

**IN THE INDUSTRIAL COURT OF MALAYSIA**  
**IN THE STATE OF SABAH AT KOTA KINABALU**  
**[ CASE NO: 17 / 4 - 163 / 20 ]**

**CHU PIT WAN**

**AND**

**LADANG SRI HARAPAN ( SABAH) SDN. BHD.**

**AWARD NO.: 2533 / 2022**

Before : **YANG ARIF DATUK INDRA BIN HAJI AYUB**  
Chairman

Venue : Industrial Court of Malaysia,  
Kota Kinabalu, Sabah

Date of Reference : 17.12.2019

Date(s) of Mention : 13.02.2020, 17.03.2021, 15.07.2021,  
25.11.2021, 07.03.2022,

Date of Hearing : 22.03.2022, 23.03.2022

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# **AWARD**

## **A. REFERENCE**

This is a reference by the Honourable Minister of Human Resources under Section 20(3) of the Industrial Relations Act 1967 (“the IRA 1967”) arising out of the dismissal of **CHU PIT WAN** (hereinafter referred to as “the Claimant”) by **LADANG SRI HARAPAN (SABAH) SDN BHD** (herein referred to as “the Company”).

## **B. PREFACE**

[1] This Ministerial reference required this Court to hear and determine the Claimant’s complaint of dismissal with effect from 01.08.2019 by the Company.

[2] The Claimant was employed by the Company as Acting Estate Manager vide a Letter of Offer dated 19.08.2013 . The dispute emanates over the discontinuation/termination of service of the Claimant by the Company.

[3] By a letter dated 09.07.2019 , the Company informed the Claimant that “*his services were no longer required by the Company and that his last day was on 31.07.2019*”. The Claimant’s last post in the Company was as Acting Estate Manager with basic salary of RM10,500.00 per month.

[4] The Claimant contended that he was employed by the Company on permanent basis and that the termination of his service by the Company was without just cause or excuse.

[5] The Company however inter alia submitted that the Claimant's was on temporary employment, the Company had obtained a permanent Senior Estate Manager for the estate, the Claimant's position as the Acting Estate Manager was never intended to be permanent and the Claimant had passed the statutory retirement age of 60 years.

### C. THE ROLE OF THE INDUSTRIAL COURT

[6] First and foremost, it is the duty of the Industrial Court to determine whether the termination or dismissal is with or without just cause or excuse.

[7] The Federal Court in the case of **Goon Kwee Phoy v. J&P Coats (M) Bhd** [1981] 1 MLRA 415, where His Lordship Raja Azlan Shah, CJM (as he then was) stated at p 430:

*“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.”*

## D. THE LAW AND BURDEN OF PROOF

[8] In the case of ***Telekom Malaysia Kawasan Utara v. Krishnan Kutty Sanguni Nair & Anor*** [2002] 3 CLJ 314 the Court Appeal held that the standard of proof in the Industrial Court is on the balance of probabilities:

*In our view the passage quoted from Administrative Law by H.W.R. Wade & C.F. Forsyth offers the clearest statement on the standard of proof required, that is the civil standard based on the balance of probabilities, which is flexible so that the degree of probability required is proportionate to the nature of gravity of the issue.”*

[9] In ***Tyco Engineering And Construction (M) Sdn Bhd v James Francis Trimble*** [2000] 2 MELR 678, the Industrial Court outlined the law on the burden of proof as follows:

*“The burden of proof that the dismissal was with just cause or excuse is on the employer which is on the balance of probabilities to adduce cogent and convincing evidence being the real reason by dismissing the employee. This is the principle of industrial jurisprudence”.*

## E. THE COMPANY’S CASE

[10] By Letter of Offer dated 19.08.2013, the Claimant was employed by the Company as the Acting Estate Manager with effect from 19.08.2013. By the same letter, the Claimant was informed *inter alia* that

his job was on a temporary basis, until further notice to be given by the Company, and that his job may be terminated at any time. It is undisputed that the Claimant signed and accepted the Letter of Offer.

**[11]** At the time when the Claimant was employed by the Company, the Claimant was 69 years old where he had passed the statutory retirement age of 60 pursuant to the Minimum Retirement Age act 2012 (“MRAA 2012”).

**[12]** Throughout the Claimant’s employment with the Company, the Claimant also performed work for Perfect Oil Resources (Sabah) Sdn Bhd. The Company and Perfect Oil Resources are related companies in that there were common directors and shareholders at the material time.

