Chan Miu Yin *v* Philip Morris Singapore Pte Ltd
[2011] SGHC 161

Case Number	: Suit No 152 of 2011 (Summons No 1924 of 2011)
Decision Date	: 04 July 2011
Tribunal/Court	: High Court
Coram	: Shaun Leong Li Shiong AR
Counsel Name(s)	: Tan Chau Yee (Harry Elias Partnership LLP) for the plaintiff; J. Sathiaseelan and Ramesh Kumar (Allen & Gledhill LLP) for the defendant.
Parties	: Chan Miu Yin — Philip Morris Singapore Pte Ltd

Civil Procedure

Employment Law

4 July 2011

Shaun Leong Li Shiong AR:

Introduction

1 The present striking-out application raises the interesting question of whether it is plain and obvious that a former employee's claim against the former employer for damages in having been dismissed in an *unfair manner*, or in *bad faith*, discloses no reasonable cause of action.

2 The plaintiff is a former employee of the defendant, and she claimed to have been dismissed in an unfair manner, and/or dismissed in bad faith, by the defendant. The defendant brought an application to strike out the plaintiff's claim, principally on the basis that a claim brought by a former employee against an employer for the unfair manner of dismissal and dismissal made in bad faith is not recognised under the law. I have explained how it is not plain and obvious that the law does not recognise a former employee's claim in damages for the unfair manner of dismissal and dismissal in bad faith (see especially [38]–[40], [43]-[45], [48]-[51], [57]-[59]), notwithstanding the seminal House of Lords' (as it then was) decision of *Johnson v Unisys Ltd* [2003] 1 A.C. 518 ("*Johnson v Unisys*") and the developments subsequent to the decision.

3 Nevertheless, in view of the plaintiff's *material admissions in the pleadings*, I found the claim to be inescapably and fundamentally flawed, the continuance of which would achieve no practical result other than to advance the plaintiff's collateral interests in pursuing the defendant to pay her more than what she was contractually entitled to under her employment contract. The claim is therefore struck out as it is frivolous, vexatious, and an abuse of proceedings.

Factual background

4 The plaintiff entered into a written contract of employment with the defendant pursuant to a letter of appointment dated 26 June 1997, where the plaintiff was appointed the manager of Information Systems. Its terms included a discretionary variable bonus in addition to the salary, and a termination clause, the relevant parts of which has been reproduced as follows ("the termination clause"):

9. **Termination**

... your service with the Company may be terminated by either party giving to the other not less than one(1) month's notice in writing or one(1) month's salary in lieu of notice.

Your employment may be terminated immediately by the Company without prior notice if you shall at any time: -

(i) Commit any serious or persistent breach or any of the terms of your employment; or

(ii) be guilty of any grave misconduct or wilful neglect in the discharge of your duties; or

(iii) become bankrupt or make any arrangements or composition with your creditors.

5 The plaintiff was employed by the defendant for about 13 years before her employment was terminated on 21 January 2011. According to the plaintiff, her contract of employment was terminated because the defendant had wanted to "silence her", as she had highlighted several unlawful activities that the defendant was allegedly involved in. Specifically, in 2009, the plaintiff had raised some questions regarding the defendant's conduct of alleged unlawful marketing activities to the defendant's then general manager, one Mr Daniel Touw.

6 Subsequently, on 17 June 2010, the Health Sciences Authority ("HSA") preferred two charges against the defendant (the legal proceedings in connection with these two charges were on-going as at 29 March 2011). Under the two charges, it was alleged that the defendant had published advertisements that contained express inducements to purchase a tobacco product.

7 On 2 August 2010, the plaintiff again highlighted the defendant's alleged unlawful marketing activities, this time to one Mr Martin Inkster ("Mr Inkster"), the general manager who had replaced Mr Touw. According to the plaintiff, she had strongly advised Mr Inkster to discontinue those alleged unlawful marketing activities.

8 During a performance review on 14 January 2011, Mr Inkster informed the plaintiff that her work performance for the year 2010 was assessed as "improvable", which was the lowest rating under the defendant's appraisal process. The appraisal was based on Mr Inkster's personal assessment of the plaintiff's work performance, as well as on the assessment provided by Ms Jennie Chan, the director of Information Systems Asia, and Ms Hsu King Lan, who was Ms Jennie Chan's immediate supervisor.

9 It was not disputed that the plaintiff had received relatively positive annual appraisals prior to the year 2008, and that the plaintiff had received a few awards in recognition of her service to the defendant, the last of which was received in around November 2008. However, it was also common ground between the parties that the plaintiff had been given the lowest appraisal rating of "improvable" for three consecutive years, from 2008 to 2010.

10 On 17 January 2011, the defendant, through Mr Inkster and Mr Chua Chee Wee (the defendant's Human Resource officer) ("Mr Chua") offered to terminate the plaintiff's employment with payment of one month's salary in lieu of notice in accordance with the termination clause, and an *ex gratia* payment of S$40,000. The plaintiff requested for more time to respond.

11 Mr Inkster and Mr Chua met the plaintiff in the morning of 21 January 2011, when the plaintiff rejected the defendant's offer made on 17 January 2011. According to the defendant, the plaintiff had, at this meeting, alleged that Mr Inkster had conspired to terminate the plaintiff's employment

because; the plaintiff had highlighted several unlawful activities that the defendant had allegedly been involved in to Mr Inkster on 2 August 2010, and that the plaintiff had in her possession information that may be damaging to the defendant in the legal proceedings related to the two charges preferred by HSA. Mr Inkster rejected these allegations and maintained that her dismissal was due to the plaintiff's poor work performance as reflected in her getting the lowest rating under the defendant's appraisal process. Mr Inkster thereafter informed the plaintiff that if the terms of the 17 January letter were rejected, the defendant would be constrained to terminate her employment in accordance with the termination clause in the letter of appointment, and asked the plaintiff to re-consider the offer.

12 Mr Inkster and Mr Chua met the plaintiff again in the afternoon of 21 January 2011. According to the plaintiff, she had expressed that the manner in which she was terminated was unfair, especially given her many years of contribution to the defendant, and the fact that the *ex gratia* payment of S$40,000 would in any case, have been paid to her as part of her incentive compensation. It was not disputed that the plaintiff found the offer of *ex gratia* payment of S$40,000 a paltry offer as she have heard of cases where former employees of the defendant who were dismissed were paid much more when they were dismissed. The defendant increased its offer of *ex gratia* payment from S$40,000 to S$75,000. The plaintiff rejected this offer.

13 The defendant therefore terminated the employment contract by a letter dated 21 January 2011. No reasons were given for the termination. It was common ground between the parties that no *express terms* of the employment contract have been breached in the termination. It was undisputed that, the termination clause has been complied with, as the plaintiff was in fact paid *more than* one month's salary in lieu of notice; specifically the sum of S$26,993.47. This amount comprises the plaintiff's one month's salary for the period of 1 January 2011 to 31 January 2011 (S$11,706.00), the plaintiff's one month salary in lieu of notice (S$11,706.00), the year end bonus pro-rated on a one month basis (S$975.50), transport allowance (S$625.00), mobile phone allowance (S$90.00), and payment for unconsumed accrued annual leave of 3.5 days (S$1,890.97). After taking into account the CPF deductions, the sum of S$25,519.47 was credited to the plaintiff's bank account.

14 The plaintiff commenced an action against the defendant, and claimed for damages for having been dismissed in an unfair manner, and dismissed in bad faith. The plaintiff pleaded that the *manner* in which her employment was terminated was *unfair* in the following (see Reply at [18]):

> ...the Plaintiff had expressed that the *manner* in which she was being terminated is *unfair*, especially given her many years of contribution to the Defendant, the manner in which she was targeted to leave, how her annual leave balance was adjusted to reflect only up till 31 January 2011 even though the Plaintiff's employ had not been terminated at the point of time, and the fact that the *ex gratia payment of S$40,000 offered in the 17 January Letter would, in any case, have been due from the Defendant to her as part of her incentive compensation*.[Emphasis added].

15 With regard to her claim of having been dismissed in *bad faith*, the plaintiff elaborated in the pleadings the reasons and motivations behind the dismissal (see statement of claim at [14]):

> The Defendant had decided to terminate the Plaintiff's employ *due to the Defendant's desire to silence the Plaintiff*, due to:
>
> a. the Plaintiff's knowledge of the Defendant's unlawful marketing activities,
>
> b. the Plaintiff raising questions regarding the Defendant's conducting [sic] [of] any unlawful

marketing activities and advising the Defendant to discontinue those activities and to set things right,

c. any possible discriminatory evidence that [the Plaintiff] may have against the Defendant's such activities (including but not limited to the current charges by the [Health Sciences Authority]),

d. [the Plaintiff] having continued access to sensitive documents if she were to continue to be under the Defendant's employ, and/or

e. The fact that she may one day be summoned to testify against the Defendant with these evidence that she had access to, given her strong stance on the matter.

The Defendant's act of termination of the Plaintiff's employ [was made] *in retaliation against her raising the question and her concern regarding the Defendant's conducting any unlawful marketing activities*... [Emphasis added].

16 The defendant's pleaded position is that the plaintiff's claim was designed to wrongfully exert pressure on the defendant to pay the plaintiff monies that the defendant is not lawfully obliged to pay. The defendant then took up an application under O 18 r 19(1) of the Rules of Court and/or under the inherent jurisdiction of the Court to strike out the plaintiff's claim.

