

INDUSTRIAL COURT OF MALAYSIA

CASE NO. : 13/4-1360/23

BETWEEN

RAJINDERJIT SINGH A/L INDERAJIT SINGH

AND

HSBC ELECTRONIC DATA PROCESSING (MALAYSIA) SDN. BHD.

AWARD NO: 1153 OF 2025

BEFORE : Y.A. TUAN ARUN KUMAR A/L S KANESIN
- CHAIRMAN
(Sitting Alone)

VENUE : Industrial Court Malaysia, Kuala Lumpur

DATE OF REFERENCE : 14.08.2023

DATES OF MENTION : 19.09.2023 & 05.02.2024

DATES OF HEARING : 02.12.2024, 03.12.2024 & 18.02.2025

REPRESENTATION : Mr. Anthony Gomez
Messrs. Gomez & Associates
Counsel for the Claimant

Mr. Sivabalah Nadarajah together with Ms.
Reena Enbasegaram
Messrs. Shearn Delamore & Co
Counsel for the Company

REFERENCE :

This matter arises out of the reference by the **Director General** for Industrial Relations dated 14.08.2023 pursuant to *Section 20(3) of the Industrial Relations Act 1967*, in respect of the dismissal of **Rajinderjit Singh A/L Inderajit Singh** (“the Claimant”) by **HSBC Electronic Data Processing (Malaysia) Sdn. Bhd.** (“the Company”) on 07.09.2022.

AWARD

1. For ease of reference, Rajinderjit Singh a/l Inderajit Singh will be referred to as the Claimant and his former employer, HSBC Electronic Data Processing (Malaysia) Sdn Bhd will be referred to as the Company.
2. This case was referred to this Court by way of Director General of Industrial Relations reference dated 14.8.2023.
3. This is a case where the Claimant claimed constructive dismissal. The Company claims that the Claimant had exceeded his hospitalization leave (‘HL’) entitlement for the year 2022 and had utilized his annual leave entitlement to cover the excess HL.

4. The Claimant on the other hand contends two (2) things, among others, in respect of his claim for constructive dismissal:
 - 4.1 That the calculation adopted by the Company in respect of his HL was wrong, as the Company had taken into account weekends and public holidays.
 - 4.2 The Company had not obtained his consent before proceeding to use his annual leave to cover the purported excess HL.
5. The Court's duty in respect of a claim of constructive dismissal is to determine if the Claimant's grounds transcend to fundamental breaches going to the root of his employment contract and there was no inordinate delay on the part of the Claimant in bringing up his grievances to the Company.

FACTS ADVANCED BY THE CLAIMANT IN HIS PLEADINGS

6. The Claimant commenced employment with the Company on 19.4.2004 as its Customer Service Executive with a monthly basic salary of RM 1,800.00.

7. The Claimant was confirmed in his position after six (6) months.
8. In 2005, the Claimant while on his way to work met with a serious accident which led him to be certified by SOCSO as an “OKU”. The OKU status did not in any way impair his ability to carry out his normal duties more than satisfactorily for the Company.
9. The Claimant contends that in the year 2021, arising from a very stressful nature of his work, he developed a medical condition diagnosed by his doctor as “vestibular neuronitis”. His consultant physician from KPJ Damansara Specialist Hospital on 16.8.2021 recommended the Claimant to be put on bed rest for a week and thereafter to engage in light duty work for one (1) month. The same consultant once again on 2.9.2021 highlighted that the Claimant’s health issues were incidental and related to his immediate work environment and therefore suggested that it be “reorganised”.
10. The Claimant contends that the Company’s Vice President did not respond satisfactorily and rejected the idea of light duty and demanded that the Claimant obtain a certificate from his doctor to certify that he is not fit to work.