**[13]** The Claimant’s primary job responsibilities were to manage the plantation lands owned by the Company and Perfect Oil Resources respectively which were located in Sandakan, Sabah. The Claimant reported to the Directors of the Company, Ms. Lee Yee Wuen (CoW1) and Mr. Lee Kai Wuen who is also the Director of Perfect Oil Resources and he was removed as a director of the Company with effect from 12.08.2020.

**[14]** As the Acting Estate Manager, the Claimant’s position was never intended to be permanent. This was coupled with the fact that at the time when the Claimant was employed, he had passed the statutory retirement age of 60.

**[15]** The Company had employed a Senior Estate Manager, Mr. Anthony Lim Kok Vui who commenced work on 06.03.2018 to manage the

plantation lands owned by the Company and Perfect Oil Resources comprising of different divisions, and each division had its own Assistant Estate Manager and Cadet Planter .

**[16]** By a letter dated 09.07.2019 , the Company informed the Claimant that his last day with the Company was on 31.07.2019. The Claimant was approximately 75 years old when the Letter was issued to him.

**[17]** The cessation of the Claimant's services was proper and lawful in view of the MRAA 2012 coupled with the nature of his engagement by the Company which was on temporary basis until further notice given by the Company and his services could be terminated at any time.

**[18]** As the Claimant was working for both the Company and Perfect Oil Resources, upon the cessation of his services with the Company, the Claimant continued his services with Perfect Oil Resources without cessation.

**[19]** The Company avers that the Claimant's claim for unfair dismissal is devoid of merits as the Claimant had not suffered any loss of employment, in view of the fact that his employment continued with Perfect Oil Resources after his last of service with the Company.

**[20]** Prior to 19.08.2013, the Claimant used to work with the Company. The Claimant avers that he resigned from the Company after he reached his retirement age. In 2013, he re-joined the Company by

accepting the Letter of Offer. The Claimant's employment with the Company with effect from 19.08.2013 was on temporary basis.

[21] It is pertinent to note the terms of the Letter of Offer dated 19.08.2013 (undisputedly accepted by the Claimant) which stated *inter alia* that:

*"The Company would like to appoint you the post of **Acting** Estate Manager in our estate at a salary of RM5,600.00 per month where it's the same as your last drawing salary in October 2010.*

*Kindly take note that your job is on temporary basis until further notice given by the company or may be terminated at any time." [Emphasis added]*

[22] It is clear from the Letter of Offer that the following elements evinced the intention of the parties that the nature of the Claimant's employment was not on permanent basis: (i). The Claimant was appointed as the Acting Estate Manager; (ii). The Claimant's job was on temporary basis until further notice given by the Company; and (iii). The Claimant's job may be terminated at any time.

[23] At the time when the Claimant re-joined the Company with effect from 19.08.2013, he was already 69 years old. The Claimant had passed the statutory retirement age of 60 pursuant to the MRAA 2012.

[24] By letter of Salary Increment dated 18.07.2017 ( was signed by the then Managing Director of the Company, the late Mr. Lee Poh Sing) to the Claimant, the Company stated *inter alia* that :

*"We are pleased to inform you that your basic salary has been revised to RM10,000/month with effect from 01 August 2017.*

*All other terms and conditions shall remain unchanged as per our initial letter of appointment to you.” [Emphasis added]*

[25] In view of the above, the Claimant’s averment that the late Mr. Lee Poh Sing purportedly told him to work as long as he was able because Mr. Lee Poh Sing purportedly needed him to monitor the estate was highly impossible as the Company’s letter dated 18.07.2017 clearly stated that the terms and conditions of the Letter of Offer remained unchanged.

[26] The Claimant testified during examination-in-chief that when he was employed via the Company’s letter dated 19.08.2013, he was informed that his services were on temporary basis for the purposes of helping, monitoring and teaching the young estate manager .The Claimant’s said evidence was consistent with the Company’s Letter of Offer and letter dated 18.07.2017, both of which were signed by the then Managing Director, the late Mr. Lee Poh Sing .

[27] The terms as agreed between the parties were *inter alia* that the Claimant’s services were ‘*on temporary basis until further notice given by the Company or may be terminated by the Company at any time*’.

## **F. THE CLAIMANT'S CASE**

[28] The Claimant was offered to work as an Acting Estate Manager in the Company’s estate pursuant to a letter of offer dated 19.08.2013 with a monthly salary of RM5,600.00 . At that time the Claimant’s job position was on temporary basis.



