

Hui Cheng Wan Agnes v Nippon SP Tech (S) Pte Ltd
[2001] SGHC 271

Case Number : Suit 1069/2000/J
Decision Date : 18 September 2001
Tribunal/Court : High Court
Coram : Woo Bih Li JC
Counsel Name(s) : Vijay Kumar Rai (V K Rai & Partners) for the plaintiff; G B Vasu (Arthur Loke Bernard Rada & Lee) for the defendants
Parties : Hui Cheng Wan Agnes — Nippon SP Tech (S) Pte Ltd

Judgment:

GROUND OF DECISION

BACKGROUND

1. The Plaintiff Hui Cheng Wan Agnes was initially employed as an Accounting Officer by K L Manufacturing Pte Ltd with effect from 25 April 1989.
2. The letter of appointment dated 17 May 1989 contained various terms and conditions which I shall come back to later. As the Amended Defence referred to this as 'the employment agreement' I will use the same description.
3. Ms Hui was initially on probation for three months and her employment was confirmed by a letter of confirmation dated 10 August 1989.
4. K L Manufacturing Pte Ltd was a wholly owned subsidiary of Komatsulite Manufacturing Pte Ltd of Japan ('Komatsulite'). It was dissolved by a members' voluntary winding-up. The effective date of dissolution was 2 September 1993 (PBD 17).
5. In the meantime, the Defendant, Nippon SP Tech (S) Pte Ltd ('Nippon SPT') was incorporated on or about 18 September 1990. At all material times, 95% of the shares in Nippon SPT was owned by Komatsulite and 5% was owned by its Managing Director Mr T Kondo. He had been appointed Managing Director on 13 March 1997.
6. It was common ground that between 18 September 1990 and 2 September 1993, the benefits, liabilities, rights and obligations of K L Manufacturing Pte Ltd under the employment agreement and the letter of confirmation were assigned to Nippon SPT with the consent of Ms Hui.
7. In or about March 1999, an Indonesian company PT Nippon SP Tech ('PT NSP') was incorporated. It was operating from Batam and was a wholly owned subsidiary of Nippon SPT .
8. Monthly profit and loss accounts of PT NSP were prepared by the accounting staff of Nippon SPT from the month of April 1999 but were not prepared for the months of August to October 1999 and December 1999 and January 2000. The accounts for April to July 1999 were prepared in Singapore currency only.
9. Later, it was learned that the accounts for PT NSP should be prepared in Bahasa Indonesia and in Rupiah currency which meant more work.

10. This caused unhappiness on the part of Ms Hui and she refused to prepare the accounts for PT NSP. At issue was the accounts for December 1999 and January 2000.

11. As a result of her conduct and certain steps she took, including a step she took to sue one Mr Nishide, Nippon SPT terminated her employment by a letter dated 19 May 2000 ('the Termination Letter').

12. In turn, Ms Hui sued Nippon SPT for damages for wrongful dismissal.

13. After hearing evidence and submissions, I dismissed Ms Hui's claim. After hearing arguments on costs, I ordered her to pay 30% of the costs. She has appealed against my decision.

THE TERMINATION LETTER DATED 19 MAY 2000

14. The Termination Letter states:

'DATE: May 19, 2000

TO: Ms. Agnes Hui

Cc. Mr. Fujii

RE: Termination of employment and dismissal

It has come to our attention that you have acted in a manner such that we have no alternative but to dismiss you with immediate effect. Such acts include:-

a. Your failure to fulfill your obligations to prepare the accounts for the month of December 1999 and January 2000 for PT NSP despite being under strict instructions so to do;

b. You unilaterally decided with your subordinate to write directly to Mr. Nishide, the appointed consultant to the company, without any clearance or reference to me or to any member of the management, clearly stating that you refused to carry the instructions of Mr. Nishide. We consider this act gross insubordination;

c. You received an important fax message from Ernst and Young on the 25 January 2000 which was clearly addressed to yourself and me. However, knowing fully well the contents and the importance of the matters therein, you did not bring it to

our attention until your note dated 2 February 2000. This is highly irresponsible on your part. We have checked with Mr Nishide and we are informed you did not let him have sight of the fax till the 2nd week of February 2000;

d. Your intention in your note dated 2 February 2000 as well as your instructions to your subordinate clearly shows that you do not want to nor intend to carry out Mr Nishide's instructions. This is directly contrary to your acknowledgement of Mr Fujii's note dated 10 June 1999 where you had been specifically and clearly instructed to support Mr. Nishide as the appointed representative and agent of Mr Fujii.