11. Subsequently on 2.10.2021, the same consultant physician explained that pursuant to his earlier letter dated 2.9.2021, that he had given two (2) weeks of sick leave for home bed rest to the Claimant. However, the Vice President wrote to the Claimant on 6.9.2021 as follows:

“Hi Raj, I have discussed with HR and will have this plotted as Hospitalisation Leave for now. As advised by HR if there are future occurrences, we will need to evaluate your medical condition and advise your doctor to provide a “Not fit to work” certificate.

12. In the beginning of 2022, the Claimant was down with Covid - 19 and was on medical leave for 20 days, but the Company went on to include public holidays as part of his medical leave. The Claimant contends that this was a clear breach of his contractual terms of employment.

13. On 29.6.2022, the Claimant while at work collapsed in front of the computer. Subsequently, the Claimant had to undergo a heart procedure. The Claimant was given 22 days of HL. The Company included public holidays in the medical leave and the Claimant

contends this is contrary to law. Starting from August 2022, the Claimant raised his contention with the Company's management in respect of deduction of his medical leave by including public holidays as well as deducting his annual leave without his consent, to offset the purported excess medical leave taken by the Claimant.

14. The Claimant then queried the Company's policy on leave entitlement in general and wanted sight of the Company's handbook to understand the Company's policy on leave. The Company however claimed that its handbook was "demised" long ago without any notification to the employees concerned.
15. The Claimant contends that the unauthorised deduction of the Claimant's annual leave to cover for the purported shortfall in the Claimant's HL was a clear breach of the Claimant's contractual terms.
16. The Claimant having served the Company for 18 years went out to persuade the Company and its management to rectify the purported irregularity of his HL. When all efforts failed, the Claimant served his notice of constructive dismissal on 30.8.2022. The Claimant gave the Company five (5) days' notice to rectify the contractual breach.

When the Company refused to rectify the said contractual breach within the stipulated period, he left the services of the Company on 7.9.2022.

COMPANY'S POSITION IN ITS PLEADING

17. With effect from 1.9.2021, the Claimant reported to one Poornima a/p Alagappan, who in turn reported to one Nisha George, Vice President, Reconciliation, Markets & Securities Services Operation.
18. The Company states that since the Claimant's commencement of employment until his self-cessation of service, the Claimant's medical leave entitlement had remained the same, that is, 14 days of sick leave within each calendar year, and in the event of hospitalisation, the Claimant was entitled to a maximum of 60 days within each calendar year, and this is provided in the Claimant's letter of appointment dated 30.3.2004 and the Employee Handbook.
19. The Company states that for the year 2022, as the Claimant had exceeded his HL entitlement of 60 days within a calendar year, any additional HL was accordingly deducted from his annual leave eligibility for that calendar year, as per the Company's practice.

20. The Company states that any medical/sick/HL for a stipulated period as provided by a registered medical practitioner would invariably include any public holiday(s) falling within that period. This was further expressly provided for in the Company's "Medical Policy Related FAQs" which confirmed that HL includes weekends, public holidays and rest days.
21. The Company further states that in the event the Claimant had exceeded his hospitalisation / sick leave entitlement of 60 days within a calendar year, any additional hospitalisation / sick leave was accordingly deducted from his 38 days' annual leave eligibility for that calendar year.
22. At the material time the Claimant left the Company's services, he had taken 72 days of medical/HL which was in excess of the 60 days eligibility. As a result thereof, 12 days of medical/HL was offset against his unutilised balance of 19.5 days of his accrued annual leave.
23. The Company states that there was communication between the Company and the Claimant on the issue of his leave and the Company had, between 18.8.2022 and 25.8.2022, provided the

Claimant with the relevant clarification on the treatment of his sick and HL.

24. The Company states that the treatment of the Claimant's sick and HL in excess of the Claimant's eligibility is based on the Company's policy which is applied across all levels of employees. The Company further states that back in 2018 and 2020, the Claimant had similarly exceeded his sick/hospitalisation leave eligibility and the excess leave was taken from his annual leave eligibility.

