

**SOON WAN ENGINEERING WORK SDN. BHD.**

*a*

v.

**AJMEER SINGH BANTA SINGH**

INDUSTRIAL COURT, KUALA LUMPUR  
SITI SALEHA SHEIKH ABU BAKAR  
CASE NO: 6/4-468/97  
2 SEPTEMBER 1998

*b*

*DISMISSAL: Abandonment - Claimant did not report to work - Whether company's allegation substantiated*

*c*

The claimant was employed as a night watchman. A robbery took place at the company's premises and the matter was reported to the police. According to the claimant, he was detained by the police for about a week, i.e. from 5 to 12 February, for further investigations but was not eventually charged. He submitted that when he went to the factory on 12 February, he saw another watchman there. The claimant subsequently reported to work on 15 February and found his punch card missing. Upon confronting the admin. officer, one Kua, the claimant alleged that Kua dismissed him.

*d*

The company, by contrast, stated that the claimant did not report to work after 5 February.

*e*

**Held:**

[1] The punch card had not been removed from the rack but had been mistakenly punched by another worker against another date.

*f*

[2] It was perplexing to note that the claimant, having known that Kua was the head of company, did not pursue the matter to ascertain the reasons for his dismissal. His testimony did not clarify the issue of motive or reason on the company's part to dismiss him.

*g*

[3] The company would not have paid his bonus if they intended to fire him.

[4] It was improbable that the claimant could have seen another watchman on that day. The company could not get a replacement at such short notice, especially during the festive season. Furthermore, they would not have asked him to return to work if they had found someone to replace him.

*h*

*[Claim dismissed.]*

**Case referred to:**

*Wong Chee Hong v. Cathay Organisation (M) Sdn. Bhd. [1988] 1 CLJ 45*

*i*

- a* For the claimant - A. Sivananthan; Malaysian Trades Union Congress  
For the company - Au Chee Kuan; M/s. Ariffin & Partners

**AWARD NO. 458 OF 1998**

The dispute is over the dismissal of the claimant by the company.

- b* The claimant commenced employment with the company from 16 September 1991 as a night watchman drawing a salary of RM300 per month. On becoming a watchman the claimant was provided with a squatter house by a Madam Kua, one of the company's directors. He was also the company's daily paid worker being paid a daily wage of RM29.50 and receiving a daily allowance of RM4.

The simple facts of the case according to the claimant are these:

- d* On 4 February 1997 at around 5.45a.m. a robbery took place at the company's premises whereupon the claimant informed the management. The company's directors came at about 6a.m. and one of them reported to the police. Subsequently the police came to investigate. On 5 February 1997 the claimant was called to the police station in Brickfields where he was detained for further investigation. However he was released on 12 February 1997 without any charge being levelled against him. Also on 12 February 1997 the claimant saw
- e* a watchman at the company's premises. Since the factory was closed on 14 February 1997, the claimant reported back to work on 15 February 1997 but he discovered that his punch card was missing from the punch card rack. On informing the personnel and admin officer, Miss Kua Sim Mai (COW1) that his card was missing she replied that he no longer had a job with the company and told him to leave the factory. The claimant complied and went home. On 17 February 1997, COW1 came to see him and gave him one week to vacate the house he occupied. On 20 February 1997 the claimant went to the office with his relative to appeal against the company's decision. After the relative talked to the management it agreed to give the claimant one month to vacate the house. Subsequently on 21 March 1997 the claimant moved out of the house as directed.

The claimant contends that he was dismissed without just cause and excuse.

- h* The pivotal pleading of the company in its statement of reply is that it did not dismiss the claimant but that the claimant failed to turn up for work or left of his own accord.

- i* It is the evidence of COW1 that after 5 February 1997 she did not see the claimant back at work anymore. She said that when the company resumed work after the Hari Raya and Chinese New Year holidays on 15 February 1997

the claimant did not return to work. She attested that there had been no complaints of the claimant's performance either as a general worker or as a watchman. COW1 claimed that the claimant can be terminated under para. (3) of his contract of employment as a watchman (Exh. CO1) if he was found to be at fault by the police with regards to the theft. However in this instance, the company was aware that the claimant was not charged. Hence the company had not terminated his services under the said provision.

