire whether that excuse or reason has or has not been made out. If it finds as a fact that it has not been proved, then the inevitable conclusion must be that the termination or dismissal was without just cause or excuse. The proper enquiry of the court is the reason advanced by it and that court or the High Court cannot go into another reason not relied on by the employer or find one for it".

[18] The burden of proof in an unfair dismissal claim lies on the employer to prove on a balance of probabilities that the employee is guilty of the allegation or the reason for the dismissal. This principle was expounded by the Industrial Court in the case of **Stamford Executive Centre v. Dharsini Ganeson [1986] ILR 101:-**

"In a dismissal case the employer must produce convincing evidence that the workman committed the offence or offences the workman is alleged to have committed for which he has been dismissed. The burden of proof lies on the employer. He must prove the workman guilty and it is not the workman who must prove himself not guilty. This is so basic a principle of industrial jurisprudence that no employer is expected to come to this Court in ignorance of it".

IV. Issues To Be Decided

[19] The issues to be determined in this case are:-

- (i) whether the reason for the Claimant's dismissal, i.e. poor performance, has been proven on a balance of probabilities; and
- (ii) if so, whether the dismissal, grounded on poor performance of the Claimant, was with just cause and excuse.

V. The Court's Findings And Reasons

- (a) **Whether the reason for the Claimant's dismissal, i.e. poor performance, has been proven on a balance of probabilities**

[20] The principles pertaining to poor performance was laid out in the case of **Ireka Construction Berhad v. Chantiravathan a/l Subramaniam James [1995] 2 ILR 11:-**

"The only issue for this Court to determine now is whether the company, on a balance of probabilities has established the poor performance of the claimant. As far as unsatisfactory performance is concerned the Industrial Court has laid down that in order to justify the dismissal of the claimant on this ground, the company has to establish:

- i) that the claimant was warned about his poor performance;*
- ii) that the claimant was accorded sufficient opportunity to improve; and*

iii) that notwithstanding the above, the claimant failed to sufficiently improve his performance".

(Emphasis added)

[21] The Claimant was dismissed from her employment effective 27 February 2024 with the reason for dismissal being grounded on poor performance. The relevant excerpt from the Termination Notice dated 27 February 2024 issued by the Company to the Claimant (at p. 47 of CLB-1) is worded as follows:-

"We regret to inform you that the Company has decided to terminate your employment due to our continuous observation of your underperformance and inability to meet set targets, which have continued since reiterated with you in the Performance Improvement Plan issued on 13 Feb 2024.

Pursuant to Clause 10 of your Terms of Employment dated 23 June 2022 ("Employment Contract"), we hereby serve on you a thirty (30) days' notice period of termination commencing from 27 February 2024.

You will therefore be paid your monthly basic salary (and allowances, if any) up to and including 28 March 2024 pro-rated accordingly. However, your physical last day of reporting to the Company's office premises shall be today. As such, you are not required to report to the office after today".

[22] The Court will now analyse the facts and evidence in order to determine whether the Claimant's dismissal on the ground of poor performance by the Company had satisfied the 3-tier test laid down in **Ireka Construction Berhad v. Chantiravathan a/l Subramaniam James** [*supra*].

- ***Whether the claimant was warned about her poor performance***

[23] The Claimant contends that she was never given any warning that her work performance had been poor and/or unsatisfactory by the Company, at the very least since the date she was confirmed in her position on 25 January 2023.

[24] The Company on the other hand contends that the Claimant was well aware of her consistent underperformance since the day she commenced her employment with the Company, and this was supported by the fact that her probation period was extended for another 3 months *vide* email from the Claimant's supervisor at the material point in time, i.e. En. Asnawi Jufrie ("*En. Asnawi*") dated 2 December 2022 (*at p. 2 of COB-1*).

[25] The said email of En. Asnawi (*at p. 2 of COB-1*) however does not expressly state that the Claimant's probation period was extended for another 3 months due to her poor performance but instead seemed to suggest that the Claimant was being accorded a much fairer and longer period for her to prove herself in her position:-

"Hi Janice.

As discussed, we will be formally extending your probation period for an additional 3 months.

We hope that by extending this probation period, it will be more fair to you, and also give you a longer runway to ramp up.

As of 1 December 2022, we will also be shifting you to Growth Account Executive, Malaysia which as discussed and agreed, would be a better direction in allowing you to focus on inbound leads and the SME market.

Let's work closely together to ensure your success.