EVALUATION AND ANALYSIS

25. To recap, this is a case where the Claimant had walked out of employment, claiming there is fundamental breaches committed by the Company. The details of the Claimant's grievances can be seen in his letter dated 30.8.2022 captioned "Notice of Constructive Dismissal" (please refer to **pages 53 – 58 of COB 1**).
26. The Claimant had conceded during the hearing that the main issue in respect of him claiming constructive dismissal is on the basis that the Company had calculated weekends and public holidays for his HL in 2022, with the consequent effect being deduction of annual

leave entitlement unilaterally by the Company, to offset the excess HL taken in the year 2022.

27. This Court is not going to go down an exercise of listing cases after cases on constructive dismissal, as that would be just futile exercise for the reading eyes. Suffice to say, the latest authority on the subject matter of constructive dismissal is the Federal Court's case of *Tan Lay Peng (representative of the estate of Tan Leong Huat) v. RHB Bank Bhd & Anor* [2019] ILRU 1026; [2024] 3 MLJ 506, which reaffirms the principle that the test adopted in establishing a claim of constructive dismissal is the contract test and not the unreasonableness test.
28. Coming back to the factual matrix of this case, is there a breach of the Claimant's contract of employment when the Company had calculated the HL to include weekends and public holidays.
29. The documentary evidence presented by the Company is clear. In fact, a perusal of **page 34 of COB 1**, in respect of the Medical Policy Related FAQs clearly states as follows:

"3. Does hospitalisation Leave include weekends?

Yes, hospitalization includes weekends, public holidays and “rest days.”

30. Further, the Court wishes to highlight the evidence of the Claimant when he was cross examined:

“SN Yes, page 15 under paragraph 2.62. Correct?

RAJINDER Yes.

SN Now, Mr Rajin, would you also confirm that prior to 2022, in several years prior to 2022, you have been on a very long medical leave for a variety of reasons. It's nothing to do, no fault of yours. You have been on very long medical leave and the hospitalisation leave for a variety of reasons.

RAJINDER Yes.

SN You had accidents which resulted in you being declared as OKU and what not, right?

RAJINDER Yes.

SN Now, would you also confirm and during those periods, you had lengthy medical leave. Am I correct?

RAJINDER Yes.

SN And in fact, Mr Rajin, would you also confirm during all those lengthy medical leaves for many years, the hospitalization leave, your medical leave entitlement, has always included Saturdays and Sundays.

RAJINDER I disagree with that.

SN You are saying you disagree? It was never? Are you saying that all the times that you had lengthy medical leave, the hospital, Saturdays and Sundays were excluded in the computation. Understand the question?

RAJINDER Yes, I understand the question.

SN So, my question is during all those periods of lengthy leave, years preceding 2022, the medical leave, hospital leave computation included Saturdays and Sundays. Correct?

RAJINDER I never take account into that.

SN I am saying that you confirmed it. That was a fact, that has always been happening. Wouldn't you agree?

RAJINDER Ok, I mean because back then –

SN No, simple. Wouldn't you agree that that is what has been happening?

RAJINDER No. I disagree with that.

SN And in fact, Mr Rajin, in 2018 and 2020, when you were on very lengthy medical leave, annual leave was deducted, was used when you exhausted your medical leave entitlement.

AG Which year?

SN In 2018 and 2020. Correct?

RAJINDER Yes.

AG 2018 and -

SN And 2020.

RAJINDER 2018 I agree. And 2020 I am unsure about it.

SN But you have actually confirmed in your witness statement that that was what has happened.

RAJINDER Ok, that's fine.

SN Correct

RAJINDER Yes.

SN So, that means for all the years preceding 2022, it has always been the practice and you yourself, your leave entitlement, the Saturdays and Sundays were included in the computation. Of course, you said you did not know or you did not object but that was a fact. Would you accept?

RAJINDER That moment, yes.

SN Yes. And also would you also confirm that in all those cases where your medical leave entitlement had already exceeded, the annual leave was used to offset.

RAJINDER I wasn't sure about that.

SN But in fact it was, isn't it? In 2018 and 2020.

RAJINDER I wasn't sure about that.