It is the claimant's submission that the company's contention that he left of his own accord cannot be believed. The claimant submits that this is based on three grounds. Firstly, he was released from detention by the police. The police had found that he was not involved in the burglary and did not charge him. Secondly, he had worked for nine years as a daily paid worker. Thirdly, he had a family to support and he was given a house free from rent for six years. Hence he had every reason to return to work with the company. The claimant further submits that it is clear that the company had indeed terminated his services under para. (3) of exh. CO1.

On the other hand it is the company's submission that it could not have fired the claimant because COW1 never saw him again after 5 February 1997. After the reconciliation meeting in May 1997, COW1 informed the claimant that he had not been fired and told him to come back to work but the claimant failed to return. The company points out that the claimant still worked as a watchman after the burglary on the night of 4 February 1997 and was given the factory keys. This the company contends showed that it still trusted him. In any case the company did not have any watchman after the claimant failed to turn up for work after 15 February 1997 and had to resort to locking the whole factory up and making periodic checks of the factory by one of the directors. The company also denies that it had dismissed the claimant under para. (3) of exh. CO1.

It is abundantly clear that the court is faced with diametrical versions of the events. That being so it is incumbent upon the court to ascertain from the evidence whether the claimant's version or the company's version is the truth.

In the case of *Wong Chee Hong v. Cathay Organisation (M) Sdn. Bhd.* [1988] 1 CLJ 45 at p. 49; [1988] 1 MLJ 94, the then Supreme Court held as follows:

When the Industrial Court is dealing with a reference under s. 20, the first thing that the court will have to do is to ask itself a question whether there was a dismissal, and if so, whether it was with or without just cause or excuse.

Hence the first issue for the court to decide is:

Was the claimant dismissed by the company?

- a* It is not disputed that the claimant was not given any notice or letter of termination of service by the company. Now although the claimant alleges that COW1 had dismissed him verbally on 15 February 1997 he says that no one else besides COW1 saw him on that day. The court opines that it is improbable that nobody saw him if he had indeed gone to the factory. As for his punch card (Exh. CO3) although the claimant asserts that he found it missing on
- b* 15 February 1997, it is COW1's uncontroverted evidence that it was in the punch card rack because another employee had mistakenly punched the claimant's card against the date "15" of the month. The claimant knew that Madam Kua who had allowed him to stay in the squatter house was the "big
- c* boss" of the company but the court is perplexed as why he failed to clarify from her as to his purported dismissal by the company. By the claimant's own testimony the company had no reason or motive for firing or terminating his employment. He further confirmed that Madam Kua did not scold him or suspect him of being involved in the burglary. Furthermore the claimant's
- d* bonus had been paid by the company to his son on 5 February 1997. The court opines that if the company had intended to fire him it would not have paid the bonus. As for the claimant's contention that he had been fired under para. (3) of exh. CO1 the court is inclined to believe the company's assertion that this is not so because he had been exonerated by the police of any involvement in the burglary.
- e* It is pertinent to note that the claimant's evidence with regard to his having to vacate the squatter house is mere heresay. The relative was never called to give evidence. In any event it is not an issue which is relevant to the claimant's employment terms. This house was not provided to him as a worker
- f* but he had been allowed to stay in it by Madam Kua who was the owner of the house.
- Furthermore the court finds the claimant's allegation that he saw a watchman working for the company on 12 February 1997 as improbable. The company could not have got a new watchman at such short notice especially during
- g* the festive season and the company would not tell the claimant that he could come back to work after the reconciliation meeting if they found a replacement for him at that time.
- After a careful deliberation of the evidence the court concludes that the
- h* company's version is the more probable one and decides in its favour. The court finds as a fact that the claimant was never dismissed but left of his own accord.
- Accordingly the claimant's claim is hereby dismissed.

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