As you are a member of the staff, Mr Fujii sent you a memo dated 9 March 2000, through me, expressing his displeasure at your work conduct. In total disregard of procedure and respect to the Company and Mr Fujii, you have instead started legal action against Mr Nishide.

Your last day of service is on the May 19, 2000.

We will pay you one month's salary in lieu of notice. Please clear your personal belongings by 12 noon May 19, 2000 and return all company items loaned to you as well as all documents and all keys to Ms. Julie Boey by that time. Only upon satisfactory receipt of all items will we make final payment to you.

Signed

T. KONDO

MANAGING DIRECTOR'

15. I categorized the reasons given into five reasons. Following the lettering in the Termination Letter, I summarised them as:

(a) Ms Hui's failure to fulfil her obligations to prepare accounts for PT NSP for December 1999 and January 2000 ('the 1st reason').

(b) and (d) can be read together. They relate to a note dated 2 February 2000 (PBD 118) written by Ms Hui and a note dated 25 February 2000 written by her assistant Linda Lim (PBD 125) ('the 2nd and 4th reasons').

(c) This relates to an urgent fax from Ernst & Young Hanadis Sarwoko & Sandjaja ('Ernst & Young') on 25 January 2000 (PBD 113). It was alleged that Ms Hui did not bring the fax to the attention of Nippon SPT until her note dated 2 February 2000 although she knew the contents and the importance of the matters stated in the fax ('the 3rd reason').

A 5th reason was stated. This relates to Ms Hui's legal action against Mr Nishide for defamation in total disregard of procedure and respect to Nippon SPT and to Mr Fujii, the President of Komatsulite.

CLAUSE 15

16. One of the terms and conditions of the employment agreement is Clause 15. It states:

'15. NOTICE OF TERMINATION

Either party may terminate this contract of service during the probationary period by giving one (1) day written notice without any reasons.

After confirmation, either party may terminate this contract of service by giving to the other one, one (1) week's / month's notice in writing or one (1) week's / month's salary in lieu of such notice. Thereafter, the Employment Act will apply.'

17. Although the second reference in clause 15 to 'one (1) week's' was not deleted, it was common ground that one week's salary did not apply and what was applicable was one month's salary in lieu of notice, subject to Ms Hui's allegation about a permanent and lifelong employment.

18. As I have mentioned, it was common ground that the terms of the employment agreement (and clause 15 thereof) applied to Ms Hui's employment with Nippon SPT .

19. It was also common ground that Ms Hui had received one month's salary in lieu of notice.

20. However, in order to get around clause 15, Ms Hui alleged that Nippon SPT had agreed to or had led her to believe that she would be employed on a permanent and lifelong basis until the age of retirement.

THE FIVE REASONS FOR DISMISSAL

21. I will first deal with the five reasons of Nippon SPT for dismissing Ms Hui.

The 1st reason

22. The job description dated 20 November 1997 pertaining to Ms Hui's job as an Accounts Officer of Nippon SPT states:

'ACCOUNTS OFFICER

Reports to: Managing Director (1) Main Functions Overall responsible for maintaining proper accounting records, preparation of Company's Financial Statements and Monthly Profit & Loss Report, preparation of payroll and all other matters relating to the Company's Accounting Policies.

(2) Responsibilities & Authorities - Payroll ...

To prepare schedules, declarations, statements, etc for year-end audit and attend to auditor's queries and correspondence.

(3) Responsibilities & Authority - Payroll ...

(4) Responsibilities and Authorities - Others ...

Any other work assigned by the Managing Director.'
[Emphasis added.]

23. Ms Hui's position was that she was under no obligation to prepare the accounts of PT NSP.

24. She said that only Mr Nishide had given instructions to prepare such accounts and even then it was on a temporary basis until accounting personnel could be employed for PT NSP.

25. She sought to distinguish Mr Nishide's instructions from those of the management of Nippon SPT because Mr Nishide was an outside consultant from Asahi Bank Research Institute of Japan. She insisted that Mr Kondo, the managing director, had never given her instructions to prepare such accounts.