SN But again, Mr Rajin, you have confirmed in your witness statement that was the fact. And I remind you, you were referring to your, let me just look at it, sorry. Your answers to Question 61 to 64. You confirmed that there was a deduction of your annual leave from your medical leave entitlement. You already confirmed that.

RAJINDER Without my consent, yes.

SN I am putting it to you, you say it's without your knowledge but I am putting it to you you are fully aware of it.

RAJINDER No, I disagree.

SN Because in fact, you had to be fully aware because your payment, your salaries paid, is dependent on that. Wouldn't you agree?

RAJINDER I was on lengthy medical leave.

SN Yes. So, I am saying you were fully aware of it but the fact remains, you accept that in 2018 and 2020, your annual leave entitlement was used to offset the excess medical leave. Correct?

RAJINDER I didn't authorise and I disagree.

SN But whatever it is, but it is a fact that was what has happened.

RAJINDER I disagree. I disagree about the fact that I authorised the Company.

SN I am not saying you authorised or not. I am saying that was a fact, isn't it? And I am putting it to you, you were aware of it and you did not object.

RAJINDER Because I didn't know the law.

SN So, now you say you did not know the law. So, that means you were aware of it but you didn't know the law?

RAJINDER I was not aware and I disagree.

SN So, which is it, Mr Rajin? Sorry, am I going too fast?

JUDGE Yes, it is very fast. Slow down.

SN Slow. I apologise.

JUDGE Yes.

SN Which is it? Is it that you were not aware of it or you did not know the law?

RAJINDER My answer would be, I disagree that I authorised the Company to deduct my annual leave and I didn't know the law until 2022.

SN And in fact, Mr Rajinder, under your terms, it is not a question of you authorising it. The practice is your annual leave will be utilised when you exceed your medical leave. No question of authorising.

RAJINDER That was not written in any of my contract.

SN And Mr Rajin, I am putting it to you that, ok, you already said you are fully aware about it. And I am also saying that, in respect of the Handbook, Mr Rajin, would you agree that it is subject to change?

RAJINDER Yes, I would agree that was subject to change.

SN Ok. And in this particular case, are you aware that the Handbook was replaced by the HR Direct.

RAJINDER No circulars were sent to the employees. And the HR Direct was a platform for us to do enquiry. That was what told by the employer to us.

SN I am suggesting to you all employees were fully aware of the HR Direct, including yourself.

RAJINDER No, I disagree with that.

SN And you have in fact, utilised the HR Direct yourself.

RAJINDER I utilised for documentation purpose to request the HR Direct because it is a platform to actually get information about confirmation letter and things like that. Not about leave and policies.

SN And I am putting it to you, Mr Rajinder, that the HR Direct on leave entitlement is merely a confirmation of what was already in existence.

RAJINDER I was not informed about that when I issued the constructive dismissal.

SN And can I now refer you to your employment contract again at page 6. Sorry, page 12, under "Other rules and regulations".

JUDGE Which document -

SN COB1, my apologies.

JUDGE Page?

SN Page 12. You again confirmed, for the very beginning, the rules and regulations and handbooks are subject to change from time to time. Am I correct?

RAJINDER Yes.

SN And in respect of the hospitalisation leave computation itself, can I refer you to page 34 of COB1?

AG Page 34?

SN 34 of COB1.

RAJINDER Yes.

SN Now, would you agree, Mr Rajin, that even if the HR Direct, it is expressly mentioned here that the hospitalisation leave included weekends , public holidays and rest days.

RAJINDER This was not given to me. This was an afterthought, 34.

SN Yes, you say it's an afterthought. In fact, Mr Rajinder, these HR Direct policies have been in existence for years before you pleaded constructive dismissal. It is not an afterthought. It is already in existence for years.

RAJINDER I was given a different policy than 34.

SN I am suggesting to you, this is the policy. You say you got a different policy. Where is the other policy that you are looking at? So, Mr Rajin, I am just suggesting , I am not going too much into the point, I am just suggesting the HR Direct has been a policy, online policy, which has been in-force for many years that all employees including yourself are fully aware of.