**[29]** The Claimant was offered to work in the Company after his retirement age by the late Lee Poh Sing. The Claimant agreed to accept the offer despite on his retirement age due to good and long relationship with the late Lee Poh Sing.

**[30]** Despite the Claimant was offered a temporary job the Claimant is entitled to basic salary, overtime payment and yearly bonuses. In 2015 the Claimant's basic salary was increased to RM6,300.00 per month. In 2016 the Claimant's salary was increased to RM6,800 per month. In 2019 the Claimant's basic salary was increased again to RM10,000.00 and to RM10,500.00 per month.

**[31]** The dispute started to occur after the death of the late Lee Poh Sing. Thus, on the 09.07.2019, the Claimant's receive his termination notice from the Company

**[32]** Despite the Claimant was initially offered as a temporary employee but there was an intention from the Company to keep him as a permanent employee the reasons are as follows:

- a) The letter of offer dated 19.08. 2013 did not have definite end. There is no clear term for a specific period of the Claimant's employment with the Company. The words "until further notice" in the letter of offer was uncertain and no specified time period. The letter of offer was unclear to the end of the Claimant's temporary employment with the company. Therefore, there is no fixed term of contract of employment of the Claimant;

- b) Even if the words “until further notice” gives power to the Company to terminate the Claimant whenever notice is given to the Claimant. However, the situation does not display as such. The Claimant had been employed since 2013 until 2019 by the Company. The Claimant continue to work with the Company without the need for yearly or monthly renewal of contract;

**[33]** The Claimant's received benefit as permanent employee such as basic salary, overtime payment, unpaid leave and yearly bonuses from the Company since 2013 until 2019. Thus, it can be inferred from the Company conduct that they are intended to employ the Claimant as their permanent employee. Providing a pay increase yearly can be meant the Claimant is no longer employee for a fixed term contract. There is no yearly renewal of contract issued by the Company to the Claimant post 2013. The company only issue letter to increase the Claimant's salary. Therefore, there will be understanding between the Company and the Claimant that his position had been converted to permanent.

**[34]** The Claimant has been working with the Company in 2013 until 2019. The Claimant enjoy all benefit as permanent employee during his employment such as overtime, bonus payment, unpaid leave payment and yearly salary increment from the Company. The Claimant continue working to monitor the Company estate without the need to execute any yearly renewal contract.

**[35]** The Company also did not issue any yearly renewal contract to the Claimant only increment offer. Further, the Claimant was not employed for a specific project for the estate. There is no mention in the letter of offer that the Claimant will be employed to complete certain project or on one-off basis. Therefore he cannot be treated as temporary employee.

**[36]** The Claimant's employment with the Company is continuous to maintain the estate daily work. He was not employed for fix term or to complete certain project. The Claimant has played major role in the Company whereas he was given the authority to sign or approve project claim for the estate as his capacity as estate manager and not acting estate manager. Thus, it can be inferred he is no longer as an acting manager over the years due to his good performances

**[37]** Thus based on the aforesaid facts, conduct of the Company against the Claimant since 2013 to 2019, the Claimant has a valid legitimate expectation that the Company has taken or accepted him as Permanent Employee of the Company despite his old age.

**[38]** There was an admission by the Company as follows:-

- a) That the Letter of offer to the Claimant does not have definite end of the Claimant's period of employment; and
- b) the Company agreed to the Claimant yearly salary increment, overtime payment and yearly bonuses;

**[39]** Furthermore in the letter of offer there was no mention at all that the Claimant's service in the company only needed until the company obtain their senior estate manager. Thus the Company's contention on this is unfounded.

**[40]** In this connection, it is not a genuine fixed term contract but there is an employment on a permanent basis dressed up as several fixed term contracts. The Company is trying to deny the expectation and their own conduct treating the Claimant as their permanent employee.

**[41]** The Claimants contended that his dismissal from the Company was without just cause or excuse . The Claimant's claim from the Company are as follows:-

- i) Reinstatement of the Claimant to his former position as an acting estate Manager without any loss of benefits, entitlements and salary ;
- ii) All arrears of salary and entitlement totaling RM10,000.00 per month from the date of termination on 31.07.2019 to the date of actual reinstatement;
- iii) All arrears of contribution to the Employees Provident Fund (EPF) from the date of termination on 31.07.2019 to the date of actual reinstatement;

iv) All arrears of incentive based on the FFB production from the date of termination on 31.07.2019 to the date of actual reinstatement;

v) Interest on the arrears of salary, allowance and entitlements from the date of termination on 31.07.2019 to the date of actual reinstatement.

vi) Alternative, the Claimant prays for an Order that the Company do pay the Claimant all arrears of salary and entitlement totaling RM10,000.00 per month , all arrears of contribution to the Employees Provident Fund (EPF), all arrears of incentive based on the FFB production and compensation in lieu of reinstatement in such amount this Court deems fit.