26. It was clear to me that although Mr Nishide was an outside consultant, he was authorised to give instructions in respect of accounting matters concerning Nippon SPT. He had the full support of the President of Komatsulite, the parent company.

27. In any event, it was also clear to me that although Mr Kondo was not as involved with the accounts as Mr Nishide, he did give instructions to Ms Hui to get the monthly accounts for PT NSP prepared. Indeed, he was making inquiries about such accounts. I need refer to only some of his inquiries below. For example:

(a) In the minutes of a meeting of 4 May 1999, the following is recorded:

'MR T. KONDO ASKS:

WHEN CAN P & L REPORT FOR PT NIPPON SP TECH BE
READY? WHY ACCOUNTS PERSONNEL NEVER GO TO BATAM
TO TEACH

AS ACCOUNTS IS DONE IN SINGAPORE, AGNES [meaning Ms
Hui] FEELS THAT IT IS NOT NECESSARY TO TEACH THE
STAFF IN BATAM HOW TO DO ACCOUNTS EXCEPT THAT
SHE HAS TO KEEP THE DOCUMENTS PROPERLY IN A FILE
AND ONCE A WEEK, THE DOCUMENTS WILL BE SENT OVER
TO SINGAPORE FOR DATA ENTRY. MOREOVER A LOT OF
THINGS ARE NOT READY LIKE THE BANK ACCOUNT IS NOT
EVEN OPENED YET. THEREFORE THERE IS NO NECESSITY TO
GO OVER TO BATAM NOW AS IT WILL BE A WASTE OF TIME
AND MONEY. AS AND WHEN NECESSARY, ACCOUNTS WILL
GO OVER TO BATAM TO LIAISE WITH THE STAFF THERE. ...

ACCOUNTS WILL TRY TO SUBMIT P&L REPORT FOR BATAM
FACTORY ON 18.05.99 ...

MEETING ENDED AT 2.30PM'

Ms Hui accepted that Mr Kondo's inquiry as mentioned in the minutes was directed at her (NE 21 line 7 to 15).

(b) A memo dated 19 May 1999 from Ms Hui to Mr Kondo states as follows:

'19 May 1999

To : Mr Kondo Managing Director

From : Agnes Hui

RE : DELAY IN PREPARATION OF APRIL 1999 PROFIT & LOSS
REPORT FOR NIPPON SP TECH & PT NIPPON SP TECH

Reasons for the delay in submission of April 1999 P & L
Report are as follows:

Many invoices from Komatsulite, Japan were billed to
Singapore at wrong unit prices. A lot of time was involved in
cross checking and price checking New amended invoices
were received by us on 14.05.99 Some are still outstanding
...

A draft copy of Nippon SP Tech's Profit & Loss Report for
April 1999 is attached but it does not include some invoices
from Komatsulite & PT Nippon SP Tech. We seek your
understanding in this matter and the finalised P & L Reports
will be submitted to you as soon as we receive all the
necessary documents.

Thank you.

c.c. Mr Ronald Teo

c.c. Mr Nishide'

28. The minutes of a meeting held on 19 November 1999 states:

'MINUTES OF MEETING HELD ON 19 NOVEMBER 1999 FROM
11.00 AM TO 11.45 AM

PRESENT : MR T. KONDO MR RONALD TEO MS AGNES HUI
MS LINDA LIM

PURPOSE OF MEETING : TO SOLVE THE ACCOUNTING
PROBLEM FOR BATAM FACTORY

The meeting opened with Mr Kondo saying that Mr Nishide has spoken to Mr Fujii about employing a new staff to take care of the Accounts in the Batam factory.

Mr Kondo feels that the Accounts Personnel will only have work to do once a month and will be very free.

Ms Agnes says that her suggestion to Mr Nishide was to get an experienced Accountant to do the Accounts on a part-time basis. In fact, arrangements have been made for Mr Nishide to meet this guy on his next trip to Batam.

Mr Kondo does not understand why the Accounts cannot be done in Singapore in the present Accounting System.

1) ...

2) Ms Agnes explained that according to Indonesian Law, Accounts must be kept in Batam and in Indonesian Rupiah Currency. If the Company wants to keep the Accounts in US\$, then it will have to apply to the Indonesian Government for approval. ...