The issues

17 It was not disputed that there was no breach of any *express terms* in the employment contract. The termination clause expressly provides that the employment contract can be terminated by either party giving to the other not less than one month's notice in writing, or one month's salary in lieu of notice. It was also not in dispute that the latter was elected and performed by the defendant; the plaintiff had in fact received more than one month's salary in lieu of notice. The key dispute lies in whether there was any breach of the ***implied terms*** (presupposed to be) found in the employment contract. In the proceedings before me, the parties dealt with the matter at the *threshold level*. More specifically, the plaintiff's claim on dismissal made in an unfair manner and/or dismissal made in bad faith was premised upon the *presupposition* that there exists in employment contracts (in general, and subject to the express terms of the contract in question) two *implied terms in law*:

(1) the implied term that the employer will treat an employee ***fairly*** in the ***manner*** of dismissal; and

(2) the implied term that the employer ***will not exercise the contractual right*** to terminate the employment contract ***in bad faith*** .

18 It was submitted on behalf of the defendant, that the employer's reasons and motivations in terminating a contract of employment are irrelevant under the common law, and that the law does not recognise a claim based on dismissal in bad faith. The defendant relied heavily on the decision of *Hui Cheng Wan Agnes v Nippon SP Tech (S) Pte Ltd* [2001] SGHC 271 ("*Hui Cheng Wan*") to support this position. Consistently, the defendant's counsel maintained that a claim based on "unfair dismissal" is not recognised by the common law, and has no place in Singapore law. The defendant relied principally on the decision of *Aldabe Fermin v Standard Chartered Bank* [2010] 3 SLR 722 to support this position.

19 In view of the oft-stated principle in *Ching Mun Fong (executrix of the estate of Tan Geok Tee, deceased) v Liu Cho Chit and another appeal* [2000] 1 SLR(R) 53 at [12], the *overarching* issue is whether it is *plain and obvious* that the plaintiff's claim for damages based on unfair dismissal and/or dismissal made in bad faith discloses no reasonable cause of action. This issue can in turn be answered by examining two precise sub-issues of, whether it is plain and obvious that the law does not recognise the existence of:

(a) an implied term that the employer will treat an employee fairly in the manner of dismissal; and

(b) an implied term that the employer will not exercise the contractual right to terminate the employment contract in bad faith.

20 In view of the defendant's pleaded position (see [29(g)] of Defence) that the plaintiff's claim is used to wrongfully exert pressure on the defendant to pay the plaintiff monies that the defendant is not lawfully obliged to pay, there is also a third issue of whether the claim ought to be struck out for being frivolous, vexatious and an abuse of proceedings.

The Decision

Whether it is plain and obvious that the law does not recognise the existence of an implied term that the employer will treat an employee fairly in the manner of dismissal

21 The plaintiff has the unenviable task of challenging the House of Lords' decision in *Johnson v Unisys*, where it was conclusively held that the there is no cause of action in common law for a claim for damages based on the unfair manner of dismissal, and that such a claim was properly struck out as disclosing no reasonable cause of action. Before the decision in *Johnson v Unisys* is discussed further, and in order to understand the reasoning of that decision in its proper context, it is useful to highlight at the outset that the implied term of *mutual trust and confidence* in employment contracts has apparently received *express* recognition in local jurisprudence, in particular, in the recent decision of *Wong Leong Wei Edward and another v Acclaim Insurance Brokers Pte Ltd and another suit* [2010] SGHC 352 ("*Wong Leong Wei v Acclaim Insurance*").

The implied term of mutual trust and confidence

22 Although the implied term of mutual trust and confidence is distinct from the implied term that the employer will not dismiss the employee unfairly; it is significant that Lord Steyn has, in *Johnson v Unisys*, opined that the implied term that the employer will not dismiss the employee unfairly can be developed from an expanded understanding of the implied term of mutual trust and confidence between the employer and employee. (I add here, parenthetically, that if Lord Steyn's views are taken to be persuasive in the local context, the apparent recognition of the implied term of mutual trust and confidence in the decision of *Wong Leong Wei* would militate against the defendant's position to some extent).

23 The existence of the implied term of mutual trust and confidence in every contract of employment (subject to the express terms of the contract in question) is, in so far as English law is concerned, entrenched by the House of Lords' decision in *Mahmud v Bank of Credit and Commerce International S.A.* [1998] A.C. 20 ("*Mahmud v BCCI*"). The plaintiffs were two long-serving employees (one of 16 years, and the other, of 12 years) of a bank which had collapsed as a result of massive fraud perpetrated by those in control of the bank. After the plaintiffs were dismissed on grounds of redundancy, the plaintiffs brought an action asserting that by reason of the corrupt and dishonest manner in which the bank had operated and the consequential collapse of the bank, the plaintiffs had

much difficulty in obtaining new employment because of their association with the bank, and thus claimed for "stigma compensation" arising from being placed in a handicap in the labour market. The Court of Appeal viewed that it was bound by the rule set in an earlier House of Lords' decision in *Addis v Gramophone Co Ltd* [1909] A.C. 488 ("*Addis v Gramophone*") that the law recognises no claim in damages for injury to feelings, mental distress, loss of reputation, or loss of employment prospects stemming from the unfair, harsh or humiliating manner of dismissal; and being bound by this rule, the Court of Appeal in *Mahmud v BCCI* decided that the claim for "stigma compensation" discloses no reasonable cause of action.

24 When the matter came before the House of Lords' in *Mahmud v BCCI*, the Law Lords heavily qualified the earlier decision of *Addis v Gramophone*, and held that the law recognises an implied term in every contract of employment that the employer or employee would not, without reasonable and proper cause, conduct oneself in a manner likely to destroy or seriously damage the relationship of confidence and trust between the employer and employee. The House of Lords held that the cause of action based upon the breach of this implied term disclosed a reasonable cause of action, and found that the employer in that case had breached the obligation (as derived from the implied term of trust and confidence) not to carry on a dishonest or corrupt business the stigma of which would imperil its employees' chances of future employment. Lord Steyn in *Mahmud v BCCI* related the evolution of the implied term of trust and confidence to the development of the employer-employee relationship, and suggested that the origin of the term could be found in the implied general duty to co-operate to ensure the performance of the contract (for the general duty to co-operate, see *Goodway v Zurich Insurance Co* [2004] EWHC 2825, (2004) 96 Const. L. R. 49; *Kellang Shipping SA v Axa Assurances Senega*l [2007] 1 Lloyd's Rep. 16 at [24], [36]), per Lord Steyn at 109:

> The evolution of the [implied] term [of mutual trust and confidence] is a comparatively recent development. The obligation probably has its origin in the general duty of co-operation between contracting parties: *Hepple & O'Higgins, Employment Law*, 4th ed. (1981), pp. 134-135, paras. 291-292. The reason for this development is part of the history of the development of employment law in this century. The notion of a 'master and servant' relationship became obsolete. Lord Slynn of Hadley recently noted 'the changes which have taken place in the employer-employee relationship, with far greater duties imposed on the employer than in the past, whether by statute or by judicial decision, to care for the physical, financial and even psychological welfare of the employee:' *Spring v. Guardian Assurance Plc*. [1995] 2 A.C. 296 , 335B. A striking illustration of this change is Scally's case [1992] 1 A.C. 294 , to which I have already referred, where the House of Lords implied a term that all employees in a certain category had to be notified by an employer of their entitlement to certain benefits. It was the change in legal culture which made possible the evolution of the implied term of trust and confidence.
>
> There was some debate at the hearing about the possible interaction of the implied obligation of confidence and trust with other more specific terms implied by law. It is true that the implied term adds little to the employee's implied obligations to serve his employer loyally and not to act contrary to his employer's interests. The major importance of the implied duty of trust and confidence lies in its impact on the obligations of the employer... and the implied obligation as formulated is apt to cover the great diversity of situations in which a balance has to be struck between an employer's interest in managing his business as he sees fit and the employee's interest in not being unfairly and improperly exploited.
>
> The evolution of the implied term of trust and confidence is a fact... I regard the emergence of the implied obligation of mutual trust and confidence as a sound development.

25 The House of Lords' decision of *Mahmud v BCCI*, and the existence of the implied term of trust

and confidence between the employer and employee, has apparently been accepted in local jurisprudence. In particular, the Court in *Wong Leong Wei v Acclaim Insurance* observed the following:

> 51 It is thus apparent from *[Mahmud] v BCCI* that a claimant will be entitled to damages from a former employer if he or she can prove that the former employer was in breach of the implied term of trust and confidence and which resulted in loss of future employment prospects. …
>
> 52 ... on the authority of *[Mahmud] v BCCI*, I accept the submission by Edward's counsel that, in principle, if it can be shown that the defendant had wrongfully dismissed Edward *in a manner* that was dishonest or illegitimate which amounted to a breach of the implied term of trust and confidence, and as a direct result of that wrongful dismissal it can be proven that Edward suffered a real and provable financial loss, in my view, Edward would be entitled to claim against the defendant for such loss beyond the contractual notice period. [Emphasis added].

26 Having gone through the background of the implied term of mutual trust and confidence between the employer and employee (which is necessary for the proper understanding of the seminal House of Lords' decision of *Johnson v Unisys*), I will now move on to deal with the question proper of whether it is plain and obvious that the law does not recognise the existence of an implied term that the employer will treat an employee fairly in the manner of dismissal. It would be appropriate to start off with the submissions made by the defendant's counsel on a local decision.

