

**TENGGU ADLAN BIN TENGGU ZAINAL RASID v GUOMAN PORT
DICKSON (Substituted by PD Resort Sdn.Bhd. By Order of Court on
27.10.2005) [2006] ILJU 6**

Industrial Law Journal Unreported (ILJU)

INDUSTRIAL COURT (KUALA LUMPUR)

TUAN FRANKLIN GOONTING

CASE NO 3/4-991/05 1492 OF 2006

24 August 2006

Ms.S.Suganthi(Messrs Shearn Delamore & Co);Mr.Mohan Singh(Messrs ***David Gurupatham*** & Koay)

Reference :

This is a reference made under [Section 20 \(3\)](#) of the [Industrial Relations Act, 1967](#) arising out of the dismissal of **Tengku Adlan Bin Tengku Zainal Rasid** (hereinafter referred to as “the Claimant”) by **Guoman Port Dickson Resort** (hereinafter referred to as “the Respondent”) on 5.4.2004.

AWARD

By this reference the Court was required to hear and determine the complaint of the claimant that he had wrongfully dismissed by the company on 5th April 2004. By his statement of case the claimant alleged constructive dismissal.

The English Court of Appeal case of *Western Excavating (ECC) Ltd. v. Sharp* (1978) I.R.L.R. 27 explained that constructive dismissal means no more than the common law right of an employee to repudiate his contract of service where the conduct of his employer is such that the latter is guilty of a breach going to the root of the contract or where he has evinced an intention no longer to be bound by the contract. In such situations the employee is entitled to regard himself as being dismissed and walk out of his employment. This position has been endorsed by the Malaysian Courts and is the position prevailing today. (See, *Wong Chee Hong v. Cathay Organisation (M) Sdn. Bhd.* (1988) 1 MLJ 92).

The company owns and manages a resort at Port Dickson, Negeri Sembilan. By a letter of appointment dated 8th July 1999 the company employed the claimant as the Assistant Sales Manager of the resort. He was paid a salary and commission and his entitlement to such commission was spelt out in Appendix 1 to the letter of appointment. By paragraph 10 of his statement of case he gives particulars of constructive dismissal as follows:-

- (a) the company unilaterally deducted the sales commission earned by the claimant without prior consent and/or lawful excuse and thereby unlawfully deducted the remuneration/wages paid to the claimant; and
- (b) the company unilaterally reduced the sales commission earned by the claimant without prior consent and/or lawful excuse and thereby unlawfully reduced the remuneration/wages paid to the claimant.

The company’s contention, vide its statement in reply, is basically that the claimant’s eligibility for commission was based on a commission structure which was subject to change at the discretion of the management. Based on the pleadings, this Court’s task is therefore to ascertain the terms of the contract of employment made between the claimant and the company. If the company was within its contractual rights to change the commission structure then the claimant had no valid complaint. Conversely, if the contract gave the company no such right then any unilateral change would be a breach of contract. Interestingly, by paragraph 10 (iii) of its statement in reply, the company puts in what can only be described as an alternative plea, that is, that by staying on in the company despite several

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changes in the commission structure, the claimant had waived and affirmed any such breach (which was denied). Concepts like estoppel, or waiver (which is the same thing) have no place in industrial relations jurisprudence. However, the Court suspended judgment for the moment, and proceeded to hear the minister's reference.

The claimant's evidence

The claimant, vide a prepared witness statement (CLWS-1) referred the Court to his letter of appointment dated 8th July 1999. Paragraph (a) thereof prescribed his remuneration as follows:-

[“(a)]Salary

RM1,600.00 per month excluding commission and allowance as clearly stated under the sales commission incentive proposal (Attached Appendix 1). (Please note that confidentiality of your salary should be maintained at all times).”

(Underlining for emphasis).

Appendix 1 is reproduced in full:-

“Appendix 1

GUOMAN PORT DICKSON

SALES COMMISSION INCENTIVE PROPOSAL

Objective : To enhance the occupancy and revenue levels of the Guoman Port Dickson through rewarding outstanding performance in business solicitations by individual members of our sales force or appointed external agents.