Instructions were also given by Mr Kondo to use the 1st Week's Exchange Rate as the Standard Rate for the month and Accounts should be kept in US\$.

At this point, Ms Agnes excused herself from the meeting as Josephine who is from the Software House was waiting for her for quite some time.

The following is based on information given by Ms Linda regarding the meeting after Ms Agnes left the room:

Mr Kondo says PT Nippon SP Tech will purchase one P.C. and Mr Teo will source for the Accounting Software to be loaded into the P.C. Either Ms Agnes or Ms Linda will go to the Batam factory to do the Accounts. Mr Teo feels that the present Batam office girls are not able to do the Accounts.

Finally, Mr Teo says we should keep the Accounts in Indonesian Rupiah instead of in US\$ and this was agreed by Mr Kondo. Mr Teo feels that by doing the Accounts in Rupiah, there is only one exchange rate involved.'

29. It was also quite clear to me that Ms Hui and her accounts staff of Nippon SPT had been preparing the monthly accounts for PT NSP from April to July 1999 and for November 1999 (see PBD 283 to 288).

30. Ms Hui had undertaken this task without complaint previously, as she herself admitted (NE 28 line

6 to 9), although she claimed that she was reluctant (NE 52 line 5 to 12).

31. Even if this was to be on a temporary basis until accounting personnel could be employed for PT NSP, no such personnel had been employed at the material time.

32. It was therefore not open to Ms Hui to disassociate herself from the preparation of the monthly accounts for PT NSP for December 1999 and January 2000.

33. However, Ernst & Young then advised on 25 January 2000 that the bookkeeping for PT NSP should be maintained in both Bahasa Indonesia and Rupiah currency.

34. Although it was known by 19 November 1999 that the books of PT NSP should be maintained in Rupiah currency, this had not been done for all the monthly accounts which had been prepared.

35. Furthermore, Nippon SPT appeared to be unaware about the requirement to maintain the books in Bahasa Indonesia until the advice of 25 January 2000.

36. Both the requirements threw a spanner in the works and made things even more difficult for Ms Hui and her accounts staff who were already behind in preparing the monthly accounts of PT NSP.

37. Accordingly, I was of the view that as regards the 1st reason, it was part of the duty of Ms Hui to prepare accounts for PT NSP and she had in fact been doing so. However, she should not be expected to do so in Bahasa Indonesia and Rupiah currency without more help. There was no misconduct on the part of Ms Hui in respect of her failure to prepare the accounts for December and January 2000.

The 2nd and 4th reasons

38. The 2nd reason involves a note dated 2 February 2000 from Ms Hui. It was addressed to Mr Ronald Teo, the general manager of Nippon SPT. His name is Teo Liang Peng but he is also known as Ronald Teo. The note states:

'2 February 2000

To : Mr Ronald Teo

From : Agnes Hui

RE : MAINTENANCE OF ACCOUNTS FOR PT NIPPON SP TECH

Attached is a letter (Ref : FOO-0188/ICTH/1/00) from Ernst & Young, the appointed auditor of PT Nippon SP Tech.

In their letter, they have stated very clearly that Accounts for Batam factory must be kept in Indonesia and it should be maintained in Bahasa Indonesia & in Rupiah currency.

As such, I have discussed with Mr Nishide on 25 January 1999 that it is a waste of time to keep the books in Singapore, in the English language and in S\$. He has agreed to source for accounting services personnel to do the accounts back-tracking to April 1999 and I have also

indicated to him that I will not be keeping the Accounts Books for PT Nippon SP Tech anymore.

Please liaise with him if you have any queries regarding the above matter.

Thank you,

c.c. Mr Kondo Mr Nishide'

39. The 4th reason involves a note dated 25 February 2000 written by Ms Hui's assistant Linda Lim to Mr Nishide. It states:

'25 February 2000

To : Mr Nishide From : Linda Lim

RE : PT NIPPON SP TECH ACCOUNTS

I have discussed with Agnes and we came to the decision that we are unable to do PT Nippon SP Tech Accounts due to these two main reasons.

1) As our Financial year-end is nearing, our priority now is to keep our Nippon SP Tech (S) Pte Ltd Accounts and schedules up-to-date as we will be required to submit these to the auditors for their audit in June 2000

2) As the PT company will expand, we suggest you get a permanent staff to handle strictly PT Nippon SP Tech Accounts. Preferably a person who is well versed with Indonesian Accounting as we are not familiar with the Indonesian Tax Laws and will not be able to forward any monthly tax reports to them in compliance with their Indonesian Tax requirements.