The defendant's submissions on Aldabe Fermin

27 The defendant's counsel, in [33] of the defendant's further written submissions, submitted that the decision of *Aldabe Fermin v Standard Chartered Bank* [2010] 3 SLR 722 ("*Aldabe Fermin*") is authority for the position that a claim based on unfair dismissal is not applicable under Singapore law. The defendant's counsel relied on the following paragraphs of the decision to support its submission:

> 49 This statutory action of unfair dismissal is entirely different from the common law doctrine of wrongful dismissal. The term "wrongful dismissal" has no special legal meaning. It is merely a term used to describe an employer's repudiatory breach of an employment contract. The courts deal with a claim of wrongful dismissal in the same way as they treat any other claim for breach of contract. See *Port of Singapore Authority v Wallace John Bryson* [19791980] SLR(R) 670 ("*Wallace*"). Hence, the common law rule that an employer can rely on any additional reason(s) (whether known to him or not) which existed at the time of dismissal to justify the dismissal applies in Singapore.
>
> 50 In contrast, unfair dismissal under the UK Act focuses on the employer's state of mind. Under the UK Act, the employer is required to give the dismissed employee a letter documenting the reasons for which he has been summarily dismissed. Should the employee make a claim of unfair dismissal, the employer must justify the dismissal with reference only to the reasons laid out in that letter.
>
> 51 The UK Act has no equivalent in Singapore. Accordingly, the UK decisions cited by the plaintiff dealing with unfair dismissal are not directly relevant.

28 In my view, the submission is flawed is so far as it is based on reading paragraphs [49] – [51] of the written grounds of *Aldabe Fermin* in isolation, and out of context. There is nothing in *Aldabe Fermin* that states that a common law claim based on unfair dismissal is not recognised under Singapore law. The precise question that the Court in *Aldabe Fermin* dealt with, was whether the employer could rely on reasons that were not found in the employer's withdrawal letter to justify the

summary dismissal of the employee. In *Aldabe Fermin*, the employer's original reason for withdrawing its letter of offer from the plaintiff-employee was due to the plaintiff's stated desire to resign on his first day of work. During the trial, the employer sought to supplement its reasons for summarily dismissing the plaintiff by listing four reasons that related to the plaintiff's alleged misconduct. The Court therefore, considered the relevant authorities and held that unlike the position in the UK where the Employment Protection Act 1975 (c 71) (UK) requires the employer to justify the dismissal only with reference to the reasons stated in the dismissal letter, there is no such statutory requirement or statutory equivalent in Singapore. As such, the Court concluded that (at [56]):

> Hence, I find that the defendant was not precluded from relying on the additional grounds to justify the dismissal notwithstanding the fact that they were not cited in the withdrawal letter.

29 It is therefore evident that the decision of *Aldabe Fermin* provides no assistance to the defendant. Having dealt with the defendant's submission based on *Aldabe Fermin*, I will now proceed on to discuss the seminal House of Lords decision of *Johnson v Unisys*.

The House of Lords' decision of Johnson v Unisys

30 Notwithstanding the developments in *Mahmud v BCCI* highlighted above, the House of Lords in *Johnson v Unisys* was not prepared to develop the implied term of mutual trust and confidence further into an implied term that the employer will treat an employee *fairly* in the *manner* of dismissal. In that case, the plaintiff-employee had suffered work related stress and the employers became aware of his particular psychological vulnerability. The employee was asked to attend a meeting one day, and no specific allegations were put to him. He was dismissed later on the same day. He made a complaint of unfair dismissal to an industrial tribunal which upheld his complaint and awarded him compensation. The employee thereafter commenced proceedings in court against the employer for damages for wrongful dismissal, claiming that he had suffered a mental breakdown and was thus unable to work due to the *unfair manner* in which he had been dismissed. The Court of Appeal upheld the Judge's decision to strike out the claim as disclosing no reasonable cause of action. The House of Lords conclusively held that the there is no cause of action in common law for the unfair manner of dismissal, and that the claim was properly struck out. In particular, Lord Hoffmann held that, whilst it has been established in *Mahmud v BCCI* that a breach of the implied term of trust and confidence can give rise to an action in damages, the courts are not prepared to extend the implied term of trust and confidence to the ***manner*** of the dismissal, per Lord Hoffmann at [44] to [46]:

> In *Mahmud v Bank of Credit and Commerce International SA* [1998] AC 20, 51 Lord Steyn said that the ***true ratio of Addis's case was that damages were recoverable only for loss caused by a breach of contract, not for loss caused by the manner of its breach*** ... the only loss caused by a wrongful dismissal flows from a failure to give proper notice or make payment in lieu. Therefore, if wrongful dismissal is the only cause of action, nothing can be recovered for mental distress or damage to reputation. On the other hand, if such damage is loss flowing from a breach of another implied term of the contract, Addis's case does not stand in the way. That is why, in Mahmud's case itself, damages were recoverable for financial loss flowing from damage to reputation caused by a breach of the implied term of trust and confidence.
>
> In this case, Mr Johnson says likewise that his ***psychiatric injury is a consequence of a breach of the implied term of trust and confidence*** , ***which required Unisys to treat him fairly in the procedures for dismissal*** . He says that implied term now fills the gap which Lord Shaw of Dunfermline perceived and regretted in Addis's case, at pp 504-505, by creating a breach of contract additional to the dismissal itself.

… I rather doubt whether the term of trust and confidence should be pressed so far. In the way it has always been formulated, it is concerned with preserving the continuing relationship which should subsist between employer and employee. So it does not seem altogether appropriate for use in connection with the way that relationship is terminated.

[Emphasis added in bold italics].

The rationale behind the decision in Johnson v Unisys

31 The necessary consequence of the above is that, as far as the position in English law is concerned, the law does not recognise any implied term that an employer will not act unfairly towards the employee in relation to the manner of dismissal, and any claim based on such implied term that does not exist would not disclose a reasonable cause of action in common law. Therefore, going by the *ratio* in *Johnson v Unisys itself*, it would be plain and obvious that a claim for damages based on unfair dismissal discloses no reasonable cause of action. However, if one examines the ***reasons*** behind the *ratio* in *Johnson v Unisys*, the situation becomes evidently more "grey" and less plain and obvious than it seemed to be. In coming to their decision, the House of Lords deferred to Parliament's expressed intention in having enacted the Employment Rights Act 1996, which granted employment tribunals the jurisdiction to adjudicate upon employer-employee disputes on unfair dismissal, and which further provided a compensatory regime to allow employees to be compensated for being unfairly dismissed. Lord Nicholls expressed the view that this statutory right not to be unfairly dismissed could not satisfactorily co-exist with a common law right (at [2]):

Having heard full argument on the point, I am persuaded that a common law right embracing the manner in which an employee is dismissed cannot satisfactorily coexist with the statutory right not to be unfairly dismissed. A newly developed common law right of this nature, covering the same ground as the statutory right, would fly in the face of the limits Parliament has already prescribed on matters such as the classes of employees who have the benefit of the statutory right, the amount of compensation payable and the short time limits for making claims. It would also defeat the intention of Parliament that claims of this nature should be decided by specialist tribunals, not the ordinary courts of law.

32 The deference to Parliament's intention was evident in Lord Hoffmann's grounds:

37 Employment law requires a balancing of the interests of employers and employees, with proper regard not only to the individual dignity and worth of the employees but also to the general economic interest. Subject to observance of fundamental human rights, *the point at which this balance should be struck is a matter for democratic decision*. The development of the common law by the judges plays a subsidiary role. Their traditional function is to adapt and modernise the common law. But such developments must be consistent with legislative policy as expressed in statutes. The courts may proceed in harmony with Parliament but there should be no discord.

…

51 … the unfair dismissal provisions were re-enacted and, as subsequently amended, are consolidated in Part X of the Employment Rights Act 1996. The jurisdiction is now exercised by employment tribunals and forms part of the fabric of English employment law.

52 Section 94(1) of the 1996 Act provides that "An employee has the right not to be unfairly dismissed by his employer". The Act contains elaborate provisions dealing with what counts as

dismissal and with the concept of unfairness, which may relate to the substantive reason for dismissal or (as in this case) the procedure adopted…

…

54 …this statutory system for dealing with unfair dismissals was set up by Parliament to deal with the recognised deficiencies of the law as it stood at the time of *Malloch v Aberdeen Corpn* [1971] 1 WLR 1581 . The remedy adopted by Parliament was not to build upon the common law by creating a statutory implied term that the power of dismissal should be exercised fairly or in good faith, leaving the courts to give a remedy on general principles of contractual damages. *Instead, it set up an entirely new system outside the ordinary courts, with tribunals staffed by a majority of lay members, applying new statutory concepts and offering statutory remedies. Many of the new rules, such as the exclusion of certain classes of employees and the limit on the amount of the compensatory award, were not based upon any principle which it would have been open to the courts to apply. They were based upon policy* and represented an attempt to balance fairness to employees against the general economic interests of the community…

…

56 Part X of the Employment Rights Act 1996 therefore gives a remedy for exactly the conduct of which Mr Johnson complains. But Parliament had restricted that remedy to a maximum of £11,000, whereas Mr Johnson wants to claim a good deal more. The question is whether the courts should develop the common law to give a parallel remedy which is not subject to any such limit.

57 My Lords, I do not think that it is a proper exercise of the judicial function of the House to take such a step. Judge Ansell, to whose unreserved judgment I would pay respectful tribute, went in my opinion to the heart of the matter when he said:

> "there is not one hint in the authorities that the ... tens of thousands of people that appear before the tribunals can have, as it were, a *possible second bite in common law* and I ask myself, if this is the situation, why on earth do we have this special statutory framework? What is the point of it if it can be circumvented in this way? ... it would mean that effectively the statutory limit on compensation for unfair dismissal would disappear."