Why do we want to implement such a concept?

Present remuneration levels of a standard salary do not reward the high achievers or penalise the consistent low performers. As such there is this need to provide the stimulus to encourage highend consistent performances.

Mechanics of the Scheme:

- 1) Commissions will be on a flat rate percentage based on revenue levels achieved:

Sales Production (RM)	Rate	Equivalent Room nights per day at approx. RM 120++
Below - 50,000	0%	14
50,000 - 100,000	1%	28
100,001-150,000	2%	42
150,001- above	4%	56

- 2) Estimated Earnings per Sales Manager

Sales (RM)	50,000	75,000	105,000	150,000	175,000
Basic Salary	1,600	1,600	1,600	1,600	1,600
EPF	192	192	192	192	192
Commission	-	750	2,100	3,000	7,000
EPF	-	90	252	360	840

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Total Earnings	1,792	2,632	4,144	5,152	9,632
Excess/(Loss)	0	840	2,352	3,360	7,840

Commission payable for:-

- Room Revenue, Room/F&B Package Revenue, Room/Recreation Package Revenue.
- Airline Contracts, Group Adhoc/Series Bookings, Seminar/Conference Package, F & B Function Revenues.

Commission apportion for payment (75% of revenue levels):-

- First time leads from Senior Managers/GMC members of Hong Leong Group of Companies (Although these are not personally solicited lead by Sales Manager, this is necessary as the leads have to be nurtured into actuality).

Commission not payable for:-

- Walk in Guests, Revenue spent by guests while in hotel.

Abiding condition

- Commissions will be paid only for completed events/bookings in the hotel. For completed events, complete payment must be received for inclusion in revenues for commission payment.

Allowances

- Travel, parking and telephone calls are claimable maximum at RM600.00 per month.”.

The claimant stated that when he was interviewed for the job he was not told that the commission structure was subject to change by the company. He did not expect the company to change the commission structure without his consent after he joined the company. He was promoted to the position of Sales Manager on 1st August 2000, without any new letter of appointment being issued.

Continuing, the claimant stated that during his tenure with the company he had been subjected to five commission structures, as follows:-

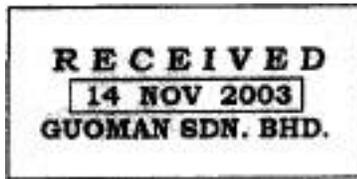
1. the original commission structure (CLB 13 - 14);
2. the change implemented by Memo dated 20th November 2001 (CLB18 - 20);
3. the change implemented by Memo dated 11th June 2002 (CLB23);
4. the change implemented by Memo dated 27th March 2003 (CLB 24); and
5. the change implemented by Memo dated 31st December 2003 (CLB27 - 28).

Each time the company introduced the change the claimant raised his objections with his Sales and Marketing Manager, who conveyed the objections to the company's General Manager because he (the Sales and Marketing Manager) too, did not agree with the change. The claimant also voiced his disagreement during management meetings attended by the General Manager. The Sales and Marketing Manager had also informed the claimant that he had on his own accord raised many objections with the management. He, together with others, requested the company to restore the original commission structure. However these requests fell on deaf ears. The company continued to change the sales commission unilaterally and according to its whims and fancies. By a memo dated 10th November 2003 (CLB25 - 26) an appeal was made to the company against sales, commission deductions. This memo, which was signed by three Sales Managers including the claimant, as well as the Sales and Marketing Manager, is reproduced below:-

“GUOMAN

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MEMO



TO : Mr. Fedrik Genberg

FROM : Vincent Pillai,
Casey Karuna
Tengku Adlan
Shirley Lee

DATE : 10 November 2003

RE : SALES COMMISSION DEDUCTION

We appeal to the management to return all monies deducted from our sales commission and reconsider the decision of deducting my commission and my Sales Managers commission for the following reason:

1. Hotel Industry does not practice this deduction.
2. The late payments are usually from the Government sector and we cannot penalise the government as long as we have the local order.
3. Collection is the responsibility of the Finance Department and the Sales Department is requested to assist in collection as per our Job Descriptions given to us.
4. The usual reason for late payments by clients are sometimes due to the inaccuracy of billing or at times dissatisfied clients requesting for compensation, otherwise payments are collected within 90 days except for the government sector where the Local Order is considered as payment in due time. Furthermore credit facilities are requested and approved from the General Manager before credit is extended.
5. Since we paid commission only after full payment is collected, there should not be any deduction especially when we assist in collection.
6. We are also not paid for any early payments or deposits received before the event.
7. Most, importantly, the Sales Manager and myself (Sales and Marketing Manager) have voiced our disagreement on the proposed deduction and we have not signed giving our consent which we believe is **unlawful deductions**.

We appeal to the management to pay all monies due to us (deducted commissions), since all the payments from the Corporate and Government have now been paid. We agree not to expect any commission payments from any unpaid accounts.

Since 2001, our total hotel revenue have been increasing steadily as follows:-

<u>YEAR</u>	<u>REVENUE</u>
2001	RM8.5 MILLION
2002	RM10.9 MILLION

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<u>YEAR</u>	<u>REVENUE</u>
2003	RM11.3 MILLION (Due to SARS)
2004	RM12.5 MILLION (Forecasted)

Total Hotel Revenue has been increasing steadily however incentives/commission schemes has been adjusted and reduced and to make matters worst, deductions were introduced in Jan 2002 which we did not agree.

We are now appealing to the Management to return the monies deducted from the commissions. We have now collected all the payments from the Corporate Companies and Government who have outstanding payments.

We sincerely hope the Management will seriously consider our request as all this factors can boots the confidence level and will motivate the Sales Managers to perform better and focus our attention to achieve our objectives for 2004.

Let me as the Sales & Marketing Manager assure the Management that I will continue to motivate the Sales Managers to perform to the best of their ability and request the Management to support us to work towards achieving our objectives and company goals.

Looking forward to hear from you.

Yours sincerely,

Vincent Pillai	Tengku Adlan	Casey Karuna	Shir Lee
Signed	Signed	Signed	Signed
.....
Sales and Marketing Manager	Sales Manager	Sales Manager	Sales Manager

Guoman Port Dickson Resort ~ A Beautifully Balanced World of Sun, Sea and Golf

In November 2003, the claimant's Sales and Marketing Manager, and all the Sales Managers including the claimant, had a meeting with the company's General Manager in a meeting room at Wisma Hong Leong. All of them voiced their disagreement to the changes and requested that the original commission structure be restored. The General Manager shouted out that they should not ever bring up this issue and he walked out of the meeting. Around the same time, in November 2003, a similar meeting took place at the resort. It was fasting month. The General Manager asked the claimant why his face looked like he was dying. The claimant replied that he was fasting and, to his surprise, the General Manager said "Change religion, lah". Towards the end of the meeting, in response to the request to restore the original commission structure, the General Manager said "If you don't like the new scheme you can find another job". This was the first time the General Manager had made insulting remarks to the claimant and told him to find another job. He realised then that he (the General Manager) was not going to act fairly. By his letter to the company dated 26th February 2004 (CLB30) he gave notice of constructive dismissal. This letter is reproduced:-

"Tengku Adlan Tengku Zainal Rasid

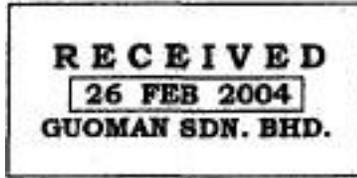
Sales Manager

Guoman Port Dickson Resort

C/O 92-04-07, Apartment Putra Ria

Jalan Bangsar

59200 Kuala Lumpur.



26th February 2004

Mr. Vincent Pillai

Sales and Marketing Manager

Guoman Port Dickson Resort

RE : Dismissal

Due to the actions of the company, I hereby consider myself dismissed from the company effective 26th February 2004 with 2 months notice.

