

JUDGMENT Express

[2026] 4 MLRA

Lee Ee Chai
v. Kansai Paint Asia Pacific Sdn Bhd

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LEE EE CHAI

v.

KANSAI PAINT ASIA PACIFIC SDN BHD

Court of Appeal, Putrajaya

Azizul Azmi Adnan, Ahmad Fairuz Zainol Abidin, Evrol Mariette Peters

JJCA

[Civil Appeal No: W-04(A)-423-09-2024]

13 March 2026

Employment: *Unfair dismissal — Appellant dismissed upon being found guilty on charge of ‘stealing or taking company property without permission’ — Appeal against order of High Court setting aside Industrial Court’s award in favour of appellant — Whether charge against appellant vague and ambiguous — Whether High Court erred in finding Industrial Court placed unduly onerous burden on respondent to prove elements of criminal theft — Whether appellant dismissed with just cause or excuse — Whether High Court erred in law and in principle in interfering with Industrial Court’s award*

Labour Law: *Unjust dismissal — Appellant dismissed upon being found guilty on charge of ‘stealing or taking company property without permission’ — Appeal against order of High Court setting aside Industrial Court’s award in favour of appellant — Whether charge against appellant vague and ambiguous — Whether High Court erred in finding Industrial Court placed unduly onerous burden on respondent to prove elements of criminal theft — Whether appellant dismissed with just cause or excuse — Whether High Court erred in law and in principle in interfering with Industrial Court’s award*

The appellant was a Senior Manager with the respondent until his dismissal in January 2022 after being found guilty during a domestic inquiry, on a charge of ‘stealing or taking company property without permission’. The appellant admitted having taken two chairs and two projectors belonging to the respondent during the respondent’s office relocation process, and explained that the items were kept in his car and later placed at the premises that the respondent had relocated to. The respondent had purportedly instructed the individuals charged with coordinating the relocation to deliver vacant possession of the office on an ‘as is where is’ basis. The Industrial Court found that the appellant had merely relocated the said items during the relocation exercise rather than stealing or taking the same without permission, that dishonest intention was not proven, and ordered the reinstatement of the appellant with back wages. The High Court on appeal found that there was no vagueness or ambiguity in the charge, that the Industrial Court had imposed an unduly onerous burden on the respondent to prove the elements of criminal theft under the Penal Code, and accordingly set aside the Industrial Court’s award. Hence the instant appeal. The appellant contended *inter alia* that the charge of ‘stealing or taking company property without



permission' was fundamentally defective for lack of particulars of the date, time and subject matter, and bad for duplicity for having been framed in the alternative. At its core, the appeal turned on the single question of whether the appellants' dismissal was with just cause and excuse.

Held (allowing the appeal):

(1) The charge was fundamentally vague as the phrase 'stealing or taking company property without permission' improperly conflated into a single allegation, two distinct and mutually exclusive forms of misconduct, i.e. 'stealing' which denoted dishonesty and an intention to permanently deprive, and 'taking company property without permission' which was a much broader and potentially neutral act which could occur without any dishonest intent. The framing of the charge in the alternative and without distinction had left the appellants uncertain as to the precise misconduct alleged and undermined his ability to properly understand and answer the charge. In the premises, it could not be said that 'there was no vagueness or ambiguity' in the charge. (paras 11-15)

(2) Given that the manner in which the charge was framed painted the appellants' actions as a clandestine, wrongful appropriation, the Industrial Court was correct to have examined whether the facts supported an allegation of such moral gravity. The Industrial Court's reference to the Penal Code in the circumstances was not to impose a criminal standard of proof but to articulate the legal elements of dishonesty and wrongful gain. It was not a misdirection but a logical analysis of the accusation's substance. (paras 17-21)

(3) Having regard to the evidence and the proper application of legal principles, the dismissal of the appellants was without just cause or excuse. The ambiguity concerning the respondent's directive to deliver vacant possession of the office on an 'as is where is' basis was a material factor that the Industrial Court was entitled to, and did consider in assessing the appellants' conduct and intent. (paras 22-28)