Regards,

Signed '

40. Ms Hui's position was that she had not refused to carry out Mr Nishide's instructions to prepare the accounts for PT NSP.

41. I disagreed. It was quite clear from her note dated 2 February 2000 that she was refusing to do so.

42. Ms Hui also took the position that she was entitled and was even obliged to make unilateral decisions and to reply directly to Mr Nishide especially if the contents of the communication were for the best interests of Nippon SPT.

43. While that was generally true, the truth of the matter was that she was doing more than just making a decision in the best interests of Nippon SPT. She was arrogating to herself the power to

decide whether she, or her staff, would prepare the accounts for PT NSP. That was not a decision for her to make.

44. I also find that she had encouraged her assistant Linda Lim to write directly to Mr Nishide to inform him that they would not be preparing such accounts in response to Mr Nishide's instructions to prepare such accounts.

45. I was of the view that Ms Hui's conduct was wanting. She should have consulted with Mr Kondo and/or Mr Teo first and sought to persuade them of the difficulties which she and her staff were facing. If they were not sympathetic, it was open to Ms Hui to resign. It was not for her to tell Mr Nishide that she would not be doing such accounts any more or, for that matter, to tell Mr Teo, to liaise direct with Mr Nishide.

46. However, I also considered the fact that Ms Hui was being pressed to do the additional work without additional support at that time.

47. Ms Hui also alleged, and I accept, that Mr Nishide had threatened to fire her on 23 February 2000, two days before Linda Lim's memo dated 25 February 2000. It was therefore quite a stressful situation.

48. In the circumstances, I concluded that her conduct, although wanting, was not so bad as to warrant a dismissal for cause. I did not think that she had lost the trust and confidence of Nippon SPT then, and, even if she did, it was not entirely her fault.

The 3rd reason

49. The 3rd reason involves a fax dated 25 January 2000 from Ernst & Young. It is not necessary to set out the contents of the fax.

50. I found that Ms Hui did bring the Ernst & Young fax dated 25 January 2000 to Mr Nishide's attention. This was mentioned in her note dated 2 February 1999 to Mr Teo and Mr Nishide did not give any evidence to the contrary as he did not give any evidence at all.

51. Accordingly, Ms Hui did not fail to bring the fax to the attention of Nippon SPT until 2 February 2000, as alleged, because Mr Nishide can be said to be representing Nippon SPT for the purpose of receiving information about the fax.

52. In any event, from Mr Kondo's own evidence, Mr Kondo appeared to have been aware of the fax before 2 February 2000 (NE 138 line 5 to 139 line 8).

53. Nippon SPT then alleged that Ms Hui did not explain the fax to Mr Kondo but this allegation was made in closing submissions for Nippon SPT for the first time. It was a different complaint from that stated in the Termination Letter. It was also not mentioned in the Amended Defence. 54. Accordingly, I was of the view that there was no misconduct by the Plaintiff regarding the 3rd reason.

The 5th reason

55. I now come to the 5th reason.

56. The background to this is that after Ms Hui had refused to prepare the accounts for PT NSP, Mr Nishide must have complained to Mr Fujii, the president of Komatsulite.

57. As a result, a note dated 29 February 2000 signed by Mr Fujii and Mr Nishide was handed to Ms Hui on 9 March 2000. The note stated:

'Disappointment to you

To Ms. Agnes

We are deeply disappointed to you as we have been perplexed by your inappropriate manner to turn the every point of issue in your own way. We have discussed whichever the personnel treatment to you is appropriate in consideration of any annoyance brought by you this time. If you still believe in your manner as a result of looking back on yourself through this letter, we advice you to find out another company which can render you a agreeable understanding for you immediately. We are unable to keep patience with your intrusive utterance and behavior any more.