The reasons for my dismissal are as follows:-

(a) Unlawful Deduction of Wages.

- The company has been deducting my wages without my consent.

(b) Unlawful Reduction of Wages.

- The company has been reducing my wages without my consent.

Despite repeated request for rectification of the above, the company has failed to do so.

Under the circumstances, I shall be seeking the appropriate legal resource.

Kindly acknowledge receipt of this letter.

Yours faithfully,

Signed

.....

Tg Adlan bin Tg Zainal Rashid

Sales Manager

C.C : General Manager
: Human Resorce Manager
: Guoman Port Dickson Resort".

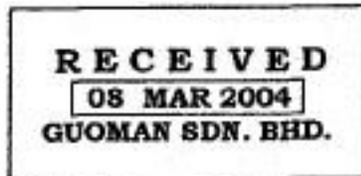
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The company replied by its letter dated 4th March 2004 (CLB31) saying it was unclear as to what deductions the claimant meant and also accepted CLB30 as resignation on the claimant's part. The claimant responded vide his letter dated 8th March 2004 (CLB32) and this letter is reproduced:-

"Major (rtd) Mohd Azmin Abdul Rahman

Human Resources Manager

Guoman Port Dickson



08th March 2004.

RE : Dismissal

With reference to your letter dated 04th March 2004 on the above matter, my explanation are as follows:

- (a) The company has been deducting my commission (part of my wages) since November 2001 without my consent which the company has records.
- (b) The company has been changing and reducing my commission scheme many time (4 Times in 4 Years) without my consent which the company has records.

Please refer to memos dated as follows :

Original Commission Scheme dated 02nd August 1999.

Commission Memo Dated November 20th 2001.

Commission Memo Dated June 11th, 2002.

Commission Memo Dated December 31st, 2003.

- (c) I have voiced my disagreement with regards to the deductions and reductions of my commission to Mr. Fedrik Genberg in August 2002 and again in November 2003 for rectification where, Mr. Vincent Pillai, Casey Karuna, Shir Lee and myself had a meeting in November 2003 at one of the meeting rooms at Wisma Hong Leong. During this discussion, we were told by Mr. Genberg not to ever bring this issue up and Mr. Genberg walked out of the meeting room to our surprise.

Earlier I and the Sales Team have also requested verbally for rectification with Mr. Genberg in his Office in Guoman Port Dickson sometimes in November 2001 but I was told to the company has made it's decision to go ahead with the deduction.

Due to the actions mentioned above, I consider myself dismissed from the company.

Kindly acknowledge receipt of this letter.

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Yours faithfully,

Signed

.....

Tengku Adlan Tengku Zainal

Sales Manager

Guoman Port Dickson Resort

CC : General Manager
Guoman Port Dickson Resort
Senior Exec. HR HLPB
Manager Legal, HLPB".

CLB32 was responded to by the company vide its letter dated 12th March 2004 (CLB33) which was in turn responded to by the claimant vide his letter dated 5th April 2004 (CLB34). CLB33 and CLB34 are reproduced below to complete the picture.

CLB33 :-

"GUOMAN

PORT DICKSON

I/we acknowledge receipt of the above enclosures.

12 March 2004

Signed

.....

Mr. Tengku Adlan Tengku Zainal Rasid

Date : 17/3/2004

Sales Manager

I received this letter under protest)

Guoman Port Dickson Resort

as the statement below untruel)Handwritten

PRESENT

Dear Mr. Tengku Adlan,

ALLEGED DISMISSAL

The above matter and your reply dated 08 March 2004 refer.

We wish to draw your attention to the letter of employment dated 08 July 1999, which you have accepted whereby you had full knowledge and/or accepted the fact that the company's sales commission scheme "**is an incentive scheme to reward the high achievers**". In this regard, the sales commission scheme is not and has never intended as a remuneration per se for the work that you have agreed to carry out but as an *incentive to motivate all sales personnel*.