(4) The High Court's intervention with the Industrial Court's award was predicated on a mischaracterisation of the Industrial Court's reasoning and a failure to accord due deference to the Industrial Court's fact-finding role and its mandate to decide cases on their substantial merits. By doing so, the High Court had substituted its own assessment of the facts for that of the Industrial Court. In the circumstances, the High Court had erred in law and in principle in interfering with the Industrial Court's award. (paras 29, 30, 33 & 34)

(5) The conclusion that the evidence pointed to poor judgment and irresponsible conduct rather than to a dishonest intention to misappropriate was one that was squarely open to the Industrial Court based on the evidence. (para 31)

Legislation referred to:

Industrial Relations Act 1967, s 30(5)



Counsel:

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*For the respondent: Edward Saw Keat Leong (Jerry Low Kok Kiang with him); M/s
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[For the High Court judgment, please refer to *Kansai Paint Asia Pacific Sdn Bhd v. Lee Ee Chai* [2025] MLRHU 333]

JUDGMENT**Evrol Mariette Peters JCA:****Introduction**

[1] This was an appeal against the decision of the High Court at Kuala Lumpur, which allowed the Respondent-Company's appeal and set aside the award of the Industrial Court.

The Factual Background

[2] The Appellant was employed by the Respondent from 1 January 1984 and rose to the position of Senior Manager-Techno Commercial Sales (Industrial), earning a monthly salary of MYR13,335.00 plus allowances, before being dismissed in January 2022.

[3] Sometime in 2021, the Respondent decided to close its Port Tech Tower (PTT) office and relocate to Bukit Raja. A committee was formed to manage the relocation, and communications were circulated regarding the removal of office items during the relocation.

[4] After the PTT office was handed back to the landlord on 7 December 2021, the Respondent discovered that two chairs and two projectors were missing. CCTV footage showed the Appellant removing these items from the PTT office. The Appellant admitted taking the chairs and explained that he had taken the projectors during the relocation process, with the items kept in his car and later placed at the Bukit Raja office.

[5] Following a meeting and a show-cause letter alleging theft or unauthorised taking of company property, a domestic inquiry was held, and the Appellant was dismissed after being found guilty.

[6] Contrary to the Respondent's allegations, the Industrial Court found that the Appellant had merely relocated company property from the PTT office to the Bukit Raja office, rather than stealing it or taking it without permission. In its award of January 2024, the Industrial Court held that the Respondent failed to prove dishonest intention and granted the Appellant relief in the form of reinstatement and back wages.



[7] The Respondent, aggrieved by this decision, appealed successfully to the High Court in September 2024. It is this High Court decision that the Appellant now challenges in the present appeal (“this Appeal”).

Issues

[8] The Appellant’s grounds of appeal, though numerous, were overlapping and intertwined. The crucial issues for consideration were, therefore, as follows: (a) whether the charge against the Appellant was vague and ambiguous; (b) whether the learned High Court Judge had erred in finding that the Industrial Court imposed an unduly onerous burden on the Respondent; and (c) whether, in the absence of dishonesty, the dismissal of the Appellant was justified.

[9] We allowed this Appeal for the following reasons.

Contentions, Evaluation, And Findings

Whether The Charge Was Vague And Ambiguous

[10] The Appellant contended that the charge of “stealing or taking company property without permission” was fundamentally defective for being vague, lacking particularisation of the date, time, and subject matter, and bad for duplicity as it was framed in the alternative. The Respondent disputed the Industrial Court’s finding that the phrase “taking company property without permission” was vague. The Company argued that this wording was clear and reflected what the Company and its employees had agreed upon as misconduct under cl 12.4 of the Company Handbook, which reads:

Serious offences requiring disciplinary action including dismissal

....