58 I can see no answer to these questions. For the judiciary to construct a general common law remedy for unfair circumstances attending dismissal would be to go contrary to the evident intention of Parliament that there should be such a remedy but that it should be limited in application and extent.

[Emphasis added].

33 Lord Millet held the same view, and added the simple, yet powerful point that, in view of the statutory right not to be unfairly dismissed, it would *not be necessary* to imply in every contract of employment a term to the same effect (at [80]):

> …the creation of the statutory right has made any such development of the common law both unnecessary and undesirable. In the great majority of cases the new common law right would merely replicate the statutory right; and it is obviously unnecessary to imply a term into a contract to give one of the contracting parties a remedy which he already has without it. In other cases, where the common law would be giving a remedy in excess of the statutory limits or

to excluded categories of employees, it would be inconsistent with the declared policy of Parliament. In all cases it would allow claims to be entertained by the ordinary courts when it was the policy of Parliament that they should be heard by specialist tribunals with members drawn from both sides of industry. And, even more importantly, the coexistence of two systems, overlapping but varying in matters of detail and heard by different tribunals, would be a recipe for chaos. All coherence in our employment laws would be lost.

Transposing Johnson v Unisys onto the local existing statutory framework

34 As can be seen from the above, the House of Lords in *Johnson v Unisys* was constrained in implying the term not to be unfairly dismissed in employment contracts, in view of the express statutory right not to be unfairly dismissed found in Part X of the UK Employment Rights Act. It is therefore arguable that, given that there is no such *equivalent* legislation in Singapore (as observed in *Aldabe Fermin* at [51]), there would be no similar impediment (as the one faced by the House of Lords) in preventing our Courts from implying a term to protect employees from being unfairly dismissed, into every contract of employment. Despite so, it cannot be said that the existing legislative framework in Singapore is entirely oblivious to the possibility of employees being dismissed in an unfair manner. For a start, s 10 of the Employment Act (Cap 91, 2009 Rev Ed) ("the Act") mandates that, in a situation where notice is given by the employer for termination of contract, the period of notice should be as that agreed in the contact of employment. If the contract does not provide for the period of notice, the Act stipulates a graduated fixed period of notice; the longer the employee has been employed, the longer the period of notice:

Notice of termination of contract

10.—(1) Either party to a contract of service may at any time give to the other party notice of his intention to terminate the contract of service.

(2) The length of such notice shall be the same for both employer and employee and shall be determined by any provision made for the notice in the terms of the contract of service, or, in the absence of such provision, shall be in accordance with subsection (3).

(3) The notice to terminate the service of a person who is employed under a contract of service shall be not less than —

(a) one day's notice if he has been so employed for less than 26 weeks;

(b) one week's notice if he has been so employed for 26 weeks or more but less than 2 years;

(c) 2 weeks' notice if he has been so employed for 2 years or more but less than 5 years; and

(d) 4 weeks' notice if he has been so employed for 5 years or more.

(4) This section shall not be taken to prevent either party from waiving his right to notice on any occasion.

(5) Such notice shall be written and may be given at any time, and the day on which the notice is given shall be included in the period of the notice.

35 Section 11(1) of the Act provides some measure of protection for employees who have been given notice in accordance to s 10, but have been asked to leave earlier without waiting for the

expiry of the notice. Such employees would be paid a pro-rated amount:

> Termination of contract without notice
>
> 11.—(1) Either party to a contract of service may terminate the contract of service without notice or, if notice has already been given in accordance with section 10, without waiting for the expiry of that notice, by paying to the other party a sum equal to the amount of salary at the gross rate of pay which would have accrued to the employee during the period of the notice and in the case of a monthly-rated employee where the period of the notice is less than a month, the amount payable for any one day shall be the gross rate of pay for one day's work.

36 It is significant that s 14 of the Act provides that an employer may, ***after due inquiry*** , dismiss the employee without notice on grounds of misconduct. If the employee thinks that he was dismissed ***without just cause or excuse*** , he may make representations in writing to the Minister. Under the Act, the Minister has the power to request the Commissioner to *inquire* into the dismissal to determine whether the dismissal was made without just cause or excuse. If the Minister is satisfied that the dismissal was made without just cause or excuse, he may direct the employer be reinstated or to pay an amount of wages to compensate the employee. He has the power, under s 14(4) to give these directions "*notwithstanding any rule of law or agreement to the contrary*". Section 14(5) provides that the Minister's decision is final and conclusive, and cannot be challenged in any court (subject to the requirements of natural justice; see *Stansfield Business International Pte Ltd v Minister for Manpower* (formerly known as Minister for Labour) [1999] 2 SLR(R) 866). Pertinently, s 14(6) mandates that the Minister's direction to reinstate or to compensate in wages the employee *operates as a bar against any action for damages* by the employee in any court in respect of the wrongful dismissal. The relevant parts of s 14 are reproduced as follows:

> Misconduct of employee
>
> 14.—(1) An employer may *after due inquiry* dismiss without notice an employee employed by him on the grounds of misconduct inconsistent with the fulfilment of the express or implied conditions of his service except that instead of dismissing an employee an employer may —
>
> (a) instantly down-grade the employee; or
>
> (b) instantly suspend him from work without payment of salary for a period not exceeding one week.
>
> (2) Notwithstanding subsection (1), where an employee considers that he has been *dismissed without just cause or excuse*by his employer, he may, within one month of the dismissal, make representations in writing to the Minister to be reinstated in his former employment.
>
> (3) The Minister may, before making a decision on any such representations, by writing under his hand *request the Commissioner to inquire into the dismissal* and report whether in his opinion the dismissal is without just cause or excuse.
>
> (4) If, after considering the report made by the Commissioner under subsection (3), the Minister is satisfied that the employee has been dismissed without just cause or excuse, he may, *notwithstanding any rule of law or agreement to the contrary* —
>
> (a) direct the employer to reinstate the employee in his former employment and to pay the employee an amount that is equivalent to the wages that the employee would have earned had

he not been dismissed by the employer; or

(b) direct the employer to pay such amount of wages as compensation as may be determined by the Minister,

and the employer shall comply with the direction of the Minister.

(5) The decision of the Minister on any representation made under this section shall be final and conclusive and shall not be challenged in any court.

(6) Any direction of the Minister under subsection (4) *shall operate as a bar to any action for damages by the employee in any court in respect of the wrongful dismissal*.

(7) An employer who fails to comply with the direction of the Minister under subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 12 months or to both.

[Emphasis added].

37 In addition to the above, an employee may lodge a claim or a complaint before the Commissioner, who is empowered under s 115 to inquire into and to decide *any dispute that arises from any term* in the employment contract.

Commissioner's power to inquire into complaints

115.—(1) Subject to this section, the Commissioner may inquire into and decide *any dispute* between an employee and his employer or any person liable under the provisions of this Act to pay any salary due to the employee *where the dispute arises out of any term in the contract of service between the employee and his employer* or out of any of the provisions of this Act, and in pursuance of that decision may make an order in the prescribed form for the payment by either party of such sum of money as he considers just without limitation of the amount thereof.

(2) The Commissioner shall not inquire into any dispute in respect of matters arising earlier than one year from the date of lodging a claim under section 119 or the termination of the contract of service of or by the person claiming under that section:

Provided that the person claiming in respect of matters arising out of or as the result of a termination of a contract of service has lodged a claim under section 119 within 6 months of the termination of the contract of service.

(3) The powers of the Commissioner under subsection (1) shall include the power to hear and decide, in accordance with the procedure laid down in this Part, any claim by a subcontractor for labour against a contractor or subcontractor for any sum which the subcontractor for labour claims to be due to him in respect of any labour provided by him under his contract with the contractor or subcontractor and to make such consequential orders as may be necessary to give effect to his decision.

(3A) Where the employee is employed in a managerial or an executive position, an order for the payment of money under subsection (1) shall not exceed $20,000.

(4) In this section, "employer" includes the transferor and the transferee of an undertaking or part thereof referred to in section 18A.

[Emphasis added].

How it is not plain and obvious that the law does not recognise a former employee's claim in damages for the unfair manner of dismissal

38 In view of the various measures of statutory protection given to employees under the Act, it could be argued that, in line with Lord Millet's reasoning in *Johnson v Unisys* (see [33] above), it is not altogether necessary to imply into the employment contract a term to protect employees from being dismissed in an unfair manner. Indeed, one could argue that the existing statutory framework under the Act manifests Parliament's intention that matters in the sphere of protecting employees from being unfairly dismissed should be legislated, and that these matters lies within the province of Parliament. Nevertheless, it should be noted that the Employment Act does not apply to all contracts of employment. A person employed in a managerial or an executive position, and who receives a salary exceeding $4,500 a month (excluding overtime payments, bonus payments, annual wage supplements, productivity incentive payments and any allowance) does not fall within the definition of "employee" under s 2 of the Act (it is not in dispute that the Act does not apply to the plaintiff's contract of employment); while the Act has limited applicability to persons employed in a managerial position or an executive position and who receives a salary not exceeding $4,500 a month (see s 2(2) of the Act).