Thanks,

Nawi"

[26] The Company further contends that the Claimant's redesignation to the position of Growth Account Executive (when her probation was extended) from her initial position of Enterprise Account Executive is a demotion from Job Grade IC3 to IC2 (*at p. 4 of COB-1*) and thus indicative of the Claimant's poor performance. However, even though the job grade is lower, nevertheless the circumstances or reason as to why she was shifted to the position of Growth Account Executive remained unexplained as the Company failed to produce the said En. Asnawi as a witness before this Court. It is evident that the person who decided to extend the Claimant's probation period and shifting her to the position of Growth Account Executive was En. Asnawi. The Company's first witness, i.e. Mr. Jarell Lim Zhe Hui (COW-1; Sales Manager) admitted during trial that he was not involved in the review of the Claimant's work performance between September 2022 to September 2023. He only became the supervisor of the

Claimant from September 2023 onwards. When cross-examined whether he knew the Claimant was warned about her poor performance during the 3-months extension of the probation period, COW-1 answered that he was verbally notified by En. Asnawi. COW-1 also confirmed that En. Asnawi is still with the Company. Therefore, why did the Company not produce En. Asnawi to testify on such a pertinent and important issue? The fact that the Company chose not to produce En. Asnawi, despite them suggesting that the Claimant was informed of her poor performance when her probation period was extended on 2 December 2022, raises more questions than answers.

[27] The Company then suggests that it was entitled to terminate the Claimant's employment pursuant to Clause 10.4 and 10.5 (e) of the Employment Contract (*at pp. 21-22 of CLB-1*) wherein the Company contends that an employee's failure to perform the duties assigned or to perform such duties in a competent or professional manner tantamount to a misconduct.

[28] Clause 10.4 of the Employment Contract (*at p. 21 of CLB-1*) provides:-

"10.4 If at any time during the Term the Employee shall be guilty of or commit misconduct which in the absolute opinion of the Company is in any way detrimental to the interests of the Company or shall be in breach of any of the terms of this Agreement, the Company may terminate the Employee without any notice or payment in lieu of notice and upon such termination, the Employee shall not be entitled to any benefit or any payment whatsoever (other than the

Base Salary actually accrued, due and payable) for or in respect of the then current year of service or to claim any compensation or damage for or in respect of or by reason of such termination”.

[29] Whereas Clause 10. 5(e) of the Employment Contract provides (at pp. 21-22 of CLB-1):-

“10.5 For the avoidance of doubt and without limiting the generality of the foregoing Clause 10.4, the Company and the Employee acknowledge and agree that misconduct includes, but is not limited, to the following:

...

(e) failure to perform the duties assigned to the Employee or failure to perform such duties in a competent or professional manner...”

[30] The Court however is unable to agree with the Company’s contention that the Claimant’s alleged poor performance amounted to a misconduct. It is trite law that poor performance is not misconduct *per se*. In cases pertaining to poor performance, the Company must undertake rehabilitative measures in order to assist any underperforming employees and guide them in order to achieve a much more satisfactory work performance, instead of taking a rather punitive or draconian measure to dismiss them on the ground of misconduct. In the case of **Eruthiam**

Arokiasamy v. B M Enterprise Sdn Bhd [2006] 2 ILR 852 it was held by the learned Industrial Court Chairman, Mohd Amin Firdaus Abdullah:-

"If a dismissal is solely and nothing else based on these words "due to your work attitude or lackadaisical attitude" or words to that effect by themselves as a ground; in industrial adjudication such a ground may not necessarily constitute a misconduct on the part of the workman to justify his dismissal.

Thus based on the sole ground given in the said termination letter, the claimant had not committed any misconduct to justify a dismissal. A workman who does not show enough care or enthusiasm in his work but nonetheless plods on with the work does not necessarily mean that he has committed misconduct. Take the example of the chef who day in and day out for the past ten years cooks the same dishes in the sweltering heat of the kitchen, is it reasonable for him to display the enthusiasm and the care of that of a novice.

The "work attitude" and the "lackadaisical attitude" put forward by the company is tied up with what it indicated as poor or unsatisfactory performance on the part of the claimant due to his poor time management and the choice of routes taken in carrying out the job. The Pleadings revolved around this ground".

[31] It is evident that after the Claimant was confirmed and redesignated to the position of Growth Account Executive on 25 January 2023 (at p. 29 of CLB-1), there

had been no warning letters given by the Company to the Claimant with regard to her alleged poor performance. In fact, the Company saw no issues with the Claimant's work performance and handed out extra sales incentives on top of her basic salary for every quarter between January 2023 to January 2024 (*at pp. 31-35 of CLB-1*). COW-1 himself, as the Claimant's superior, had given positive performance reviews as is evident from the Performance Review_Q4_2023 (*at pp. 10-12 of CLB-2*), averaging a score of 8 out of a maximum 10.