## **G. WITNESSES**

**[42]** During the Hearing, there were 2 witnesses testified in Court as follows :

**CoW1** : **Lee Yee Wuen** – the Director of the Company and her witness statement was marked as CoWS-1.

**CLW1** : **Chu Pit Wan** – the Claimant in this present case. His witness statement was marked as CLWS-1.

## H. ISSUES FOR DETERMINATION

[43] In this case, it is an undisputed fact from the evidence that the Claimant's employment with the Company was terminated effective on 01.08.2019.

[44] Based on the case of ***Colgate Palmolive (M) Sdn Bhd v. Yap Kok Foong & Another Appeal*** [2001] 3 CLJ 9, it now remains to be considered whether the termination was with just cause or excuse.

## I. THE COURT'S FINDINGS

### GENUINE TEMPORARY BASIS CONTRACT

[45] In the instant case the Company contended that the Claimant employment was premised upon his acceptance of a temporary basis contract offered by the Company in 2013.

[46] The Claimant submitted that he was not employed by the Company on temporary basis but meant to be permanent to supervise the management of the palm oil estate and to help new estate manager to run the management of the Company.

[47] This Court concurs with the Company that the contract in this case was on a temporary basis pursuant to the letter of offer dated 19.08.2013. The contents of the letter of Offer are these :

*“RE : LETTER OF OFFER AS ACTING ESTATE MANAGER*

*We refer to our discussion earlier as in regard of the matter as mentioned above.*

*The company would like to appoint you the post of Acting Estate Manager in our estate at a salary of RM5,600.00 per month where it's the same as your last drawing salary in October 2010.*

*Kindly take note that your job is on temporary basis until further notice given by the company OR may be terminated at any time. Please confirm that you accept this offer on the terms stated and that you will be able to commence your duties on 19th August 2013.”*

**[48]** The contents of the Letter of Offer states and can be summarized as follow :

i). The Claimant was appointed as the Acting Estate Manager.

ii). The Claimant's job was on temporary basis until further notice given by the Company and

iii). The Claimant can be terminated at any time.

**[49]** This Court is of the opinion that based on the above letter of offer, the intention of the parties were crystal clear that it was for a temporary basis, and not a permanent employment. Clearly, there was no ambiguity, dispute or otherwise of the parties' intention that it was for a temporary basis.

**[50]** This Court is convinced that the Claimant understood each and every written term and condition written in this letter of offer of employment and that the Claimant was well aware that his employment with the Company was on temporary basis at all times.

**[51]** This Court is satisfied that the evidence in this case shows that the terms and conditions of the employment was not on permanent basis. The Claimant may be terminated at any time. The Claimant himself accepted the employment as a temporary basis. Upon accepting the offer, the Claimant also knew that he was subjected to the agreed terms and conditions.

**[52]** The law recognizes that a company has the right to organize its business in the manner it considers best. Thus, this Court is of the view that the Company was exercising its right in terminating the Claimant's contract.

**[53]** This Court is also of the view that the nature of the Claimant's work was not of a permanent nature, therefore the Company is entitled to terminate him when the Company no longer require the service of the Claimant since the Company had engaged a permanent Estate Manager to replace the Claimant.

**[54]** In the present case, this Court is satisfied that the Company's evidence that the contract was on temporary basis was more probable than the Claimant's allegations that it was not.



[55] It must be noted that the Claimant had admitted in his Statement of Case that “ *the Claimant to work as an Acting Estate Manager.... The job offered was on temporary basis*” . Hence, it is obvious that the Claimant knew the fact of the position being on temporary basis when he accepted the offer of employment.

[56] In addition, this Court agrees with Company that the Claimant in his Statement of Claim (“SOC”) did not plead that his employment was permanent. The Claimant , in paragraphs 1 and 13 of the SOC , clearly stated that his employment with the Company since 19.08.2013 was on temporary basis .

[57] In fact, the Claimant agrees that “*termination could be done but it must be done properly and fairly despite the Claimant’s work was on temporary basis*” .