(signature) FUJII [hand-written]

(signature) Nishide Shinya [hand-written] 29 Feb 2000' [hand-written]

58. In the light of this note, Ms Hui took two steps. First, she wrote to Mr Fujii directly on 14 March 2000 to explain her position. Secondly, she instructed her solicitors Simon Wong & Associates to write to Mr Nishide to allege defamation. The letter from them also dated 14 March 2000 demanded the following:

'Your ref: Our ref : SW.2000.025.wsn Date : 14th March 2000

Mr Nishide Shinya BY COURIER Asahi Bank Research Co., Ltd. 3-1-6, Fushimicho, Chuoko, Osaka, Japan

Dear Sir

RE: YOUR LETTER OF 29 FEBRUARY 2000 CAPTIONED "DISAPPOINTMENT TO YOU"

....

We are now instructed to seek redress for your wrongful defamation.

Our client would require you to personally apologise to her in front of her Managing Director, Mr Takahiro Kondo and the President of Komatsulite Manufacturing Co. Ltd, Mr Y. Fujii. In addition, our client requires you to place a public apology (the contents of which are to be approved by our client) in one copy each of the local Singapore newspapers namely The Straits Times, The Business Times and The Asahi Shimbun. Further, our client shall require you to indemnify her for all costs and expenses incurred herein.

Kindly revert to us within ten (10) days from the date hereof with a satisfactory reply to our client's abovementioned requirements failing which our client shall not hesitate to take whatever legal action is appropriate to seek redress from you as well as damages and costs for your wrongful defamation.'

59. The demand was not met and Ms Hui commenced legal action against Mr Nishide for defamation.

60. Subsequently, there was an exchange of correspondence between the solicitors for Ms Hui and for Mr Nishide in which Mr Nishide's solicitors had sought to persuade Ms Hui to drop her legal action. I need refer only to one as an illustration.

61. In a letter dated 26 April 2000 from Mr Nishide's solicitors, Peter Moe & Partners to Simon Wong & Associates, they said:

'Dear Sirs, WITHOUT PREJUDICE

MC SUIT 2697/2000/K

We refer to the above matter. ...

However, our client, as is true to his intention from the very start was never to jeopardise any person's income and employment. It is not the Japanese way. Our client himself sought ways and means to help your client. This time our client is proposing that he advise her employers to forbear dismissing her for her actions, to wipe the slate clean and to allow her to start afresh. Our client is willing to do this if and only if this suit is discontinued on a drop hands basis.'

62. In the meantime, Mr Kondo and Mr Teo also tried to persuade Ms Hui to withdraw her legal action.

63. As I have mentioned, Mr Nishide was a consultant with Asahi Research Institute. According to Mr Kondo, it is a wholly owned subsidiary of Asahi Bank, Japan, which is a creditor of Komatsulite. The legal action had brought Nippon SPT and Komatsulite into disfavour, serious embarrassment and friction with Asahi Bank (see para 20 of his affidavit of evidence in chief. See also NE 141 line 12 to 142 line 2).

64. According to Mr Kondo, Ms Hui was aware that her legal action was hurting the relationship with Asahi Bank (see para 21 of Mr Kondo's affidavit of evidence in chief). Ms Hui denied this (NE 40 line 10 to 12). I was of the view that she was aware. In any event, Ms Hui did agree to consider dropping the legal action.

65. However, notwithstanding all the entreaties, Ms Hui refused to drop the legal action. Her reason was that she had not received the apology demanded in her solicitors' letter of 14 March 2000 (NE 39 line 10 to line 24).

66. Coming back to the 5th reason for dismissal with cause, Nippon SPT did not lay down any procedure to be followed if any of its employees wanted to sue someone elsewhere. Therefore, Ms Hui did not fail to follow any procedure.

67. While Ms Hui should have consulted Mr Kondo or Mr Teo before initiating the suit against Mr Nishide, bearing in mind that the suit might cause problems for Komatsulite, of which Nippon SPT is a subsidiary, she was not obliged to do so.

68. Accordingly, I was of the view that the omission by Ms Hui to consult Mr Kondo or Mr Teo and the initiation of the defamation action against Mr Nishide did not amount to such misconduct as to justify a dismissal for cause.

69. I also found that when Ms Hui refused to withdraw her defamation action against Mr Nishide, notwithstanding Mr Kondo's and Mr Teo's request to her to do so, this was the straw which broke the camel's back. Accordingly, Nippon SPT issued the Termination Letter dated 19 May 2000.