(b) Stealing or taking company property without permission

[11] In our view, the charge was fundamentally vague, as the phrase “stealing or taking company property without permission” improperly conflated two distinct and mutually exclusive forms of misconduct into a single allegation.

[12] “Stealing” denotes dishonesty and an intention to permanently deprive the employer of its property, which is a serious offence carrying a high threshold of proof. In contrast, “taking company property without permission” is a much broader and potentially neutral act which may occur without any dishonest intent, particularly in an employment setting where employees routinely handle, move, or temporarily retain company property in the course of their duties.

[13] By framing the charge in the alternative and without distinction, the Respondent failed to specify whether the Appellant was being accused of a dishonest act amounting to theft, or merely of unauthorised handling of company property. These are qualitatively different allegations, each requiring



different elements to be established and engaging different lines of defence. The Appellant was, therefore, left uncertain as to the precise misconduct alleged and the mental element said to be present, undermining his ability to properly understand and answer the charge.

[14] Such a conflated charge offends the requirement of clarity and certainty in disciplinary proceedings. An employee must know with precision whether he is being accused of dishonesty or of a lesser, non-dishonest breach of workplace rules. Where a charge fails to draw this distinction, it is inherently ambiguous and cannot form a proper or fair basis for disciplinary action.

[15] We were, therefore, not in agreement with the learned High Court Judge when His Lordship concluded that ‘there was no vagueness or ambiguity’ in the charge.

Whether The High Court Judge Erred In Finding That The Industrial Court Imposed An Unduly Onerous Burden On The Respondent

[16] The Respondent contended that the learned High Court Judge was correct when His Lordship found that the Industrial Court had erred by requiring the Respondent to prove the elements of criminal theft under the Penal Code, specifically, dishonest intention, wrongful loss, and intention to permanently deprive. We found this contention untenable for the following reasons.

[17] The charge faced by the Appellant was not a neutral “breach of procedure.” It was specifically “stealing or taking company property without permission.” The term “stealing” inherently connotes dishonesty. The Respondent’s own framing of the case, from the show-cause letter through the domestic inquiry, painted the Appellant’s actions as a clandestine, wrongful appropriation.

[18] In such circumstances, the Industrial Court was correct to have examined whether the facts supported an allegation of such moral gravity. Its reference to the Penal Code was not to impose a criminal standard of proof but to articulate the legal elements of dishonesty and wrongful gain, which were directly relevant to the charge levied by the employer. This was not a misdirection, but a logical analysis of the accusation’s substance.

[19] We also wish to emphasise that the Industrial Court did not apply the criminal standard of proof “beyond a reasonable doubt” in arriving at its findings. Any reference by the Chairman of the Industrial Court to the Penal Code was strictly limited to an analytical purpose, namely, to examine the elements of stealing and the requirement of dishonesty under the Industrial Court’s own civil standard of proof, which is on the balance of probabilities.

[20] The Industrial Court’s discussion of the Penal Code was, therefore, not an adoption of criminal law or criminal standards, but rather a tool to determine what constitutes “stealing” in terms of its constituent elements, such as unauthorised taking and dishonest intent. The Court applied these elements



as a reference point to assess the evidence and the mental element required for the alleged misconduct.

[21] In other words, the Industrial Court adapted the definition of stealing from criminal law to the disciplinary context, without converting the proceedings into a criminal trial. Its findings were reached using the civil standard, which is appropriate for employment disputes, and this distinction is critical to understanding the correctness of the approach by the Industrial Court.

Whether The Dismissal Was Justified In The Absence Of Dishonesty

[22] At its core, this Appeal turned on a single question: was the dismissal of the Appellant with just cause and excuse? Having regard to the evidence and the proper application of legal principles, we were of the unanimous view that it was not, for the reasons below.

[23] First, the evidence before the Industrial Court revealed a significant and unresolved ambiguity concerning the key instruction for vacating the PTT office. The Respondent's directive to deliver vacant possession on an "as is where is" basis was central to its case, yet its precise meaning remained vague. Crucially, the Respondent's own witnesses provided inconsistent and unclear explanations of this critical term.