[58] Further, the SOC mention nothing at all that the Claimant’s employment was on permanent basis and purportedly could not be terminated at any time. Contrary to his SOC, it was only in his Rejoinder that the Claimant for the first time claims that he was employed on permanent basis and cannot be terminated at any time.

[59] In addition, the letter of Salary Increment of the Claimant dated 18.07.2017 maintained the terms of the Letter of Offer dated 19.08.2013. It is very obvious that there was no change to the terms of the Letter of Offer throughout the Claimant’s employment with the Company.

**[60]** In conclusion, the terms of the Letter of Offer dated 19.08.2013 were clear in that the Claimant was employed on temporary basis.

**FIXED TERM CONTRACT / PERMANENT BASIS**

**[61]** The Company submitted that the Claimant – against his own pleadings – went on to submit that his employment was purportedly not on fixed term but on permanent basis.

**[62]** The issue of fixed term contract was not raised nor pleaded by the Company. This issue was raised by the Claimant in his Rejoinder and is entirely different from the Company's pleadings in its Statement in Reply that the Claimant was employed on 'temporary basis' and that he could be terminated at any time.

**[63]** This Court agrees with the Company that the Claimant's contentions on the purported fixed term contract and permanent employment which was not pleaded by the Claimant in the SOC should be given little or no weight by this Court.

**[64]** In any event , if this Court agrees that it was a fixed term contract , such contract had completed its natural course with the issuance of the letter entitled "*Your Service Is No Longer Required*" dated 09.07.2019 which clearly spell the end of the Claimant's tenure as the Acting Estate Manager of the Company effective on 01.08.2019.

[65] However, as mentioned earlier, this Court is satisfied that the terms of the Letter of Offer dated 19.08.2013 were very obvious that the Claimant was employed on temporary basis.

#### **WHETHER THERE WAS A DISMISSAL**

[66] The Claimant contended that he was dismissed by the Company and that dismissal was without just cause or excuse.

[67] The Company submitted that the issue of dismissal does not arise in the present case. The Company in its Statement in Reply has pleaded that the Claimant was terminated in view of his age, the terms of the Letter of Offer and the MRAA 2012.

[68] The Company cited the case of ***Zakiah Ishak v. Majlis Daerah Hulu Selangor [2005] 4 CLJ 77***, whereby the Court of Appeal held that :

*“The facts in the present case are no different from those in the case of Gnanasundram v. Public Services Commission [1966] 1 LNS 219. In that case the applicant was offered temporary employment by the respondent on the following conditions:*

*2. This is (sic) offer is subject to the following conditions:*

*(d) That during the first year of the period of your appointment, your services would be terminable at any time with one month’s notice or one month’s salary plus cost of living allowance in lieu, and without any reason being given. You would also be free to relinquish your appointment by giving one month’s notice or one month’s salary in lieu plus cost of living allowance. During the rest of your period of appointment, the appropriate notice required for both parties would be three months or one month’s salary in lieu plus cost of living allowance.*

3. The appointment offered is temporary.

*The applicant in that case challenged the termination of his employment made pursuant to the said conditions. Raja Azlan Shah J (as HRH then was) in dismissing the application observed:*

*Without deciding whether the applicant holds office during pleasure, I am clearly of the opinion that article 135(2) does not apply. **The applicant was never dismissed from service. Dismissal presupposes some disciplinary proceeding against him whereby he is found guilty of indiscipline and misconduct under the Public Officers (Conduct and Discipline) Regulations 1956. This is not the present position here. This is purely a case of a contract being terminated under one of its clauses. To say that the applicant was dismissed would be to use that word in quite a different sense from any in which, as far as I can see, it has hitherto been used.***

[Emphasis added]

[69] After having considered the submission by both parties , this Court is convinced that in the present case , the service of the Claimant with the Company was terminated and it was not a dismissal as contended by the Claimant .

**LEGITIMATE EXPECTATION**

[70] In ***Gerald Blaise Ryan v See Hua Markerting (Sabah) Sdn Bhd*** [2013] 3 ILR 307, the learned Chairman stated the following on the issue of legitimate expectation :

*“[30] the Doctrine of legitimate expectation which had its origin in public law has been extended to and impacted private law, particularly in the fields of company law and employment law where the doctrine is used to protect employment or positions...*

*[31] From a general perspective, the following are some of the principle that would justify the application of the doctrine:*

- *the promise or representation made by the employer underlying the expectation must be clear, unambiguous and not subject to qualification;*
- *the expectation must be reasonable; the representation must have been induced by the decision maker; and*
- *the representation must be one that it was competent for the decision maker to make... “ [ emphasis added]*