Summary on all the five reasons

70. Taking into account all the reasons advanced by Nippon SPT in the Termination Letter and the circumstances, I found that Nippon SPT had not established that Ms Hui's conduct was so bad as to justify a dismissal with cause, although her conduct was wanting (I should mention that 'without cause' in para 8 of my Judgment dated 31 July 2001 should read as 'with cause').

71. However, Ms Hui could not seriously expect to be retained in the employment of Nippon SPT, especially when she continued with her action against Mr Nishide notwithstanding that Mr Kondo and Mr Teo had made it clear to her that her action was hurting the relationship with Asahi Bank.

DID NIPPON SPT AGREE OR LEAD MS HUI TO BELIEVE THAT SHE WOULD BE EMPLOYED ON A PERMANENT AND LIFELONG BASIS UNTIL RETIREMENT?

72. As for Ms Hui's allegation that Nippon SPT had agreed or led her to believe that she would be employed on a permanent and lifelong basis until retirement, Ms Hui relied on a statement. The statement was found in various letters of confirmation or promotion or informing her of a bonus or an increase in her salary. It said:

'We look forward to your continued support and contribution for many more years to come.'

73. In my view, Nippon SPT did not agree or lead Ms Hui to believe that she would be employed on a permanent or lifelong basis until retirement. The statement did not amount to any representation to that effect. It was a statement of appreciation and encouragement but nothing more.

74. Also letters of confirmation or promotion, without more, do not amount to any such representation.

75. I would add that the fact that there were or may have been persons who were employed by Nippon SPT until retirement age is irrelevant.

WHETHER MS HUI'S EMPLOYMENT WAS VALIDLY TERMINATED

76. As regards the question whether Nippon SPT was entitled to exercise its rights under Clause 15 of the employment agreement, I found the judgment of Lord Browne-Wilkinson in *Delaney v Staples* [1992] ICR 483, at p 488 to 489, instructive. He said:

'The phrase "payment in lieu of notice" is not a term of art. It is commonly used to describe many types of payment the legal analysis of which differs. Without attempting to give an exhaustive list, the following are the principle[sic] categories.

(1) An employer gives proper notice of termination to his employee, tells the employee that he need not work until the termination date and gives him the wages attributable to the notice period in a lump sum. In this case (commonly

called "garden leave") there is no breach of contract by the employer. The employment continues until the expiry of the notice: the lump sum payment is simply advance payment of wages.

(2) The contract of employment provides expressly that the employment may be terminated either by notice or on payment of a sum in lieu of notice, summarily. In such a case if the employer summarily dismisses the employee he is not in breach of contract provided that he makes the payment in lieu. But the payment in lieu is not a payment of wages in the ordinary sense since it is not a payment for work to be done under the contract of employment.

(3) At the end of the employment, the employer and the employee agree that the employment is to terminate forthwith on payment of a sum in lieu of notice. Again, the employer is not in breach of contract by dismissing summarily and the payment in lieu is not strictly wages since it is not remuneration for work done during the continuance of the employment.

(4) Without the agreement of the employee, the employer summarily dismisses the employee and tenders a payment in lieu of proper notice. This is by far the most common type of payment in lieu and the present case falls into this category. The employer is in breach of contract by dismissing the employee without proper notice. However, the summary dismissal is effective to put an end to the employment relationship, whether or not it unilaterally discharges the contract of employment. Since the employment relationship has ended no further services are to be rendered by the employee under the contract. It follows that the payment in lieu is not a payment of wages in the ordinary sense since it is not a payment for work done under the contract of employment.' [Emphasis added.]

77. Although Mr Kondo did say that Nippon SPT would not issue a one month notice (under Clause 15) without good reason (NE 100 line 1 to 3 and NE 111 line 17 to NE 112 line 8), Nippon SPT is nevertheless entitled to issue a one month notice or pay one month's salary in lieu thereof even without any good reason.

78. Accordingly, I was of the view that Nippon SPT was entitled to exercise and did exercise its rights under Clause 15. It had validly terminated Ms Hui's employment.

79. Even if Nippon SPT had initially omitted to give one month's salary in lieu of notice, the extent of Ms Hui's damages would be the amount which she would have received until her employment was lawfully terminated, see *Alexander Proudfoot Productivity Services Co Singapore Pte Ltd v Sim Hua Ngee Alvin* [1993] 1 SLR 494 and *Latham v Credit Suisse Boston* [2000] 2 SLR 693. This would have been the one month's salary in lieu of notice.