For the record, you were paid a monthly basic salary for the job you have engaged to carry out. Your salary has been

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increased over the years in addition to discretionary bonuses given by the company. Upon your promotion to Sales Manager on 1st August 2000, the basic salary was increased by 37.5% to reflect your new role and responsibilities.

The Management has over the years made changes to the scheme and has made known to you through the company's memos. The revision and/or amendment to the commission structure was certainly not imposed on your goodself only but also applicable to all sales personnel. Apart from the above, any commissions due to you were paid promptly every month.

We trust that the above has been satisfactory explained. In the meantime, we shall continue to treat your letter dated 26 February 2004 as a letter of resignation and accordingly our stand on this matter remains the same as per our letter dated 04 March 2004.

Yours truly,

Signed

.....

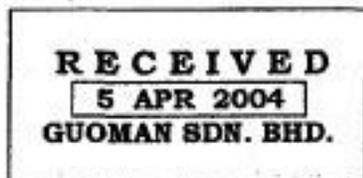
Major (rtd) Mohd Azmin Abdul Rahman

Human Resources Manager

CC : General Manager, Guoman Port Dickson Resort
Senior Executive Human Resources HLPB
Senior Manager, Industrial Relations, HHMC
Manager, Legal, HLPB".

CLB 34:

"Tengku Adlan Tengku Zainal Rasid
Sales Manager
Guoman Port Dickson Resort
C/O 92-04-07, Apartment Putra Ria
Jalan Bangsar
59200 Kuala Lumpur.



05th April 2004
Mr. Fredrik Genberg
General Manager

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Guoman Port Dickson Resort

RE : Fundamental Breaches In The Terms of Employment

I refer to your letter dated 12th March 2004 and it's noted you maintain your stand. I have never at all accepted or agreed that the company said commission scheme "**is an incentive to reward the high achievers**". I have voiced my disagreement to the deduction and reduction on my commission. U did not obtain my consent at all.

It is obvious that your actions is to victimize me and it is done in bad faith. Please be informed that I consider your actions as fundamental breached in the contract of employment between the company and my self. Since you have failed to rectify the said breaches I have no other alternative but to consider myself constructively dismissed effective today and have the matter referred to the Jabatan Perusahaan under Section C (1) [Akta Perhubungan Perusahaan 1967](#) for appropriate relief.

Yours faithfully,

Signed

.....

Tg Adlan bin Tg Zainal Rasid

C.C : Human Resources manager
Guoman Port Dickson Resort".

Concluding his testimony-in-chief the claimant stated that he had earned sales commission averaging RM5,851.89 per month according to the original commission structure. His calculations were based on a detailed statement that he had prepared (CLB73). Based on this statement the total difference in the sales commission between the original structure and the commission paid according to the changes introduced by the company was RM103,673.30.

The company's evidence

Mr. Fedrik Genberg, the company's General Manager (COW1), gave his testimony-in-chief vide a prepared witness statement. Referring to the claimant's letter of appointment he stated that in addition to a salary, the claimant was also entitled to commission as per the proposed structure in Appendix 1. Payment of this commission and the structure was not a fixed term of the claimant's employment contract. As indicated in the letter of appointment the annexed structure was only a proposed one at the time, which in effect meant that this was subject to change. The claimant was to be paid commission. However the amount would vary.

Continuing his testimony, COW1 stated that the claimant was appointed as Assistant Sales Manager and was subsequently promoted to Sales Manager. He reported to the Sales and Marketing Manager. His key duties and responsibilities were to sell leisure activities, rooms and food and beverage packages of the hotel to corporate clients and any other groups. In addition the claimant was also responsible for collections. The Sales Manager had been granted the facility to extend credit to their clients as they were best suited to determine if this would assist them in closing the sale. This worked very well for them. Correspondingly they were then also responsible for collecting the money. The speed of collecting money from the respective company was very dependent upon how well they finalised all the details for the groups as well as how much they followed up on the payment.

