

**IN THE APPELLATE DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2021] SGHC(A) 17

Civil Appeal No 59 of 2021

Between

Normet Singapore Pte Ltd

... Appellant

And

Koh Wee Xiong @ Xu
Weixiang

... Respondent

Civil Appeal No 60 of 2021

Between

Koh Wee Xiong @ Xu
Weixiang

... Appellant

And

Normet Singapore Pte Ltd

... Respondent

In the matter of Suit No 23 of 2018

Between

Koh Wee Xiong @ Xu
Weixiang

... Plaintiff

And

Normet Singapore Pte Ltd

... Defendant

EX TEMPORE JUDGMENT

[Employment Law] — [Contract of service] — [Termination without notice]
[Employment Law] — [Pay] — [Dismissal]
[Employment Law] — [Pay] — [Annual wage supplement]

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Normet Singapore Pte Ltd
v
Koh Wee Xiong (alias Xu Weixiang) and another appeal

[2021] SGHC(A) 17

Appellate Division of the High Court — Civil Appeal Nos 59 of 2021 and 60 of 2021

Quentin Loh JAD, See Kee Oon J, Chua Lee Ming J

23 November 2021

23 November 2021

Chua Lee Ming J (delivering the judgment of the court *ex tempore*):

1 These cross-appeals arise from the decision of the High Court Judge (the “Judge”) in Suit No 23 of 2018, in which Mr Koh Wee Siong @ Xu Weixiang (“Koh”) sued Normet Singapore Pte Ltd (“Normet”) for wrongful dismissal and certain payments alleged to be due to him, and Normet counterclaimed against Koh for breaches of his employment contract.

2 The Judge’s decision was as follows:

(a) Normet failed to prove three out of the four alleged breaches of Koh’s employment contract. However, Normet succeeded on the fourth alleged breach, *ie*, that Koh had assisted Kensetsu International (S) Pte Ltd (“Kensetsu”), a competitor of Normet, with a product presentation. In doing so, Koh had breached his employment contract, which

prohibited him from participating in business activities outside of his employment with Normet. Under Koh's employment contract, Normet could terminate his employment if he committed a serious or persistent breach of the terms of his employment or was guilty of serious and wilful misconduct. Koh's breach was sufficient to justify his summary dismissal. However, the Judge did not award Normet damages for this breach as there was no evidence of any loss suffered by Normet.

(b) Koh succeeded in his claims for pro-rated annual wage supplement ("AWS") in the sum of \$11,022.84 and compensation for five days of unused compassionate leave in the sum of \$2,945.38. However, Koh's claims for arrears in commission, Retention Incentive Bonus and annual bonus were dismissed.

3 In Civil Appeal No 59 of 2021, Normet appealed against the Judge's rejection of one of the alleged breaches of Koh's employment contract, *ie*, that Koh had breached his duty of confidentiality owed to Normet by procuring a laboratory known as TUV SUD PSB Pte Ltd ("TUV") to issue supplementary test reports on Normet's products to Kensetsu. Normet also appealed against the Judge's findings that Koh was entitled to his pro-rated AWS and compensation for five days of unused compassionate leave.

4 In Civil Appeal No 60 of 2021, Koh appealed against the Judge's finding that his dismissal was not wrongful as well as the Judge's rejection of his claims for commission, Retention Incentive Bonus and annual bonus.

5 We are of the view that the Judge's findings that are being appealed against cannot be said to be plainly wrong or against the weight of the evidence.

6 With respect to Koh's summary dismissal, Koh was present at the office of Maxbond Singapore Pte Ltd ("Maxbond") when Kensetsu made its client presentation. Maxbond was one of Normet's customers. The Judge found that Koh assisted Kensetsu with the product presentation to Maxbond. In his oral grounds, the Judge said that he found Koh's testimony as to why he was present at Maxbond's office on that day to be internally inconsistent. The Judge also found discrepancies between the accounts given by Koh and a director and shareholder of Kensetsu, Mr Tham Keang Hoe ("Tham") concerning how they came to meet at Maxbond and their respective roles at the presentation. Before us, Koh argued that the Judge misapplied the burden of proof in that the Judge accepted that Normet had proved its case by virtue of Koh's and Tham's evidence being inconsistent. In our view, this argument is unfounded and mischievous. This was not a case where Normet had adduced no evidence in support of its claim. Normet had adduced evidence from a then employee of Maxbond that Koh had participated in Kensetsu's product presentation. It is clear that the Judge accepted Normet's evidence and disbelieved the evidence given by Koh and Tham.

7 Koh also pointed out that Normet had alleged that Koh had represented himself as Kensetsu's employee at the presentation, but the Judge did not make any finding on this allegation. We do not think this takes Koh's case any further; the finding that Koh assisted Kensetsu with its product presentation to Maxbond was (as the Judge found) sufficient ground for Koh's dismissal. Not only was Kensetsu a competitor to Normet, Maxbond was one of Normet's customers.