RAJINDER I know the HR Direct's existence as a platform.

SN So you know that it existed?

RAJINDER Existed, not as a frequently ask question platform, regards of leave.

SN Ok. So, you knew it existed. And would you also agree, you would have access to the HR Direct? if you choose to.

RAJINDER The bottom fact here is -

SN No, Mr Rajin. Would you agree, you knew it existed and you have access?

RAJINDER We were not informed that it was an Employee Handbook.

SN I am not saying whether you were informed. You knew that there was a HR Direct.

RAJINDER There was a HR Direct, yes.

SN And you had access to the HR Direct. Yes or no, did you have access or not?

RAJINDER Yes.

SN And in fact, if you have access, you would have seen all these policies which were in the HR Direct.

RAJINDER I was not given the policies, at that moment.

SN I am suggesting to you, Mr Rajinder, you have not been, your statements here is incorrect that you were not aware of this thing. Right, now let's talk about your leave in 2022, ok? You mentioned it in your notice of constructive dismissal letter at page 54 to 55.

JUDGE 54 to?

SN 55

RAJINDER Yes.

SN Ok. Where you set out at paragraph 7 onwards, about what you discovered about your leave entitlement during the time your medical into 2022. Now, just to confirm, in 2022 also, you were on quite a number of days medical leave. Am I correct?

RAJINDER Yes.

SN You were on leave because of COVID.

RAJINDER Yes.

SN And you also had a leave because of a heart condition.

RAJINDER Yes, correct.

SN And during all that time, Mr Rajinder, you will be aware of your medical leave utilisation as and when you went, isn't it?

RAJINDER Yes, correct.

SN And if you wish to also, Mr Rajin, you can check, "Have I completed, have I exhausted my medical leave?"

RAJINDER I was not with my computer.

SN No but if you wish to, you could check with the Company
"Have I exhausted" –

RAJINDER I was on medical leave. I need to rest.

SN No, after you come back from medical leave. You could
have checked. Yes or no?

RAJINDER At that moment, my leave was correctly plotted.

SN No, I am just thinking. Justing thinking, so you could
have checked, isn't it? Let me just take you, then let's you to to
the leave at page 54. Your leave in January and February. That
happened in, you would have already known the leave. You
could have checked and found out what was your, how much of
your medical leave was utilised. Isn't it?

RAJINDER I was not aware because I was sick.

SN No, after that. That means after February, you returned to work. You mean to say, you didn't check? Of course, when you are sick, I don't expect you. But after you returned, you would have known, isn't it? But you did nothing, isn't it Mr Rajinder?

RAJINDER I was not aware that my Saturday, Sunday was deducted, that moment.

SN I am suggesting to you, Mr Rajin, that's the point I am trying to get. You were fully aware of it. That's why I am saying, even in January and February, after that, when your medical leave included the Saturday and Sunday, you knew about it but you did not anything about it.

RAJINDER But I dispute it. That particular moment.

SN I am coming to that.

JUDGE Wait, when you answer. You look at me when you answer.

RAJINDER Yes, sir.

JUDGE What's your answer?

RAJINDER I dispute it. That particular moment, sir.

JUDGE Can you speak a bit louder?

RAJINDER Sure.

SN And, Mr Rajin, the first time you disputed it was in August 2022. Do you agree?

RAJINDER Yes, when my leave was exhausted.

SN So, now my point I am saying is that in the earlier medical leave, which was used in January and February, you did not raise any issue about it, right?

RAJINDER Yes, because I was not exhausted that moment and during COVID. The leave was not exhausted.

SN Ok. Now, that means by August, that means correct, by August 2022, you already knew that 12 days of your annual leave was being used to offset the excess medical leave. Am I correct?

RAJINDER Without my permission, yes.

SN Or whatever. You already became aware by August.

RAJINDER I was disputing it.