[32] What is even more telling is the document produced by the Company itself during the trial (*at p. 89 of COB-1*) which clearly shows that the Claimant had been averaging a sales target of 70%, and in fact even achieved 99% for Q3 of 2023:-

"Q4 2022 – 38% (Probation Extension)

Q1 2023 – 72%

Q2 2023 – 47%

Q3 2023 – 99%

Q4 2023 – 73%"

[33] The Company, rather unfortunately, still deemed the Claimant's performance as unsatisfactory. When queried by the Court as to whether an achievement of 99% in Q3 of 2023 is still insufficient, COW-1 responded by saying that the Claimant was required to hit a minimum target of 100%. COW-1 further stated that it was not unreasonable to set such a target as he himself as well as some other employees had done so and continued to do so, without producing any concrete evidence whatsoever

before this Court to substantiate his claim. Surely, setting such a lofty and high target to achieve would be unreasonable in the circumstances. Humans are not robots or machines to churn out 100% completion rate day in day out, and they certainly are not able to turn up the same way each and every day. The Company's expectations of the Claimant to hit a minimum sales target of 100% was downright unreasonable and must be struck down as an unfair labour practice.

[34] In light of the above, it is evident that the Claimant had not been underperforming in her duties, which clearly explains the dearth of warnings given to her on the alleged poor performance by the Company.

- ***Whether the Claimant was accorded sufficient opportunity to improve?***

[35] The Company, having deemed the Claimant to be underperforming without issuing any warning letters, proceeded to place the Claimant on a PIP commencing 12 February 2024. This was communicated by COW-1 to the Claimant *via* WhatsApp text message on 7 February 2024 (*at p. 37 of CLB-1*).

[36] The Claimant meanwhile responded to COW-1's WhatsApp message by asking why was she being placed under PIP, which lends credence to the fact that she was oblivious to any issue of poor work performance on her part prior to the WhatsApp message on 7 February 2024. COW-1's response then is even more interesting, in that he informed the Claimant that "*everything will be back to normal*" and "*but if you were to under perform again the company reserves the right to issue another PIP*" (*at*

p. 37 of CLB-1). Thus, COW-1 made it clear that should the Claimant fail in the initial PIP, the Company will issue another PIP. This response by COW-1 is important because the initial PIP, which was to be for a period of one month, i.e. 13 February 2024 until 12 March 2024, lasted only 2 weeks before the Company decided to pull the plug and dismiss the Claimant from her employment.

[37] It was not in dispute that the PIP commenced during the Chinese New Year period in 2024. Despite businesses being usually slow during Chinese New Year festivities, the Claimant was nevertheless required to meet her targets (which the Claimant claims to be onerous) set under the PIP. When queried during cross-examination as to what her job functions are and whether the targets set under the PIP was in line with the Claimant's job functions, COW-1 rather shockingly answered that he had never seen the Claimant's Employment Contract.

[38] Both COW-1 and the Company's second witness, i.e. Ms. Ng Kai Lin (COW-2; Human Resource Manager), confirmed that the PIP was prepared by COW-1 alone without consulting anyone from the Human Resources department, let alone COW-2. This begs the question - without having access or even having any knowledge of the Claimant's Employment Contract as well as no consultation with the Human Resources department, how did COW-1 even structure the PIP for the Claimant? It seems more like COW-1 was on a one-man express mission to get rid of the Claimant from employment.

[39] Things get more interesting when a Bi-weekly PIP Review was also scheduled to be held between the Claimant and her supervisor on 27 February 2024. Lo and behold, instead of the Bi-weekly PIP Review meeting being held on 27 February 2024, the Claimant was instead given a Termination Letter on the said date, i.e. two weeks before the one-month PIP period was to end.

[40] COW-1 when cross-examined whether he had given any guidance to the Claimant during the PIP, answered in the affirmative. However when pressed further for documentation of such guidance being given, COW-1 was unable to do so.

[41] From the above, it is evident that the entire PIP process was rushed through in a haphazard manner by COW-1 with the sole intention of dismissing the Claimant from her employment. This is further fortified by the fact that COW-1 had demanded the Claimant to either accept the PIP or resign. The *modus operandi* is therefore clear that the Claimant was to be removed from employment at all costs. The PIP still had 2 more weeks remaining and at the half-way mark the Claimant had already achieved approximately 50% of the targets set despite the constrained timeline (*at p. 84 of COB-1*). Thus, the Claimant could have achieved the 100% target if she was only allowed to continue the PIP for the remaining 2 weeks of the PIP, i.e. until 13 March 2024. The Claimant was clearly not given sufficient time to improve on her alleged poor work performance by the Company.