**[71]** In the case of **Zakiah Ishak v. Majlis Daerah Hulu Selangor** (supra), the Court of Appeal held that :

*“Secondly it was contended on her behalf that the termination was in breach of her legitimate expectation that she could continue in her employment for the said period. In law for legitimate expectation to arise there must be evidence of a promise or undertaking made by the respondent to that effect. We find no such evidence before the court. On that premise we find that her claim for breach of legitimate expectation is wholly unsustainable.”*

**[72]** Applying the above principle, was there a clear and unambiguous promise or representation by the Company that the Claimant was a permanent employee of the Company ? Based on the Letter of Offer and the Letter of Salary Increment , it is very clear that the terms of the employment was on temporary basis.

[73] There was no evidence that there was any promise and/or representation by the Company that the Claimant was on permanent employment. This Court viewed that it was not a legitimate expectation of the Claimant to expect the Company to automatically convert the status of temporary basis to a permanent employment.

[74] In the case of **Universiti Teknikal Malaysia Melaka v. Prof Madya Md Noah Jamal** [2014] 4 ILR 473, the Court of Appeal held that:

*“Pertamanya, kami bersetuju dengan penghujahan peguam perayu bahawa responden tidak mempunyai apa-apa ‘legitimate expectation’ bahawa perkhidmatannya sebagai Timbalan Dekan akan terus kekal sehingga tamat tempoh kontraknya dengan universiti sebagai Profesor DS35 kerana responden sedar akan syarat bahawa pelantikannya sebagai Timbalan Dekan itu boleh ditamatkan pada bila-bila masa sebelum tamat tempoh kontraknya dengan universiti. Hakikat ini dinyatakan dengan jelas di dalam surat pelantikannya sebagai Timbalan Dekan yang bertarikh 15 Disember 2007. Peguam perayu telah merujuk kepada kes Gnanasundram v. Public Services Commission [1966] 1 LNS 219. Dalam kes itu mahkamah telah mengatakan bahawa pemohon dalam kes tersebut telah menerima syarat-syarat kontrak yang dibuatnya dengan pihak Kerajaan. Oleh itu, pemohon adalah terikat dengan syarat-syarat tersebut sebagaimana Kerajaan terikat dengannya. Begitulah juga dengan keadaan di dalam kes di hadapan kami sekarang. Responden telah menerima pelantikan sebagai Timbalan Dekan dengan menyedari bahawa pelantikan ke jawatan tersebut boleh ditamatkan oleh Naib Canselor pada bila-bila masa.” [Emphasis added]*

[75] Applying the above principle into the present case, this Court is of the view that the Claimant’s claim that he have a legitimate expectation that the temporary basis would be converted into a permanent employment

by the Company could not be upheld based on the letter of offer and the letter of salary increment produced before this Court.

[76] The Claimant was well aware and had accepted the Letter of Offer that his job was temporary basis until further notice given by the Company and that he could be terminated at any time. As such, the Claimant was not entitled to complain that he purportedly had 'legitimate expectation' that he was 'converted' to be a permanent employee and could purportedly work as long as he wished.

[77] Referring to ***Dismissal from Employment and the Remedies, Dr. Ashgar Ali Ali Mohamad, Lexis Nexis Publication 2007***, it was stated at page 14:

*“ The ‘right to work’ and ‘right in the work’ are two different concepts. The former deals with the individual right to be employed, which is in conformity with Article 23 of the Universal Declaration of Human Rights 1948, which provides that the ‘right to work’ is the natural right of every man to obtain employment, while the latter implies ‘proprietary right’ in employment. At common law, there is no legally enforceable ‘right to work’. The House of Lords in Allen v Flood [1898] AC 1 (HL) observed :*

*A man has no right to be employed by any particular employer, and has no right to any particular employment if it depends on the will of another “*

[78] In addition, this Court is satisfied that when the Claimant signed the Letter of Offer as well as the Letter of Salary Increment , he understood his contract was on a temporary basis, and was subject to termination at any time.

In fact , he willingly accepted it without having anyone to force him to sign and accept the offer. He read and understood the written terms and conditions in the contract.

Therefore, this Court is satisfied that the Claimant knew of the essential term of his employment , namely that his position as a Acting Estate Manager was on a temporary basis.

**[79]** Furthermore, since the Claimant was past the statutory retirement age and he was fully aware that there would be no legitimate expectation that his contract would be a permanent employment. The final authority lies with the Company .