The company had made revisions to the commission structure during the tenure of the claimant's employment, which were applicable to all sales personnel including the claimant. He was not the only individual affected.

Continuing his testimony-in-chief COW1 stated that the commission structure was something he had designed and, in retrospect, he would have to say that the first few structures were "works in progress" that were aimed at providing an incentive to increase sales and to remunerating the sales team fairly. Through a process of *trial and*

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error, the final structure was announced vide a memo dated 31st December 2003 (COB25) and this structure was still in use currently.

Concerning the deductions made from the commissions due to the claimant which he had referred to in his letter claiming constructive dismissal, COW1 explained that this had been necessary because the sales team, which previously had no authority to give credit, were permitted to give credit to their clients upon their collective request, on the promise that they would take responsibility for collections. When they failed to adequately do so, these deductions were imposed to drive home the importance of collections.

Concluding his testimony-in-chief COW1 stated that the claimant had elected to remain in employment throughout the several revisions and changes which had been made to the commission structure.

Evaluation and findings

The company, by paragraphs 3.3 and 10 (i) of its statement in reply has pleaded that the commission structure was subject to change at the discretion of its management. Sad to say, this qualification is not to be found in the claimant's letter of appointment or Appendix 1 (CLB8 - 14). Appendix 1 is an integral part of the letter of appointment which by clause (a) refers to commissions "*as clearly stated*" in Appendix 1. Nothing could be clearer. No doubt the sales commission is said to be an "incentive proposal" in Appendix 1. Nevertheless, without further words of elaboration, the contra preferentum rule of construction requires any ambiguity or vagueness of language to be resolved against the maker of the document i.e. the company, and in favour of the claimant. The Court just cannot read into the employment contract words that are not there. The company has failed to translate pleaded matters into solid evidence. COW1 himself has admitted that finalising the commission structure involved a process of "trial and error". At whose expense is the trial and who pays for the errors? Equity, good conscience and the substantial merits of the case require the Court to point its index finger to the company. COW1 very frankly says that in retrospect he would have to say that the first few structure were "works in progress" that were aimed at providing an incentive to increase sales and to remunerating the sales team fairly. This straw-clutching does not move the Court which does not see any spirit of mutual dialogue having been extended to the claimant and his fellow workers; all it sees is unilateral decision making by the big guy. The Court accordingly finds and holds that in unilaterally changing the commission structure and not reverting to the original structure though requested the company had breached the claimant's employment contract and evinced an intention no longer to be bound by it. The claimant was constructively dismissed.

Did the claimant delay in claiming constructive dismissal? The company's counsel cited several authorities which say that too long a delay in responding to a breach by the company might be taken to mean that an employee had waived the breach. Each case must be decided on its own facts. From the evidence before the Court it is clear that the objections and appeals that were made to the company were not by the claimant alone but by the claimant collectively with his fellow Sales Managers and also the Sales and Marketing Manager. At times the representations were made to the management through the Sales and Marketing Manager while at other times these representations to the management were made by the Sales Manager together with the Sales and Marketing Manager as a collective effort. In either case it was not a one-to-one communication between the claimant and the company alone. It would be natural for the claimant not to act on his own just yet without first discussing with the others who were similarly circumstanced. This understandably would have taken up considerable time. While cross-examining the claimant, the company's counsel Ms. Suganthi disclosed that the Sales and Marketing Manager, Mr. Vincent Pillai, also has a case pending in the Industrial Court in relation to a similar claim. The hope of the claimant and his fellow Sales Managers partly hinged on their superior, the said Mr. Vincent Pillai. He had been entrusted with the task of transmitting their pleas onward to the management. Hence it was only to be expected that they waited for him to revert with the management's response. In the event, Mr. Vincent Pillai himself became a party to a separate reference to the Industrial Court. In these circumstances, having regard to equity, good conscience and substantial merits of the case, there was no undue delay on the part of the claimant in claiming constructive dismissal. Furthermore, the company was guilty of not just one breach but a series of breaches. In this regard the Court calls to mind the words of Glidewell LJ in the English Court of Appeal case of *Lewis v. Motorworld Garages Ltd.* (1986) ILR 107 (quoted by the Chairman, Y.A. Lim Heng Seng in *Bayer (M) Sdn. Bhd. v. Rugayah Bte Parman*, Award No. 267 of 1995):_