[24] That the relocation was shrouded in confusion was evident from the contradictory testimony of the Respondent's own witnesses. COW1 had candidly admitted that she did not understand the "as is where is" basis of the relocation, whereas COW2 had understood it to mean that items bearing asset serial numbers were to be left behind. Such fundamental disagreement between the very individuals charged with coordinating the office relocation fell far short of establishing a clear or uniformly understood company policy.

[25] Nevertheless, the High Court had transformed this equivocal evidence into a definitive finding that "all furniture, fixtures, and fittings therein, including those marked with asset serial numbers, were to be left behind." This conclusion had inaccurately inflated the limited and contradictory evidence that was actually before the Industrial Court.

[26] This evolution in interpretation underscored the fundamental ambiguity that existed at the material time. This lack of clarity created a nebulous boundary for compliance. It was against this backdrop of an ambiguous operational directive that the Appellant had acted.

[27] In our view, this ambiguity was not a minor technicality; it was a material factor that the Industrial Court was entitled to, and did, consider in assessing the Appellant's conduct and intent. When the rules of engagement are unclear, it becomes inherently more difficult to establish that a breach was deliberate, wilful, or dishonest.



[28] This contextual ambiguity bore upon the gravity of the alleged misconduct and should have been accorded significant weight in the overall assessment of whether the Appellant's actions constituted the serious, dismissible offence of "stealing," as opposed to an error of judgment made in a poorly defined operational scenario. The Industrial Court's consideration of this factor was, therefore, necessary for a fair adjudication on the substantial merits of the case.

[29] Secondly, the High Court's intervention with the award of the Industrial Court was predicated on a mischaracterisation of the Industrial Court's reasoning and a failure to accord due deference to the specialised tribunal's fact-finding role and its mandate to decide cases on their "substantial merits."

[30] In doing so, the High Court had substituted its own assessment of the facts for that of the Industrial Court. The Industrial Court's finding that dishonesty was not proved was a significant finding of fact based on its evaluation of the entire context: the ambiguous instructions surrounding the office move, the non-urgent retrieval of the office keys, the Appellant's open actions under CCTV coverage, his immediate admission and return of items when asked, his unblemished record, and the nature of the assets, namely office chairs and projectors.

[31] The conclusion that this evidence pointed to poor judgment and irresponsible conduct, rather than to a dishonest intention to misappropriate, was one that was squarely open to the Industrial Court on the evidence. An appellate court cannot overturn such a finding merely because it might have drawn a different inference. The High Court's holding that the "taking without permission" was *ipso facto* serious misconduct ignored this nuanced factual matrix that the Industrial Court was uniquely positioned to assess.

[32] We were also of the view that the High Court's decision had undermined the statutory mandate of the Industrial Court under s 30(5) of the Industrial Relations Act 1967 ("Industrial Relations Act"). The Industrial Relations Act requires the Court to act "according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal form." This mandated a holistic, fair, and proportionate assessment. The Industrial Court executed this mandate by distinguishing between a dismissible offence of dishonest appropriation and a culpable but less severe act of mismanagement during a chaotic relocation.

[33] By reducing the analysis to a technical breach of a handbook clause and disregarding the crucial element of intent and context, we were of the view that the learned High Court Judge had reintroduced the very legalistic formalism that the Industrial Relations Act seeks to avoid. The Industrial Court's finding of contributory misconduct but not dismissible misconduct was a classic exercise of its arbitral discretion to ensure fairness, a discretion with which the High Court ought not to have interfered.



Conclusion

[34] For the aforesaid reasons, we were unanimously of the view that the learned High Court Judge had erred in law and in principle in interfering with the Industrial Court's award. Consequently, the Appeal was allowed with costs, the order of the High Court was set aside, and the award of the Industrial Court restored.