**[80]** In view of the above, this Court concurs that the Claimant's contentions that his employment was purportedly permanent or he purportedly had legitimate expectation that the Company had purportedly taken him as a permanent employee is baseless .

#### **CLAIMANT HAD PASSED THE STATUTORY RETIREMENT AGE**

**[81]** The Claimant contends that he had passed the statutory retirement age of 60 when he was employed by the Company in 2013 and the Company was not entitled to terminate his services thereafter.

**[82]** The Claimant was 69 years old when he was employed by the Company on 19.08.2013. The Company submitted that once the Claimant passed the statutory retirement age , the Claimant no longer had lien to the



job and he was liable to be released at any time. The Claimant cannot now be allowed to claim that his status of employment remained as a permanent employee and was purportedly not terminable.

[83] The Company's position is supported by the Court of Appeal decision in the case of ***Colgate Palmolive (M) Sdn. Bhd. v. Yap Kok Foong [2001] 4 MLJ 97*** which was referred to by the Industrial Court in the case of ***Tai Kon Lee v. Tamco Switchgear (Malaysia) Sdn Bhd [Award No. 2817 of 2019]*** as follows :

*"Once the Claimant passed the retirement age (ie 55 years) the Claimant no longer has lien to the job and he is liable to be released at any time. The Claimant cannot now be allowed to claim that his status of employment remained as permanent employee. The Company's position is supported by the decision of the Court of Appeal in Colgate Palmolive (M) Sdn. Bhd. v. Yap Kok Foong [2001] 4 MLJ 97 when Gopal Sri Ram JCA cited with approval the judgment of the Industrial Court which held that:*

*the non-existence of a retirement clause in an employment contract cannot mean that no employer can ever bring an employee's service to an end by retiring him (or her) at a certain retirement age, or that such an action would be tantamount to dismissal without just cause or excuse."*  
[Emphasis added]

[84] This Court agrees that the Company is not prevented by law to employ the Claimant . The Claimant admitted that *"there is no mandatory prohibition for the Claimant to work after his retirement age. It is still subject to mutual agreement between the Company and the employee"*. Clearly, there was mutual agreement between the Company and Claimant to the terms contained in the Letter of Offer including the termination clause.

[85] The Industrial Court in the case of **Rasalechumi Kanagaratnam v. Lourdes Medical Services Sdn Bhd** [2021] 4 ILR 176 referred to by the Claimant held *inter alia* that :

*“how long an employee can work past the age of 60 years, based on the minimum retirement age statutorily mandated, is something that is best left between the contracting parties, which will depend on the terms and conditions of the employment stipulated in the contract of employment between them and the surroundings circumstances of the case.”*

[86] In the case of **Gill Satwant Singh v. Assunta Hospital** [2019] 3 ILR 564, the Industrial Court held that :

“Since the claimant has not only attained; but passed the minimum retirement age under the statute, the Hospital was entirely correct when it opted to exercise its right to retire the claimant in 2016 although the contractual provision is silent on whether or not the claimant can be retired by the Hospital after the attaining the age of 60 years. The contention that the claimant could work as long as he wished since the Minimum Retirement Age Act does not provide for a maximum retirement age is not to the claimant’s avail. The court’s construction of the law would be that in the absence of a provision on retirement age, in an employment contract, the earliest age upon which an employee could be retired would be upon the employee attaining the age of 60. Since the claimant has passed the Minimum retirement age of 60, the Hospital can decide to retire the claimant at any point of time since he had passed the minimum retirement age. The claimant’s contention that he cannot be retired at any point of time since there was no maximum retirement age stipulated in his contract of employment does not hold water. This was the reason why the Minimum Retirement Age Act was introduced; vis-a-vis to ensure that an employee has a right to remain in employment up to the time he attains the minimum retirement age. Once an employee attains the minimum retirement age of 60, it would be perfectly lawful for the employee at any time to be terminated by way of retirement, in the absence of a contractual term providing the employee’s retirement age above 60 years.” [Emphasis added]

[87] In the present case, since the Claimant had passed the statutory retirement age of 60, the Company was entitled to exercise its right to retire the Claimant at any time pursuant to the Letter of Offer which had provided the termination clause where the Claimant could be terminated at any time .

**Whether the Claimant is entitle for Compensation / Termination Benefits**

[88] Pursuant to the Letter of Offer dated 19.08.2013 between the Company and the Claimant, the Company was not contractually bound to pay the Claimant termination benefits.