OTHER SUBMISSIONS FOR MS HUI

Disciplinary proceedings and rules of natural justice

80. Ms Hui alleged that her employment was terminated although no disciplinary proceedings were conducted and if they had been conducted, they were unfair as being in breach of the rules of natural justice (see para 10d of the Amended Statement of Claim).

81. In my view, the issue about the rules of natural justice is not relevant as such rules do not apply to a termination of employment in accordance with the terms of a contract, even if, for the sake of argument, they apply to a dismissal under ordinary contracts of employment where there is no prescribed procedure for a dismissal.

82. As for disciplinary proceedings, Mr Rai relied on a notice dated 10 June 1999 from Mr Fujii as giving rise to the need to have disciplinary proceedings. It states: 'Notice to every staffs (sic) in N-SP Jun, 10, 1999 It is regrettable that some staffs (sic) doesn't understand the mission of Mr. Nishide yet. Once again, I shall remind all staffs (sic) of the following instruction.

As a CEO in Komatsulite Head Office, I have committed to Mr. Nishide to excute my auditing and supporting job in my overseas factories. So that he shall play a role instead of me in this commitment.

On contrary to this regard, the staffs (sic) who are not inclined to be subject to my policy can be free to discontinue to work here. And the staffs (sic) who are not supportive or negative to his commitment and instructions shall be treated with serious proceedings properly in strict measure.

Chief Executive Officer in Head Office and Chairman in N-SP Mr. Fujii

Signature_____ ' [Emphasis added.]

83. I did not agree with Mr Rai. The reference to 'with serious proceedings' meant 'seriously' and was a warning of dismissal whether with cause or without cause.

84. Even if the notice was interpreted to mean that disciplinary proceedings would be conducted for staff who were not supportive or were negative this would still be irrelevant where the contract of employment is otherwise terminated in accordance with its terms.

85. In any event, Ms Hui knew about the concerns of Nippon SPT, especially about her legal action against Mr Nishide, and would not budge from her position.

Bad faith

86. I would also mention that it was suggested by Ms Hui that the management of Nippon SPT was trying to get rid of her because she knew too much (NE 13 line 7 & 8 and NE 41 line 7 to 15). She alleged her dismissal was done in bad faith.

87. On this point, Ms Hui alleged, inter alia, in para 21 of her affidavit that:

(a) there had been excessive purchases by Nippon SPT from Nana Impex Pte Ltd and NM Planning Pte Ltd which were allegedly set up by a lady (who Ms Hui had

named) who had been employed by Nippon SPT as a receptionist around 1992 to 1993. She even alleged that since 1993, Mr Kondo and the lady had had 'a close and personal relationship';

(b) purchases from NM Planning were at inflated prices;

(c) Mr Kondo had revised his own salary package (without approval from Mr Fujii).

88. She also alleged that monies were owing by PT NSP to Nippon SPT and had not been recovered by the latter. This allegation was a non-starter. It was up to Nippon SPT to decide whether and when it would recover such monies. 89. I was of the view that the allegation of bad faith was a red herring as Nippon SPT was entitled to terminate her employment by paying one month's salary in lieu of notice.

90. Furthermore, Ms Hui had failed to establish bad faith. In reaching this conclusion, I took into account the following:

(a) Ms Hui's allegations of instances to demonstrate bad faith, as set out above, were not mentioned in her letter dated 29 May 2000 to Mr Kondo responding to the termination letter. Such allegations were also different from those stated under her Amended Statement of Claim at para 10f.

(b) the evidence and demeanour of Mr Kondo and Mr Teo.

(c) Ms Hui's employment would not have been terminated but for her legal action against Mr Nishide.

91. It seemed to me that the alleged instances of bad faith given in evidence was Ms Hui's way of getting her own back at Mr Kondo and/or Nippon SPT.

Retrenchment

92. The Amended Statement of Claim mentions retrenchment benefits for damages. However, there was no valid issue about retrenchment.

SUMMARY

93. Ms Hui is obviously a person who has strong views about her legal rights. However, she should bear in mind that her former employers also have their legal rights.

WOO BIH LI
JUDICIAL COMMISSIONER
SINGAPORE

Date : 18 September 2001

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