39 Furthermore, despite the substantial measure of protection given to (certain definitions of) employees under the Employment Act, it remained so that ***unlike the position in England*** , ***there is no express statutory right not to be unfairly dismissed*** . Given that there is no such express statutory right not to be unfairly dismissed, Lord Millet's reasoning in *Johnson v Unisys* based on the ***necessary*** implication of terms (see [33] above) *would not be evidently* applicable to the local context. Nevertheless, this is not a case where an argument could simply be made that, ***just because*** the express statutory right not to be unfairly dismissed does not exist in Singapore, an employee would *ipso facto* have a common law claim in damages for unfair dismissal; for there is undeniable force in Lord Hoffmann's argument in *Johnson v Unisys* (see [32] above) that the implication of a term to support such a claim would be a decision based upon ***policy*** , and would involve the intricate balance between the individual dignity and worth of the employees against the general economic interests of the community. Simply put, the questions relating to the fairness of dismissal, in so far as *every contract of employment* is concerned, would be a matter of (in Lord Hoffmann's view) ***democratic decision*** that falls outside the province of the Courts.

40 That the issues involved in the sphere of unfair dismissal requires a considered and nuanced approach in taking into account the interests of all stakeholders is without doubt, and is particularly emphasized by the fact that, in England, ***even with*** an existing comprehensive statutory regime to protect employees from unfair dismissal, the House of Lords found it necessary to *minimize* the impact of the *ratio* in *Johnson v Unisys*. In this regard, it is pertinent that in about three years after the decision of *Johnson v Unisys*, the House of Lords took the opportunity to clarify and delineate the *ratio* of *Johnson v Unisys*, in the decisions of *Eastwood v Magnox Electric* and *McCabe v Cornwall County Council* [2005] 1 A.C. 503 ("*Eastwood*" and "*McCabe*"), in what Lord Nicholls termed the "*Johnson exclusion area*":

> *The boundary line*
>
> 27 Identifying the boundary of the '*Johnson* exclusion area', as it has been called, is comparatively straightforward. The statutory code provides remedies for infringement of the statutory right not to be dismissed unfairly. An employee's remedy for unfair dismissal, whether

actual or constructive, is the remedy provided by statute. If before his dismissal, whether actual or constructive, an employee has acquired a cause of action at law, for breach of contract or otherwise, that cause of action remains unimpaired by his subsequent unfair dismissal and the statutory rights flowing therefrom. By definition, in law such a cause of action exists independently of the dismissal.

28 In the ordinary course, suspension apart, an employer's failure to act fairly in the steps leading to dismissal does not of itself cause the employee financial loss. *The loss arises when the employee is dismissed and it arises by reason of his dismissal. Then the resultant claim for loss falls squarely within the Johnson exclusion area*.

29 Exceptionally this is not so. Exceptionally, financial loss may flow directly from the *employer's failure to act fairly when taking steps leading to dismissal*. Financial loss flowing from suspension is an instance. Another instance is cases such as those now before the House, when an employee suffers financial loss from psychiatric or other illness caused by his pre-dismissal unfair treatment. In such cases the employee has a common law cause of action which precedes, and is independent of, his subsequent dismissal. In respect of his subsequent dismissal he may of course present a claim to an employment tribunal. If he brings proceedings both in court and before a tribunal he cannot recover any overlapping heads of loss twice over.

[Emphasis added].

41 Lord Nicholls' definition of the "*Johnson* exclusion area" reduces the impact of the *ratio* in *Johnson v Unisys*. Under the defined "*Johnson* exclusion area", a claim in damages arising from the *unfair manner of dismissal* falls within the exclusion, and does not give rise to any common law claim, for such a claim already exists within the statutory protection against unfair dismissal; whereas a claim in damages arising from *pre-dismissal events* falls outside the exclusion area and would give rise to a common law cause of action for breach of the contract (specifically, breach of the implied term of mutual trust and confidence) that is independent from the fact of the dismissal itself.

42 In *Eastwood*, the two employees-plaintiffs had a superior who had a long standing grudge against them. The superior and the employees' manager had worked together to encourage colleagues to provide false statements and to formulate complaints of sexual harassment against the employees. The employees was suspended (but not dismissed), without being informed of the allegations made against them. The employees claimed that the members of management conduct a campaign to demoralise them prior to their dismissal, and that this was a breach of the implied term of trust and confidence which took place prior to their dismissal. They claimed to have suffered psychiatric illnesses caused by a deliberate course of conduct by members of the management. Lord Nicholls, applying the "*Johnson* exclusion area", held that the employees' claim in *Eastwood* fell outside the exclusion area and found that the claim in damages gave rise to a cause of action in common law. In doing so, His Lordship was at the same time acutely aware of the practical problems that would naturally arise from the "*Johnson* exclusion area", one of which was the disconcerting anomaly that an employer would be better off dismissing an employee rather than to suspend him, for an employer in the former position would be able to restrict the amount of damages compensable to that of the prescribed statutory limit; whereas employees would attempt to circumvent the statutory limit by identifying facts which occurred prior to the dismissal, in order to create a claim based not on the unfairness of the dismissal itself, but on the breach of the implied term of mutual trust and confidence (per Lord Nicholls):

31 ...the existence of this boundary line means that in some cases a continuing course of conduct, typically a disciplinary process followed by dismissal, may have to be chopped *artificially*

into separate pieces. In cases of constructive dismissal *a distinction will have to be drawn between loss flowing from antecedent breaches of the trust and confidence term and loss flowing from the employee's acceptance of these breaches as a repudiation of the contract*. *The loss flowing from the impugned conduct taking place before actual or constructive dismissal lies outside the Johnson exclusion area, the loss flowing from the dismissal itself is within that area*. In some cases this legalistic distinction may give rise to difficult questions of *causation* in cases such as those now before the House, where financial loss is claimed as the consequence of psychiatric illness said to have been brought on by the employer's conduct before the employee was dismissed. Judges and tribunals, faced perhaps with conflicting medical evidence, *may have to decide whether the fact of dismissal was really the last straw which proved too much for the employee, or whether the onset of the illness occurred even before he was dismissed*.

32 The existence of this boundary line produces other strange results. *An employer may be better off dismissing an employee than suspending him. A statutory claim for unfair dismissal would be subject to the statutory cap, a common law claim for unfair suspension would not*... the decision in *Johnson's* case means that an employee who is psychologically vulnerable is owed no duty of care in respect of his dismissal although, depending on the circumstances, he may be owed a duty of care in respect of his suspension.

33 It goes without saying that an inter-relation between the common law and statute having these awkward and unfortunate consequences is not satisfactory. The difficulties arise principally because of the cap on the amount of compensatory awards for unfair dismissal... *employees and their legal advisers are seeking to side-step the statutory limit by identifying elements in the events preceding dismissal, but leading up to dismissal, which can be used as pegs on which to hang a common law claim for breach of an employer's implied contractual obligation to act fairly. This situation merits urgent attention by the government and the legislature*.

43 Lord Nicholls' definition of the "*Johnson* exclusion area" in *Eastwood*, made in about three years after the decision of *Johnson v Unisys*, serves to emphasize the fact that the *ratio* in *Johnson v Unisys* is *necessarily dependent* upon the existence of the statutory right not to be unfairly dismissed; the delineation set out by the "*Johnson* exclusion area" thus underscores the symmetry between the non-existence of a common law cause of action in unfair dismissal and the existence of a corresponding statutory cause of action. Likewise, the existence of a common law cause of action for breach of an implied term of mutual trust and confidence reflects the non-existence of a corresponding statutory cause of action. Applying the logic of that symmetry to the present context may very well lead to a compelling case that a common law cause of action in unfair dismissal would exist.

44 Subject to Lord Hoffmann's significant caveat (in *Johnson v Unisys*) that the sphere of unfair dismissal should be a matter of *democratic decision*, one could argue that the non-existence of an express statutory protection against unfair dismissal signify *Parliament's intention* to leave this issue to be decided by the Courts. In my view, given that the position in England itself is still in a state of development (as is evident from the recent judicial pronouncements in *Eastwood*), despite having the benefit of guidance from a comprehensive and express statutory regime in Part X of the UK Employment Rights Act against unfair dismissal of employees, it would be ambitious for the defendant in the present case to proclaim that the position in Singapore is settled. This is particularly so given that the Courts in Singapore have not, to date, had the opportunity to consider the reasoning in *Johnson v Unisys*, and to decide to *what extent* would the reasoning in that decision apply *viz* the existing local legislative framework.

45 Whether the existing statutory regime in Singapore is sufficient to protect employees' rights

relating to unfair dismissal, and whether *even if* sufficient, are there any other reasons to (or not to) imply such a term (with especial regard to Lord Hoffmann's view that this could very well be a question to be decided on *policy* grounds (and hence to be left to the province of Parliament)), are questions that have yet to be *fully* considered by a Court of law. There is no doubt that time is required for the development of the implied term of mutual trust and confidence which was apparently accepted in the local decision of *Wong Leong Wei v Acclaim Insurance* only very recently, especially for a task as important as that of implying a *further* (and separate) term in *every contract of employment*. For the reasons above, I am *not* prepared to strike out the plaintiff's claim *on the ground* that a claim for damages based on unfair dismissal clearly and plainly discloses no reasonable cause of action.