SN You were already told by August that 12 days was being utilised. Am I correct?

RAJINDER Yes, but I was still disputing. Yes, correct but I was disputing it.

SN You were disputing it?

RAJINDER I was disputing it. But I knew.

SN Then, just also clarifying, if because you had exceeded your medical leave in 2022 by 12 days, correct, you agree?

RAJINDER Yes, correct.

SN If you did not utilise the annual leave, you would have to be on unpaid leave for 12 days.

RAJINDER Agree.

SN In this case, you were not put on unpaid leave. Am I correct?

RAJINDER Yes, correct.

SN In fact, you continued to be paid because your annual leave was utilised.

RAJINDER Yes, but that was exhausted.

SN Yes or not. You continued to be paid because your annual leave was utilised.

RAJINDER Yes, but the Company need to inform me.

SN I am suggesting to you that this was well within the record of the Company. Well, this is well within your knowledge about this.

RAJINDER But I was not aware about it.

SN So, that means, just to correct me here, Mr Rajin, basically your pleading constructive dismissal, after 17 years, because 12 days annual leave was used without your consent. Correct? Would you confirm that?

RAJINDER Because I didn't authorise it.

SN You are basically –

JUDGE Then just answer. Then your counsel will question you after that.

RAJINDER Yes.

SN And for the 12 days which was utilised, if that was not utilised, you would have been on unpaid leave for the 12 days.

RAJINDER Yes, I totally agree,

SN So, I am suggesting to you, first of all, there was no breach of your contract. Do you agree or disagree?

RAJINDER No, it is a breach of contract.

SN I am also suggesting to you, even if there is a breach as you said, it is a very minor breach because you have suffered no loss.

RAJINDER It was not a minor breach.

SN You disagree?

JUDGE He disagreed.

SN Ok. So, in conclusion, I am not going to go further on that point. The next point you raised in your CD letter is that your grievances and complaints were not being investigated objectively.

RAJINDER Correct.

SN Now, would you agree with me since July 2022, there have been numerous meetings and email communications regarding your complaint.

RAJINDER When I raised it, yes.

SN That means, of course, when you raised it. That's the only time when the Company will have to do it. So, you see, when you raised it, since July, would you agree there had been numerous meetings and email communications on the matter?

RAJINDER My grievance was not addressed.

SN Yes or no?

RAJINDER Yes, my emails were not addressed.

SN And also, it even when to the extent that the Head of HR for the whole company, Ms Anne, also got involved to explain the situation.

RAJINDER She has never spoke to me.

SN But she communicated by email.

RAJINDER No. She only communicated by email when I issued the constructive dismissal.

SN So, the only reason why you say it's unfair is because what you demanded was not accepted.

RAJINDER No, I was not actually given the evidence and information which I needed from the Company, when I raised the issue. When I initially raised the grievance before even my constructive dismissal, I was actually willing to settle it amicably with the Company but I was not getting any answers.

SN Because, I am suggesting to you, because the Company had made it very clear, what was done was in accordance with your contract.

RAJINDER The Company was using -

SN You disagree?

RAJINDER The Company was using the old rules.”

31. Based on the evidence of the Claimant, the Court can draw an inference that the Company has been using weekends and public holidays in its computation of HL in the past for not only the Claimant, but all its employees. The court takes note that when one is on a long hospitalisation leave, the attending doctor would just state in the medical certificate, as an example, “you are given sick leave from 1.6.2025 until 30.6.2025” and hence that is the period of hospitalisation leave, which will mean that weekends and public holidays are not excluded.

32. In fact, such an approach is supported by virtue of reference to *Section 60F(3) of the Employment Act 1955*, which states as follows:

“(3) The employer shall pay the employee his ordinary rate of pay for every day of such sick leave, and an employee on a monthly rate of pay shall be deemed to have received his sick leave pay if he receives from his employer his monthly wages, without abatement

in respect of the days on which he was on sick leave, for the month during which he was on sick leave.”