8 With respect to the question whether Koh had procured TUV to issue supplementary test results on Normet's products to Kensetsu, Normet relied on a letter dated 6 October 2015 to TUV (the "Letter") allegedly signed by Koh, as well as the evidence of a TUV employee, Mr Eddie bin Suwand ("Suwand"). It

was not disputed that the signature on the Letter was very different from Koh's usual signature. Normet produced a delivery order, allegedly signed by Koh using a signature that looked somewhat similar to the signature on the Letter, to support its case that the Letter was issued by Koh. There was no expert evidence on the authenticity of the signature on the Letter. In our view, the Judge was correct to find that the evidence was not compelling. A court should be very slow to conclude that a questioned signature is genuine based solely on its own examination and perception of the questioned signature and the specimen signature. Apparent visual similarity between two signatures to a non-expert's eyes does not mean that the questioned signature is therefore genuine. Further, we note that the original copy of the Letter was not available and there was only one specimen signature, which was itself disputed.

9 As for Suwand's evidence, the Judge did not accept his evidence because he found aspects of his evidence unsatisfactory. The Judge's assessment of Suwand's evidence ought to be given considerable weight. Normet bore the burden of proving that Koh did procure the issuance of the supplementary test reports to Kensetsu. In our judgment, the Judge's finding that Normet had not proven its case cannot be said to be against the weight of the evidence or plainly wrong.

10 We turn next to Koh's claim for AWS. The Employee Handbook provided that AWS would be paid to employees who were in service on 31 December of the year in question. Koh's employment contract (the "Last Employment Contract") provided only that AWS would be paid on a pro-rated basis if Koh did not complete the full year of service. In the present case, Koh was dismissed on 11 December 2017. Normet argued that there was no inconsistency as the AWS provision in the Last Employment Contract could mean pro-rating where the employee joined the company after January of the

year in question, provided that the employee was still in service on 31 December of that year. In our view, Normet's interpretation of the AWS provision cannot apply to Koh's case since Koh was already in Normet's employment when the Last Employment Contract was entered into. The Last Employment Contract was issued as Koh was promoted to the position of Business Manager, ASEAN. In any event, any ambiguity should be resolved against Normet since both documents were prepared by Normet. We agree with the Judge that the provisions relating to AWS in the Employee Handbook and the Last Employment Contract were inconsistent with each other. As provided in the Employee Handbook, in the event of any inconsistency between the Employer Handbook and an employment contract, the latter would prevail. Koh was therefore entitled to be paid his pro-rated AWS.

11 As for Koh's claim for compensation for unused compassionate leave, the Judge was clearly justified in concluding that Koh was entitled to such compensation. The Employee Handbook allowed Koh to exhaust such leave within two months from the death of his grandmother; Koh was terminated before the two-month period expired. Normet's finance manager confirmed that there was no reason not to pay Koh for his unused compassionate leave.

12 With respect to Koh's claim for commissions, it was not disputed that Koh was paid various amounts of commission during the period from April 2012 to March 2015. However, Koh claimed that these payments had been made pursuant to a "pooled commissions" scheme allegedly instituted in 2008. Koh claimed that he had not been paid his commission under his employment contract. The Judge found that the commissions paid to Koh had been paid under his employment contract and rejected Koh's claim. The Judge noted in particular that despite Koh's claim that the pooled commission scheme was instituted in 2008 or 2009, Koh's IR8A forms did not show him receiving any

commissions for the years from 2009 to 2011. Koh challenged the accuracy of his IR8A forms, pointing out that there were some mistakes in the forms. However, the Judge had considered all the evidence and we are satisfied that his decision was not plainly wrong.

13 As for Koh’s claim for Retention Incentive Bonus, we agree with the Judge that the agreement providing for Retention Incentive Bonus was superseded by Koh’s Last Employment Contract, which provided that the contract was deemed an “integrated contract, and any previous contracts and agreements are deemed superseded”. Koh was thus not entitled to any Retention Incentive Bonus.

14 As for Koh’s claim for annual bonus, we agree with the Judge that, under Koh’s employment contract, the annual bonus was discretionary. Koh made much of the fact that the relevant clause stated as follows: “You are entitled to a bonus according to the then existing bonus scheme. ...” In our view, that did not mean that Normet had a contractual obligation to pay bonus. This conclusion is reinforced by the fact that the clause also provided that payment of bonus was subject to “confirmation of the bonus amounts by Normet’s Board of Directors in accordance with Normet’s practice”.

15 For the reasons given above, we dismiss both appeals. In the circumstances, the appropriate order as to costs is for each party to bear its own

costs of the appeals and we so order. There will be the usual consequential orders.

Quentin Loh
Judge of the Appellate Division

See Kee Oon
Judge of the High Court

Chua Lee Ming
Judge of the High Court

Goh Kim Thong Andrew (De Souza Lim & Goh LLP) for the
appellant in CA 59/2021 and respondent in CA 60/2021;
Francis Chan Wei Wen and Alexius Chew Hui Jun (Titanium Law
Chambers LLC) for the appellant in CA 60/2021 and respondent in
CA 59/2021.