Whether it is plain and obvious that the law does not recognise the existence of an implied term that the employer will not exercise the contractual right to terminate the employment contract in bad faith

46 The defendant's position is that the implied term that the employer will not exercise the contractual right to terminate the employment contract in bad faith does not exist in employment contracts. This is because the reasons and motivations behind the dismissal are, according to the defendant, irrelevant. This position is substantially weakened by the local Court of Appeal's decision of *Latham Scott v. Credit Suisse First Boston* [2000] 2 SLR(R) 30 ("*Latham Scott*"). In that case, the employee ("Latham") entered into a written contract of employment with the employer ("CSFB"). Its terms included a discretionary bonus in addition to the salary, and it also provided that either party could terminate the contract by giving the other a month's notice. Latham was asked by CSFB to leave shortly after he started work, and CSFB terminated the contract of employment through a letter giving him a month's remuneration in lieu of notice. Latham commenced an action against CSFB for damages in wrongful dismissal. Latham also alleged that CSFB had acted in bad faith in dismissing him, thereby wrongfully depriving him of the chance to earn a bonus.

47 The Court of Appeal (at [42]) considered the allegations based on bad faith as Latham's "second *substantive* ground of appeal", and considered the evidence to determine the ***motivations*** behind the dismissal. Upon an analysis of the evidence, the Court of Appeal found that Latham's dismissal could not be said to be *purely motivated* by Latham's complaints of alleged insider trading made against some of CSFB's senior employees; and that there were several other events which related to Latham's attitude and the poor manner in which he interacted with his colleagues which amounted to reasonable grounds for dismissal. The Court of Appeal held that Latham's dismissal was motivated by several factors, one of which was that his relationship with his colleagues had deteriorated to such a great extent that CSFB thought Latham should no longer remain in its employment. As such, the Court of Appeal *concluded* that CSFB did not act in bad faith in dismissing Latham (at para [52]-[53]):

> In our view, even if Latham was right to complain and comment that the use of the information relating to the Srithai bonds buy-back by Harvey and Chan amounted to insider trading, and that Harvey was annoyed with him for this reason, *it did not mean that Latham's dismissal was motivated purely by this event*. Although Latham tried to establish that this was the sole reason for his dismissal, we have already considered the fact that *there were many other complaints about his attitude and the manner in which he interacted with his colleagues, the Bloomberg incident and the Chakra incident, that amounted to reasonable grounds for CSFB to decide that Latham should not be retained*.
>
> …Latham's complaints to Harvey and some other senior officers at CSFB that Chan was mis-marking CSFB's books in order avoid paying taxes, that Latham claimed annoyed Chan and Harvey

so much so that he was dismissed for it. In the first place, the judicial commissioner found that Latham's accusations were unfounded. Latham himself recognised this but asserted that there was no malice in his actions. This was accepted by the judicial commissioner. Again, *it would be wrong to accept Latham's suggestion that his dismissal was motivated by Chan's and Harvey's anger and bad faith in relation to this matter. Clearly, his relationship with his colleagues and Harvey was not going well and, by 19 September 1997, had deteriorated to such an extent that the Chakra incident was the final straw*. On an overall assessment of the events throughout the five to six months of Latham's employment with CSFB, rather than regarding the incidents in isolation, it was apparent that Latham was not able to fit into the organisation. Thus, CSFB was entitled to decide that Latham should no longer remain in their employ even though they might well have breached the contractual provision requiring them to give one month's notice to him. *CSFB did not act in bad faith in dismissing Latham*.

[Emphasis added]

48 An argument could be made that the presence of the employer's duty not to exercise its contractual right to terminate the employment in bad faith was *implicit* in the decision of *Latham Scott*, as it could be said that the Court of Appeal's willingness to consider the evidence to decide whether the employer had acted in bad faith, *presupposes* that the employer had a duty not terminate employment in bad faith.

The defendant's submissions on Latham Scott

49 The defendant's counsel submitted that *Latham Scott* does not apply to the present case. It was submitted that *Latham Scott* is a different case because the employment contract in that case does not expressly provide that the contract can be terminated with one month's salary in lieu of notice, unlike the present case. When this submission was made before me, I queried counsel why would a duty not to dismiss in bad faith ("the duty") exist in a contract of employment which allows for termination with a month's notice (such as the situation in *Latham Scott*), but that such a duty does not exist in a contract of employment which allows for termination with payment of a month's salary in lieu of notice (such as the situation in the present case)? I asked for the rationale of such an anomaly, and counsel submitted that it was because in the present case where the contract can be terminated with payment of salary in lieu of notice, there was no requirement to provide any reasons for the dismissal; and as there was no such requirement to give reasons, it must follow that the reasons for the dismissal are irrelevant ("counsel's submission"). In addition, it is not in dispute that the employment contract does not expressly state that reasons must be given for the dismissal.

50 Counsel's submission presupposes that there can be no claims of dismissal in bad faith where there is no requirement to provide reasons for dismissal. It is not necessary to decide whether counsel's submission is correct in law, suffice to say that the position is *not plain and obvious*, in view that the Court of Appeal in *Latham Scott* had went on to consider the substantive allegations of bad faith, *notwithstanding* the Court of Appeal's express recognition that there was *no requirement* to provide any reasons to terminate the employment contract (at [42], [44]):

…Latham's *second substantive ground of appeal* was that CSFB had acted in bad faith in dismissing him, thereby wrongfully depriving him of the chance to earn his bonus payment. Latham's argument in this respect was two-pronged. On the one hand, he said that he made substantial contributions to CSFB during the course of his employment with them. In support of this allegation, he cited a list of projects that he was involved in where he helped CSFB make profits as a result of his proficient research skills. Latham also highlighted Harvey's favourable written assessment of him in late June 1997. Furthermore, Latham was allotted a tentative bonus

of US$400,000 by Harvey as late as August 1997, a mere three weeks before his dismissal.

…

…It may well be that Latham was performing reasonably well in certain areas but not in all. This did not mean that he was immune from being contractually dismissed. We noted from the outset that Latham's termination, eventually found to be wrongful by the judicial commissioner on the technical ground that he was not given the requisite one month's notice, was purportedly contractual. CSFB never claimed that Latham had committed some form of gross misconduct that entitled them to terminate his employment immediately. *Under the terms of the contract, both Latham and CSFB could terminate the employment contract without any reason, as long as the one month notice period was adhered to. As such, the focus here would be whether CSFB acted in bad faith by dismissing Latham because he had complained rightfully that his colleagues were engaging in insider trading as regards the Srithai issue*.

[Emphasis added].

51 As can be seen from the above, the fact that the employment contract could be terminated without the requirement to provide reasons, did not prevent the Court of Appeal in *Latham Scott* from considering the substantive allegations of bad faith.

The defendant's submissions on Hui Cheng Wan

52 Nevertheless, the defendant's counsel made a second argument. It was submitted that the decision of *Hui Cheng Wan* is authority for the position that the reasons and motivations behind an employer's decision to terminate a contract of employment are irrelevant, whenever there is an express term that allows the employer to terminate the employment contract with payment of salary in lieu of notice (such as that in the present case).

53 Just like in the present case, the employment contract in *Hui Cheng Wan* provided that either party may terminate the contract with a month's notice in writing, or one month's salary in lieu of notice. As a result of the employee's ("Ms Hui") conduct and her alleged refusal to follow instructions, the employer terminated the contract of employment with payment of one month's salary in lieu of notice. Ms Hui commenced an action against the employer for wrongful dismissal. The Court found that the employment contract was validly terminated; even though one Mr Kondo (the managing director of the parent company of Ms Hui's employer) gave evidence that the employer would not issue a one month notice without good reason, the employer was nevertheless entitled under the contract to terminate her employment with payment of one month's salary in lieu of notice even without any good reason.

54 Ms Hui, however made an alternative argument that her dismissal was made in bad faith because she "knew too much". In this regard, the facts in *Hui Cheng Wan* are similar to the present case, where the employee was dismissed because the employer allegedly intended to "silence her". More specifically, Ms Hui claimed she knew that there had been excessive purchases at inflated prices by the employer from several companies set up by a lady who had a close and personal relationship with Mr Kondo, and that Mr Kondo had revised his own salary package with prior approval. In the hearing before me, the defendant's counsel brought my attention to para [89] of the decision, where the Court observed that:

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.

[Emphasis added].

55 The defendant's counsel submitted that the above paragraph shows that that the reasons and motivations behind an employer's decision to terminate a contract of employment are irrelevant, where there is an express term that allows the employer to terminate the employment contract with payment of salary in lieu of notice. The true purport of this observation that the allegation of bad faith was a "red herring" is unclear (and it could very well be *obiter dicta*), as the Court went on to find that Ms Hui had failed to establish bad faith *on the merits* of her allegations (see *Hui Cheng Wan* at [90]). With respect, it does not appear, at least from the written decision in *Hui Cheng Wan* that the observation was made with consideration of any authorities. No authorities were mentioned in arriving at that observation, not least the Court of Appeal decision of *Latham Scott* which was decided and reported before the decision of *Hui Cheng Wan*. Notwithstanding the "red herring" observation made in *Hui Cheng Wan*, the pertinent question remained: what could be the rationale to explain the anomaly where bad faith is relevant in the context where the employment contract can be terminated with a month's notice (as was the situation in *Latham Scott*), but was irrelevant in the context where the employment contract can be terminated with payment of a month's salary in lieu of notice? In both cases, there is no requirement to provide reasons; yet this did not prevent the Court of Appeal in *Latham Scott* from considering the substantive allegations of bad faith. The defendant's counsel had no answer to explain the rationale for this purported anomaly.