- ***Whether notwithstanding the above, the Claimant failed to sufficiently improve her performance***

[42] As can be seen above, the PIP was to run for a period of one month, i.e. 13 February 2024 to 13 March 2024. The Company however pulled the plug and dismissed the Claimant 2 weeks into the PIP period, i.e. on 27 February 2024.

[43] From the evidence tendered, the Claimant had achieved approximately 50% of the activity targets and one-third of the sales target set under the PIP in the first 2 weeks. However, she was not given sufficient time to complete the targets set when her PIP was prematurely brought to an end without any satisfactory explanation being given by the Company.

[44] In the circumstances, it was not a case of the Claimant having failed to sufficiently improve her work performance, but rather she was not given sufficient time and guidance for her to achieve the targets set under the PIP.

[45] The Court finds that the Company had failed to prove on a balance of probabilities that the Claimant's work performance had been poor, be it before or after she was placed under the PIP. The Company had clearly failed to satisfy all 3 limbs of the test propounded in **Ireka Construction Berhad v. Chantiravathan a/l Subramaniam James** [*supra*].

(ii) Whether the dismissal, grounded on unsatisfactory performance of the Claimant, was with just cause and excuse

[46] After having perused the documentary evidence as well as having heard the oral testimonies of the witnesses, this Court finds that the Company had failed to prove on a balance of probabilities that the Claimant had performed unsatisfactorily, be it before or after she was placed under the PIP. What is more critical from the evidence produced before the Court is that the Claimant was clearly not given sufficient time to improve her alleged poor work performance when her one-month PIP period was cut short by 2 weeks, without any guidance being given or bi-weekly review being held. The Claimant was clearly set up to fail in her PIP.

[47] In the circumstances, the Court finds that the Claimant's dismissal from employment was done without just cause or excuse.

VI. The Remedy

[48] The Court finds that an order for reinstatement is inappropriate taking into account the circumstances of the case. She is however entitled to a compensation *in lieu* of reinstatement.

[49] The Claimant's last drawn salary was RM6,500.00 based on her salary slip for February 2024 (*at p. 21 of CLB-3*).

[50] For the computation of the compensation *in lieu* of reinstatement, it is evident that the Claimant had been in the Companies' employment for 1 year and 8 months before she was dismissed from her employment. Thus, she had 1 year of completed service at that point in time. The Claimant is thus entitled to compensation *in lieu* of reinstatement for a total sum of RM6,500.00, i.e. RM6,500.00 x 1 month.

[51] Para. 1 of the Second Schedule of the Industrial Relations Act 1967 provides that in the event that backwages are to be given, such backwages shall not exceed 24 months' backwages from the date of dismissal based on the last-drawn salary of the person who has been dismissed without just cause or excuse. The Claimant was effectively dismissed from her employment on 27 February 2024 and the hearing of this case was completed on 16 October 2025. Thus, the Court allows a total of 20 months backwages, amounting to RM130,000.00, i.e. RM6,500.00 x 20 months.

[52] The Claimant had testified before this Court that she is unemployed without producing any evidence of whether she had applied for any jobs post-dismissal. In the circumstances, the Court exercises its discretion to impose a deduction of 5% on the back wages awarded to the Claimant for post-dismissal earnings. It is trite law that an employee who had been dismissed from employment cannot simply rest on her laurels. The onus is on the Claimant to prove to this Court that she had indeed tried to look for new employment, but none was produced before this Court.

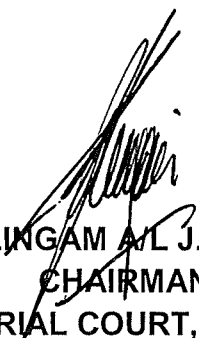
VII. Award

[53] The Court awards and directs that the Company pay to the Claimant a total sum of **RM130,000.00**, which is derived from the following calculation:-

(i)	Compensation <i>in lieu</i> of reinstatement		
	RM6,500.00 x 1 month	...RM	6,500.00
(ii)	Backwages		
	RM6,500.00 x 20 months	...RM	130,000.00
(iii)	Less deduction of 5% on		
	the backwages for post-dismissal		
	earnings	...RM	(6,500.00)
			<hr/>
	Total	...RM	130,000.00
			=====

[54] The Company shall pay the said award sum of **RM130,000.00**, subject to statutory deductions (if any), to the Claimant's solicitors, Messrs. Lee & Poh Partnership, within 30 days from the date mentioned at the bottom of this Award.

HANDED DOWN AND DATED THIS 7TH DAY OF JANUARY 2026.


(PARAMALINGAM A/L J. DORAISAMY)
CHAIRMAN
INDUSTRIAL COURT, MALAYSIA
KUALA LUMPUR