33. The interpretation of the above section is that an employee on a monthly wage will be entitled to his pay for that month, if he has been given sick leave for that month. In the circumstances, weekends and public holidays are inclusive.
34. The Claimant’s counsel during oral submission of this matter argued that the Company’s past practice cannot be used to justify what is wrong from the outset. The Claimant’s counsel argues that the practice of using weekends and public holidays in the computation of HL is wrong and against the law.
35. The argument posed by the Claimant’s counsel is not wrong. What is wrong remains a wrong. An unlawful act remains an unlawful act and cannot be converted to a lawful act, just because it was done as a practice for a period of time.
36. But in our case, the law does not state that hospitalisation leave only means working days. If that is the case, then clearly what the Company is doing is wrong. What we have is a situation, where

based on past practice, these terms can be implied into the contract of employment.

37. In the case of *Rothmans of Pall Mall (M) Bhd v Rothmans Employees' Union* [1990] 1 ILR 161, the Court stated as follows:

“The phrase "Terms and Conditions of employment" is not defined in the Industrial Relations Act, 1967. But suffice it to say that the "terms of employment" of any person refer to all matters covered by contract of employment. In *British Broadcasting Corporation v. Hearn & Others* [1978] 1 All ER 116 at 118, Lord Denning said:

Terms and conditions of employment may include not only the contractual terms and conditions but those terms which are understood and applied by the parties in practice, or habitually, or by common consent, without ever being incorporated into the contract.”

38. As such, taking into account the fact that the Company had clearly stated in its Handbook that HL includes weekends and public holidays, and the fact that has been practiced in the past, and the Claimant himself had previously taken HL, which included his weekends and public holidays, the Court cannot come to the

conclusion that the Company had breached the terms of employment of the Claimant.

39. On the next consequent issue of the Company deducting annual leave entitlement of the Claimant, after the Claimant had exceeded his HL, the Court agrees with the Claimant's counsel submission that there are no express terms in the Claimant's employment contract or handbook, permitting the Company to use annual leave to offset against excess HL taken by the Claimant.

40. However, the Court cannot be blind to the fact that in the past, the Company had done the same in respect of the Claimant's previous hospitalisation and the Claimant did not raise any objections at that material time.

41. The Court finds that the only reason the Company had used annual leave to offset against the excess HL is to ensure that the Claimant's salary is not affected. In the event annual leave is not utilised, the Claimant would be on unpaid leave for the 12 extra days of his HL.

42. In the circumstances, whilst the Court agrees that there is breach in respect of the Claimant's annual leave entitlement, the Court finds

that does not in way amount to fundamental breach going to the root of the Claimant's employment. There is no monetary loss to the Claimant as he still takes his full basic salary, as the Company had utilised his annual leave to cover the excess HL, to ensure his basic salary is not affected. The loss to the Claimant is he would not have those 12 days of annual leave for the year 2022.

43. That loss of 12 days of annual leave as opposed to receiving the full basic salary for the month of August 2022 cannot in any way be considered as a fundamental breach. A fundamental breach is akin to, objectively speaking, something which is so serious that the employee cannot be accepted to be able to tolerate. As an example, if the employee is not paid his salary, he cannot be expected to stay on, as that would be such a fundamental breach.

44. That is simply not the case on our facts. The Claimant's loss of enjoyment of 12 days of annual leave cannot be considered to be such a fundamental breach, especially when the Company had used the annual leave entitlement to ensure the Claimant does not lose out monetarily, in respect of his salary.

45. The Court finds there is no bad intention on the part of the Company as the Company merely wants to ensure its employees do not lose out monetarily, in terms of their take home pay.
46. In the circumstances, the Court finds that the Claimant has failed to establish his claim for constructive dismissal and hence his case is dismissed.

HANDED DOWN AND DATED THIS 15TH DAY OF JULY 2025

-signed-

(ARUN KUMAR A/L S KANESIN)
CHAIRMAN
INDUSTRIAL COURT, MALAYSIA
KUALA LUMPUR