56 In my view, notwithstanding the submissions made on *Hui Cheng Wan*, the bigger obstacle to the plaintiff's case lies in the seminal Court of Appeal decision of *Ng Giap Hon v Westcomb Securities Pte Ltd and others* [2009] 3 SLR(R) 518 ("*Ng Giap Hon*") (a decision which the defendant did not submit upon). The Court of Appeal decided *not* to endorse the doctrine of good faith in contracts in Singapore, and dismissed the appellant's argument for an implied duty of good faith in the agreement between the appellant and the respondent, *in so far as* the appellant's argument for an implied duty of good faith is premised upon an implied term in law that applies to *all* contracts:

> 42 The implied terms which the appellant sought to rely upon are (as just mentioned) framed in the alternative and are to be found in para 14 of the Statement of Claim, as follows:
>
> > [T]here was an implied duty of good faith between the [appellant] and [the first respondent] as between agent and principal. Further or in the alternative, it was an implied term of the [A]gency [A]greement that the [first respondent] would not do anything to deprive the [appellant] from earning his commission. [emphasis added; underlining in original omitted]
>
> We shall hereafter refer to the former term (ie, that relating to the implied duty of good faith) as "the First Implied Term", and to the latter term (ie, that relating to the first respondent's obligation not to do anything to deprive the appellant from earning his commission) as "the Second Implied Term".
>
> 43 The First Implied Term is (as can be seen from the quotation in the preceding paragraph) premised on the general doctrine of good faith and (more importantly) appears to fall within the broader category of "terms implied in law"…
>
> 44 It is clear, in our view, that if a term relating to good faith is to be implied into the Agency Agreement, *that term cannot be premised on the broader category of "terms implied in law", especially having regard (in the context of the present appeal) to the general doctrine of good faith that constitutes the pith and marrow of the First Implied Term*…
>
> …

> 60 … it is not surprising that the *doctrine of good faith continues… to be a fledgling one in the Commonwealth*. Much clarification is required, even on a theoretical level. Needless to say, u*ntil the theoretical foundations as well as the structure of this doctrine are settled*, it would be inadvisable (to say the least) to even attempt to apply it in the practical sphere … In the context of the present appeal, this is, in our view, *the strongest reason as to why we cannot accede to the appellant's argument that this court should endorse an implied duty of good faith in the Singapore context*. The First Implied Term should not, therefore, be implied into the Agency Agreement.
>
> [Emphasis added].

57 As emphasized by the Court of Appeal in *Ng Giap Hon*, the doctrine of good faith is a fledgling doctrine in English and Singapore contract law which requires much clarification, even on a theoretical level. There remain differing views as to what the doctrine meant and how it was to be applied. In so far as the implied term that the employer will not exercise the contractual right to terminate the employment contract in bad faith is based upon the doctrine of good faith, the authority of *Ng Giap Hon* poses substantial difficulties to the plaintiff.

58 Nevertheless, the precise question of whether, ***in the sphere of employment contracts*** , there is a ***sui generis*** contractual duty not to terminate the employment contract in bad faith, was not placed before the court in *Ng Giap Hon*, neither was the authority of *Latham Scott* placed before the Court of Appeal for consideration. It would also not have escaped the defendant's counsel that the plaintiff's basis for establishing such a duty was intricately linked with the argument based on unfair dismissal; and in that regard, it is pertinent that, in *Johnson v Unisys*, Lord Hoffmann was prepared to contemplate that the implied term that the power of dismissal should be exercised fairly and in good faith can be developed from the existing implied term of trust and confidence between the employer and employee:

> 45 In this case, Mr Johnson says … that his psychiatric injury is a consequence of a breach of the implied term of trust and confidence, which required Unisys to treat *him fairly in the procedures for dismissal…*
>
> 46 … I rather doubt whether the *term of trust and confidence* should be pressed so far. In the way it has always been formulated, it is concerned with preserving the continuing relationship which should subsist between employer and employee. So it does not seem altogether appropriate for use in connection with the way that relationship is terminated. *If one is looking for an implied term, I think a more elegant solution is McLachlin J's implication of a separate term that the power of dismissal will be exercised fairly and in good faith*.
>
> [Emphasis added]

59 The decision of *Ng Giap Hon* would pose no difficulty, if indeed, the *juridical basis* of the implied term that the employer will not exercise the contractual right to terminate the employment contract in bad faith, is derived not from the doctrine of good faith, but from the implied term of mutual trust and confidence between the employer and employee (as suggested by Lord Hoffmann in *Johnson v Unisys*), restricted in its *sui generis* form to employment contracts only. Conclusively, in view of the decision of *Latham Scott*, and in particular, the Court of Appeal's consideration of the evidence to determine the *motivations* behind the dismissal as well as the Court of Appeal's *conclusion* that the dismissal was *not made in bad faith*, it *could not* be said that the law plainly and obviously does not recognise the existence of an implied term that the employer will not exercise the contractual right to terminate the employment contract in bad faith. The plaintiff's claim could not therefore be struck out

on that basis.

The plaintiff's claim, *as pleaded*, is frivolous, vexatious and an abuse of proceedings

60 A proceeding is said to be "vexatious" when the party bringing it is not acting *bona fide*, and merely wishes to annoy or embarrass his opponent, or when it is ***not calculated to lead to any practical result*** (see *Goh Koon Suan v Heng Gek Kiau and others* [1990] 2 SLR(R) 705 at [15]). This definition has been endorsed in *Afro-Asia Shipping Co (Pte) Ltd v Haridass Ho & Partners and another* [2003] 2 SLR(R) 491 at [22], the Court of Appeal decision of *Riduan bin Yusof v Khng Thian Huat and another* [2005] 2 SLR(R) 188 at [29], and also in the decision of *Chee Siok Chin and others v Minister of Home Affairs and another* [2006] 1 SLR(R) 582 at 37, where the Court provided much guidance to the definitions of "frivolous", "vexatious" and an "abuse of process":

> 33 Proceedings are frivolous when they are deemed to waste the court's time, and are determined to be incapable of legally sustainable and reasoned argument. Proceedings are vexatious when they are shown to be without foundation and/or where they cannot possibly succeed and/or where an action is brought only for annoyance *or to gain some fanciful advantage*.
>
> 34 The instances of abuse of process can therefore be systematically classified into four categories, viz:
>
> (a) proceedings which involve a deception on the court, or are fictitious or constitute a mere sham;
>
> (b) *proceedings where the process of the court is not being fairly or honestly used but is employed for some ulterior or improper purpose or in an improper way*;
>
> (c) *proceedings which are manifestly groundless or without foundation or which serve no useful purpose*;
>
> (d) multiple or successive proceedings which cause or are likely to cause improper vexation or oppression.
>
> …
>
> Frivolous or vexatious
>
> 37 These words have been judicially interpreted to mean "obviously unsustainable": *Attorney-General of the Duchy of Lancaster v London* and *North Western Railway Company* [1892] 3 Ch 274 at 277. In *Goh Koon Suan v Heng Gek Kiau* [1990] 2 SLR(R) 705 at [15], Yong Pung How CJ opined that an action would be vexatious "when the party bringing it is not acting bona fide, and merely wishes to annoy or embarrass his *opponent, or when it is not calculated to lead to any practical resul*t". It has also been suggested that "frivolous" and "vexatious" connote *purposelessness in relation to the process* or a lack of seriousness or truth and a lack of bona fides: see Jeffrey Pinsler, Singapore Court Practice 2005 (LexisNexis, 2005) at para 18/19/12, p 482.
>
> Abuse of process
>
> 38 This is the widest general ground for striking out. Needless to say, there is, by its very

definition, an inevitable overlap with the other grounds. As Yong CJ succinctly emphasised in *Goh Koon Suan v Heng Gek Kiau* at [15], abuse of process characterises a proceeding which is "wanting in bona fides and is frivolous, vexatious or oppressive". The Court of Appeal in *Gabriel Peter & Partners v Wee Chong Jin* ([36] supra) at [22] broadly outlined what amounts to an abuse of process:

> The term, 'abuse of the process of the Court', in O 18 r 19(1)(d), has been given a wide interpretation by the courts. It includes considerations of public policy and the interests of justice. This term signifies that the process of the court must be used bona fide and properly and must not be abused. The court will prevent the improper use of its machinery. It will prevent the judicial process from being used as a means of vexation and oppression in the process of litigation. The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed and will depend on all the relevant circumstances of the case. A type of conduct which has been judicially acknowledged as an abuse of process is the bringing of an action for a *collateral purpose* ...

[Emphasis added].

61 In the present case, it is common ground between the parties that the plaintiff was paid *more than* one month's salary in lieu of notice; specifically the sum of S$26,993.47. The plaintiff pleaded in [15] of the statement of claim the following:

> By reason of the said unfair dismissal and/or dismissal in bad faith, the Plaintiff has suffered loss and damage

62 According to the plaintiff's *pleaded* position, the *material facts* are unlike the case of *Johnson v Unisys* where the employee suffered a mental breakdown due to the unfair manner of dismissal. The plaintiff did not plead that she had suffered injury to feelings, mental distress, and/or loss of reputation as a result of the unfair dismissal (as was the case in *Addis v Gramophone*) (I add here parenthetically, that this does not conclude that even if such material facts were pleaded, that the alleged losses of such nature were recoverable at law). Unlike the case of *Mahmud v BCCI*, this was not a case where the plaintiff pleaded that she had suffered loss of employment prospects, or that she had difficulty finding alternative employment as a result of the unfair manner of dismissal or dismissal made in bad faith. It was also not pleaded that she suffered psychiatric injury or psychiatric illnesses (as was pleaded in *Eastwood* and *McCabe*). Nor did the plaintiff plead that she had suffered loss of future earnings, or expenses incurred in obtaining future employment, as a result of the unfair dismissal. The plaintiff pleaded for damages to be assessed. However, the damages have to be assessed based on the losses and damages *suffered by the plaintiff as a result of the defendant's breach, as discerned from the material facts pleaded* (and of course, evidence would be required at a subsequent stage to prove such material facts). In the present case, taking the plaintiff's pleaded position as it stands, none of the material facts that related to any of those losses were pleaded, nor was such facts alleged or submitted throughout the proceedings before me.