[89] This Court is convinced that the termination of the Claimant is fair and valid . As there was no clause on payment of termination and lay off benefits in his letter of Offer, it is not possible for the Company to pay any benefits over and above what was agreed upon between parties in the Letter of Offer. Hence, the Claimant is not entitle for compensation and/or termination benefits.

[90] This Court is of the view that the issue of compensation will only arise if the Claimant is successful in showing that the termination was carried out without just cause or excuse.

[91] In addition, the Claimant had duly confirmed that his base salary was RM 10,500.00 per month. The **Labour (Termination and Layoff Benefits) (Sabah) Rules 2008 (“the Rules 2008”)** is only applicable to employees earning RM2,500.00 and below.

**[92]** As such, the Rules 2008 are not applicable to the Claimant (who was employed on temporary basis and with the salary of RM10,500.00) as he is outside the scope of the Sabah Labour Ordinance and the Company is not statutorily obliged to pay termination and layoff benefits under the Labour (Termination and Layoff Benefits) (Sabah) Rules 2008 to the Claimant.

**NOTICE OF EXPIRY OF CONTRACT**

**[93]** The Claimant contended that he was not given a proper notice and he had to quit his job by 31.07.2019 . He also claimed that he was being dismissed by the Company without proper notice or was only given 22 days' notice prior to his termination.

**[94]** The Company submits that the Claimant was not entitled to any notice period in the first place as the Letter of Offer did not provide so, and the Claimant was not an employee within the provisions of the Labour Ordinance. In fact, the Company – although not obliged – had been kind by giving early notice of termination to the Claimant via letter dated 09.07.2019 prior to his last day with the Company on 31.07.2019.

**[95]** In line with the Letter of Offer dated 19.08.2013 , this Court is of the opinion that the Company was under no legal obligation to give Notice to the Claimant on the impending termination of his temporary service .

**[96]** In the present case, as admitted by the Claimant the Company had given and served a notice of “*YOUR SERVICE IS NO LONGER REQUIRED*”

on the 09.07.2019 to notify him that his service would expire. The contents of the Notice are as follows :

*RE : YOUR SERVICE IS NO LONGER REQUIRED*

*You have been the Acting Estate Manager for Ladang Sri Harapan Division 1 and Perfect Oil Resources even though you are fully paid for by our company. Due to the bad economy, we can no longer bear the overhead costs for Perfect Oil Resources. We have communicated to the management in Perfect Oil Resources to take you since they only have a cadet but they refused. We no longer need an Acting Estate Manager since we already have a Senior Estate Manager and an Assistant Estate Manager. In view of your old age (76 years old), we think it is also in your best interest to retire for safety reason. Your last day with the company will be 31 July 2019.*

**[97]** This Court is of the view that the Company had given the Claimant a proper and reasonable notice of the Company's intention to inform the Claimant that his *last day with the Company will be on 31.07.2019.*

**THE VALIDITY OF THE LETTER DATED 09.07.2019**

**[98]** The Claimant contends that there was disagreement between the directors of the Company at the material time relating to the termination of the Claimant's services.

**[99]** This Court agree that as a director of the Company – CoW1 had the power to terminate the Claimant's services on the grounds as stated in the Company's letter dated 09.07.2019. Hence , this Court is of the view that the letter dated 09.07.2019 is proper and valid.

## **J. CONCLUSION**

**[100]** In the present case, this Court is satisfied that the employment of the Claimant was a case of a genuine temporary basis. The Claimant's employment was terminated by the Company in accordance with the terms of the Letter of Offer.

**[101]** As mentioned earlier, the Claimant service with the Company was terminated and he was not dismissed as contended by the Claimant. Hence, the issue of dismissal does not arise in the present case .

**[102]** Pursuant to section 30(5) of the IRA1967 and guided by the principles of equity, good conscience and substantial merits of the case without regard to technicalities and legal forms and after having considered the totality of the evidence adduced, this Court is satisfied that the Company had made out on a balance of probabilities its case against the Claimant. This Court is of the view that the Company's decision to terminate the Claimant was fair, valid and with just cause or excuse.

**[103]** In the circumstances, the Claimant's claim is hereby dismissed.

**HANDED DOWN AND DATED THIS 29<sup>th</sup> DAY OF NOVEMBER 2022**

***-signed-***

**( YANG ARIF DATUK INDRA BIN HAJI AYUB )**

**CHAIRMAN**

**INDUSTRIAL COURT MALAYSIA SABAH**