"This case raises another issue of principle which, so far as I can ascertain, has not yet been considered by this Court. If the employer is in breach of an express term of a contract of employment, of such seriousness that the employee would be justified in leaving and claiming constructive dismissal, but the employee does not leave and accepts the altered terms of employment, and if subsequently a series of actions by the employer might constitute together a breach of the implied

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obligation of trust and confidence; is the employee then entitled to treat the original action by the employer which was a breach of the express terms of the contract as a part - the start - of the series of actions which, taken together with the employer's other action, might cumulatively amount to a breach of the implied term? In my judgment the answer to this question is clearly "yes".

Having held that there was a dismissal the next question the Court has to ask is whether the dismissal was for just cause and excuse. No reasons were put forward by the company for dismissing the claimant. On the contrary, by paragraph 7 of its statement in reply it frankly admits that the claimant had an unblemished performance record. In the circumstances the Court holds that the dismissal was without just cause and excuse.

Remedy and Award

Ms. Suganthi submits that the facts surrounding the claimant's dismissal do not augur well for a continued relationship of mutual trust and confidence which must exist between the claimant and the company. After his dismissal the claimant took a break and took time to find a suitable job. He now works for another resort as a Senior Sales Manager. He appears to be cut out for a resort-type of environment and gives the Court the impression that he is happily settled down to his new job. Reinstatement would not be an appropriate remedy in these circumstances. The Court will instead award a monetary compensation as per the following items:-

- (a) Backwages at the rate of RM2,348.00 per month, being the claimant's last drawn salary but limited to twenty-four months.
- (b) Commission at the rate of RM5,851.89 per month being the average monthly sales commissions earned by the claimant, but limited to twenty-four months. This item is awarded based on the authority of *Lim Seng Hua v. Fiamma Sdn. Bhd.* (1996) 3 MLJ 604.
- (c) The deductions made by the company from the claimant's commissions. This has been explained and tabulated in detail by the claimant at page 73 of CLB. The total amount deducted was RM 103,673.30, but after the dismissal the company paid the claimant RM 1121.24 vide COB36, RM65.78 vide COB37 and RM985.50 vide COB38 totalling RM2,172.52. The amount still being withheld by the company, after setting off these sums paid to date is therefore RM 101,500.78. The claimant has worked for it and, in good conscience, should be paid.
- (d) Compensation *in lieu* of reinstatement at the rate of one month's last-drawn salary for each completed year of service.

From the backwages awarded a deduction will have to be made for the claimant's post-dismissal earnings, though this deduction need not be mathematically calculated. He found a new job about five months after he was dismissed. This new job paid about RM3,800.00 in terms of salary and allowances but he received no commissions. In the circumstances it would be fair to deduct a sum representing 15% of the backwages.

The Court therefore awards the claimant the total sum of RM299,237.34 arrived at as follows:-

Item (a) @ RM2,348.00 x 24 months	- RM56,352.00
Less 15% deduction	- RM 8,452.80
	- RM47,899.20
Item (b) @ RM5,851.89 x 24 months	- RM140,445.36
Item (c)	- RM101,500.78
Item (d) @ 2,348.00 x 4 years of completed service	- RM 9,392.00
	- RM299,237.34

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The said sum of RM299,237.34 shall be paid to the claimant's solicitors Messrs **David Gurupatham** & Koay within fourteen days from the receipt of this award and shall be released by them to the claimant after income tax clearance.

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