63 Instead, the only *material facts* that discern any viable loss and damage ***suffered by the plaintiff as a result of*** the defendant's unfair dismissal or dismissal in bad faith, ***as pleaded*** , would be that the unfair dismissal or dismissal in bad faith had deprived the plaintiff of the opportunity to receive a variable bonus known as the "incentive compensation". This is analogous to the *Latham Scott* situation where the employee claimed that the dismissal in bad faith had wrongfully deprived the employee the chance to earn his discretionary bonus. In the present case, the plaintiff pleaded that (see Reply at [18]):

> ...the Plaintiff had expressed that the *manner* in which she was being terminated is *unfair*, especially given her many years of contribution to the Defendant, the manner in which she was targeted to leave, how her annual leave balance was adjusted to reflect only up till 31 January 2011 even though the Plaintiff's employ had not been terminated at the point of time, and the fact that the *ex gratia payment of S$40,000 offered in the 17 January Letter would, in any case, have been due from the Defendant to her as part of her incentive compensation*.
>
> [Emphasis added]

64 The plaintiff considered that the defendant's offer of *ex gratia* payment of S$40,000 would have, in any case, been due from the defendant to her as part of her incentive compensation. When the defendant queried what was the basis upon which the plaintiff allege that she is entitled to the incentive compensation, the plaintiff pleaded that she has been receiving the incentive compensation for the past 10 years, and that s*he would have received it if her employment had not been terminated* (see Further and Better Particulars dated 29 April 2011 at answer number 3):

> ...[The Plaintiff] has been receiving incentive compensation for the past 10 years in or about February of each year and [she] was of the view that she would have been given such incentive compensation in or about February 2011 *if her employment with the Defendant had not been terminated*
>
> [Emphasis added].

65 In other words, according to the plaintiff, the unfair dismissal and/or dismissal in bad faith had deprived the plaintiff of the opportunity to earn the incentive compensation (which she would have allegedly received if not for the termination). In the hearing before me, the plaintiff's counsel also submitted, in the same vein, that the plaintiff would have received the incentive compensation but for the defendant's unfair termination of employment. However, the plaintiff made two material admissions which have severe consequences on their claim. The plaintiff pleaded the following (see Further and Better Particulars dated 29 April 2011 at answer number 1):

> The Plaintiff ***did not claim that it was her right*** to receive the incentive compensation ***or that her right to the incentive compensation arises out of any contractual obligation on the part of the Defendant*** . [The Plaintiff] has said...that the *ex gratia* payment of S$40,000 offered in 17 January Letter would have included the incentive compensation due from the Defendant to her. [Emphasis added in bold italics].

66 The plaintiff admitted that she has no right to receive the incentive compensation, and that the defendant has no contractual obligation to pay the incentive compensation to the plaintiff. At this juncture, it is apposite to set out several settled principles relating to the award of damages in a breach of an employment contract. The Court of Appeal in *Latham Scott* held (at [56]):

> The general principle is that damages for breach of contract are awarded as a compensation to the plaintiff for the damage, loss or injury he has suffered through that breach. He is to be placed in the same position as it the contract had been performed.

67 It has been elegantly opined in Selwyn's Law of Employment (16th ed, Oxford University Press 2011) at para [16.21]) that:

> The general principle in contract law (and it must be remembered that employment law is basically concerned with a *contract* of employment) is that the purpose of damages is to put the

innocent party in the position in which he would have been had the *contractual obligations* been performed, insofar as it is possible to do this by a monetary award.

[Emphasis added].

68 In the present case, and as explained above in [63] – [65], based on the plaintiff's ***pleaded case*** , the only material facts that discern any viable loss and damage that she would have suffered from the unfair dismissal and/or dismissal in bad faith was the deprivation of her opportunity to earn the incentive compensation. Yet in the very same breath, found in the same set of pleadings, the plaintiff conceded that there is no contractual entitlement to the incentive compensation. In effect, the payment of incentive compensation would be in the defendant's absolute goodwill and discretion. As such, taking the plaintiff's pleaded case at its highest (that is, assuming *arguendo* that her claim in unfair manner of dismissal, and dismissal in bad faith is successful), the defendant's unfair dismissal and dismissal in bad faith ***had not deprived the plaintiff of anything that she was contractually entitled to*** . In view of the material admissions, *even if the plaintiff had continued to be employed by the defendant*; and on the other hand, even if the defendant had terminated the contract of employment in good faith, or if the defendant had performed a fair manner of dismissing the plaintiff's employment, the plaintiff ***would still not be contractually entitled to the incentive compensation*** , much less when her employment was terminated in accordance with the express terms of the contract, with payment of more than one month's salary in lieu of notice. (I add here parenthetically, that it also does not lie in the plaintiff's mouth to claim that she is entitled to the *ex gratia* payments of S$40,000 and S$75,000, as it is beyond doubted that she had rejected these two offers from the defendant, as admitted in her pleadings.)

69 The present situation is analogous to that in *Latham Scott*, where the employee ("Latham") claimed that he was wrongfully dismissed and that the employer had owed him a guaranteed bonus of almost US$2m. Latham also claimed that the dismissal made in bad faith had deprived him of the opportunity to earn the bonus. The Court of Appeal considered whether Latham would have been entitled to a discretionary bonus if he had not been dismissed from the company. The relevant clause of Latham's employment contract stated that "a bonus may be paid to you at the end of each calendar year, based on Company profitability and your performance during the year". The Court of Appeal observed that the bonus payment was entirely discretionary. Even if Latham had continued to be employed at the company, he would not have had a legal right to claim a bonus from the company (at [71]-[72]):

71 In our view, it would be wrong to allow an employee in Latham's position to lay claim to a discretionary bonus on a proper construction of his employment contract when his services were terminated even before his bonus was properly declared. In both *Walz v Barings Services Ltd*, a preliminary hearing before the English Industrial Tribunal, and *Bajor v Citibank International plc* (Queen's Bench Division, 19 February 1998, unreported), the plaintiffs were employed in an industry in which the employees operated within a 'bonus culture' in which bonuses were very commonly and even invariably paid. However, both plaintiffs were held not to be entitled to claim the bonus as a matter of contractual obligation after being dismissed, even if they were wrongfully dismissed as in the case of *Bajor v Citibank International plc*. In *Walz v Barings Services Ltd*, this was so even though the bonus had already been announced by the respondents. It was held there that, as the bonus was totally discretionary, there was simply no obligation to pay. Announcing it did not convert the payment of the bonus into a contractual obligation.

72 Latham's situation was akin to the plaintiffs in these two cases. Unless the bonus had been expressed to be guaranteed, an employee in Latham's position could not claim to be legally

entitled to a bonus, the granting and quantum of which are entirely at the discretion of the employer. While he might have hoped for a bonus if he had indeed remained in the employ of CSFB, the fact remained that, even then, he would not have been able to claim to be entitled to a bonus as of right as it was entirely at the discretion of CSFB.

70 As the payment of bonus was found to be entirely within the employer's discretion in *Latham Scott*, the "incentive compensation" in the present case would *a fortiori* be found to be within the defendant's absolute discretion. There is nothing in the plaintiff's employment contract that guarantees the incentive compensation. Furthermore, the clause in Latham's employment contract tagged the payment of bonus to the employee's performance as well as the employer's profitability for that given year, and yet the Court of Appeal still found the payment of bonus to be entirely within the employer's discretion. In the present case, given that clause 3 of the plaintiff's letter of appointment merely states "you *may* be paid a *discretionary* variable bonus equivalent to one month's gross salary, and proportionately in respect of any incomplete year of service", where the payment of bonus is expressed to be discretionary, and where it is not tagged to the performance of the employee or the employer's profitability (unlike the situation in *Latham Scott*), it must be all the more so that the payment of incentive compensation is in the employer's absolute discretion.

71 Notwithstanding the reference to the decision of *Latham Scott* above, the present situation is unlike that in *Latham Scott* where the Court has to determine whether the payment of bonus was discretionary. There was no such need in the present case, as the plaintiff had effectively ***conceded*** (see [65] - [66] above) that there is no contractual basis for the payment of the incentive compensation, and that the payment of such is entirely within the defendant's discretion. In this regard, the plaintiff's admissions have rendered the claim inescapably and fundamentally flawed. The claim is, in essence, a "*non-claim*", *in so far as* she has admitted that the defendant's breach did not deprive her of anything that she was contractually entitled to. Given that the plaintiff is ***already placed in the position she would have been in if the termination had not been made in bad faith or made unfairly*** (with the payment to the plaintiff of more than one month's salary in lieu of notice, and with the plaintiff's material concession that, even if the contract of employment was not terminated, she would not in any case be contractually entitled to the incentive compensation (see [65], [68] above)), the continuance of the plaintiff's claim in trial would therefore achieve ***no practical or useful purpose other than to advance the plaintiff's collateral interests*** in pursuing against the defendant to pay her more than what she was contractually entitled to under her employment contract. For the reasons above, the claim is struck out as it is frivolous, vexatious and an abuse of proceedings.

Conclusion

72 The plaintiff's claim is struck out with costs. I will hear parties' submissions on costs at a later date.