IN THE STATE COURTS OF THE REPUBLIC OF SINGAPORE

[2026] SGECT 1

Employment Claims Tribunals — Claim Nos 11019 and 11021 of 2024

Between

JGP

… *Claimant*

And

JGQ

… *Respondent*

GROUNDS OF DECISION

[Employment Law — Disciplinary procedures]
[Employment Law — Pay — Discretionary bonuses]
[Employment Law — Termination — "Wrongful Dismissal"]

Version No 1: 18 May 2026 (13:59 hrs)

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JGP
v
JGQ

[2026] SGECT 1

Employment Claims Tribunals — Claim Nos 11019 and 11021 of 2024
Tribunal Magistrate Jared Kang Chern Wey
21 May, 29 July, 8 August, 16 September 2025

15 May 2026

Tribunal Magistrate Jared Kang Chern Wey:

1 "An employee is *wrongfully* dismissed if, without cause, he is dismissed without full notice or without money in lieu of notice. The notice period is either: that set out in the contract; or the appropriate implied notice; or is determined in accordance with the statutory minimum period calculated in accordance with the employee's length of service. An employer may legitimately terminate an employee's employment without notice or money in lieu of notice if the employee has committed gross misconduct or some other serious breach of his contract of employment such as dishonesty, disobedience, or serious incompetence. … If an employer, without legitimate reason, summarily terminates an employee's contract, the employee is entitled to compensation for his notice period. This is quantified by calculating the net amounts (salary and benefits) he should have received during the balance of his

notice period" (*Blackstone's Employment Law Practice 2023* (Lydia Banerjee and Gavin Mansfield eds) (Oxford University Press, 2023) at [25.01], [25.03]).

2 Though this is a statement of English law, it accurately reflects the position in Singapore as well. This much is clear from several of our own Court of Appeal's decisions, the correctness of which few would question (see, *eg*, *Port of Singapore Authority v Wallace John Bryson* [1979-1980] SLR(R) 670; *Chiam Heng Hsien v Jurong Town Corp* [1986-1986] SLR(R) 92; *Alexander Proudfoot Productivity Services Co S'pore Pte Ltd v Sim Hua Ngee Alvin and another appeal* [1992] 3 SLR(R) 933; *Latham Scott v Credit Suisse First Boston* [2000] 2 SLR(R) 30). Indeed, it seems almost banal to state what "wrongful dismissal" *simpliciter* is about. Absent discrete complications—such as those arising, for example, from the application of the principle in *Boston Deep Sea Fishing and Ice Co v Ansell* (1888) 39 Ch D 339 ("*Boston Deep Sea Fishing*") (*cf*, *Phosagro Asia Pte Ltd v Piattchanine, Iouri* [2016] 5 SLR 1052 ("*Phosagro Asia*")); the legacy of *Addis v Gramophone Co Ltd* [1909] AC 488 ("*Addis*") in restricting recoverable damages (*cf*, *Wee Kim San Lawrence Bernard v Robinson & Co (Singapore) Pte Ltd* [2014] 4 SLR 357); or whether the implied term of mutual trust and confidence exists in Singapore (*cf*, *Dong Wei v Shell Eastern Trading (Pte) Ltd and another* [2022] 1 SLR 1318 ("*Dong Wei*"))—the law in this area is generally regarded as straightforward or, at least, settled.

3 It is, therefore, somewhat unfortunate that—when the Employment (Amendment) Act 2018 (No 55 of 2018) was passed, and the jurisdiction to decide employee-claims under s 14(2) of the Employment Act 1968 ("EA") (as well as its sister provision, s 84(2) of the EA concerning pregnant employees) was transferred from the Minister to the Employment Claims Tribunals ("ECT")—Parliament chose to call the disputes arising from such claims "*wrongful dismissal* disputes" (see s 2(1) of and the Third Schedule to the

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Employment Claims Act 2016 ("ECA")). This label—now, because of the 2018 Act, attached to two *very* substantively different claims—has been the source of some conceptual confusion. This confusion has, in turn, produced not only a lack of clarity as to the principles and propositions of law that *the ECT* is bound to apply when deciding such claims, but also those which *the courts* are to apply in respect of the "wrongful dismissal" claims they hear (see, *eg*, *Longitude 101 Pte Ltd v Navinea Kanapathy Pillai and another matter* [2025] SLR(StC) 403 ("*Longitude 101*"); *Cisilia Oktavia Lim v Reins International (Singapore) Pte Ltd* [2024] SGMC 68 ("*Cisilia Oktavia Lim*")). As a result, the law governing "wrongful dismissals" has become a little more layered, difficult, and unclear than it perhaps needed to be.

4 The circumstances of six related cases (including the present)[1] that were before me were relatively apt demonstrations of at least some of this difficulty and lack of clarity. As such, I take the opportunity here to parse through as many of those layers as possible, in an attempt to make as much sense of the law as I am able within the constraints inherent in this institutional setting. That is, one where parties are required to act in-person and, as a corollary, tribunals do not benefit from the assistance of opposing arguments from counsel, especially on matters of law. Nevertheless, despite any shortcomings this may produce in my understanding, I still think it crucial that *an* exposition on the law and its surrounding difficulties be written. In my view, the law *needs* clarification, especially given the high volume of "wrongful dismissal" claims dealt with by the ECT and the corresponding risk of inconsistency a lack of clarity can create. Even if, ultimately, my understanding of the law is not placed before an appellate court for rejection, criticism, correction, or adoption, I trust that the

[1] ECT/11008/2024 and ECT/11009/2024; ECT/11014/2024 and ECT/11015/2024; ECT/11017/2024 and ECT/11018/2024; ECT/11019/2024 and ECT/11021/2024; ECT/11020/2024 and ECT/11022/2024; and ECT/11028/2024 and ECT/11029/2024.

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detailed treatment of the law I offer here will still be of some utility to fellow employment tribunals of coordinate jurisdiction, as they too work through the same difficulties in their own cases.

Preface

5 In December 2023, the respondent commenced an internal review of staff medical-benefit claims after concerns had arisen about possible misuse of outpatient medical entitlements. The review had been prompted by a high volume of claims submitted for sums incurred at a clinic which I shall refer to as "Clinic X", where some employees appeared to have sought reimbursement for retail items[2] that were not claimable under the respondent's "*Medical and Dental Benefits"* policy (the "Medical Claims Policy" or "MCP").[3]

6 A substantial number of employees were investigated in the course of this review, which revealed that many had made claims for reimbursement which were not permissible under the MCP. The respondent performed a grouping exercise to tier these employees according, chiefly, to quantitative criteria. Those who fell within the highest quantitative tiers were issued a notice to attend a disciplinary inquiry ("DI") before a Disciplinary Committee ("DC"). There were some employees who did not fall within the highest quantitative tiers, but who had also been notified to attend a DI. In respect of those cases, there were other qualitative reasons which the respondent assessed warranted a DC hearing from the employee and examining their conduct.

7 In the result, around 40 employees were dismissed, each having been assessed by the various DCs to have intentionally, wilfully, and/or dishonestly

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2 ECT/11019/2024 — R14.

3 ECT/11019/2024 — R12; R13.

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committed serious breaches of the respondent's MCP by making the impermissible claims that they had. Of those, eight filed claims in the ECT, mainly contending that they had been "wrongfully dismissed". One employee withdrew her case early in the process;[4] another's ("Ms X") proceeded to trial before a different tribunal;[5] and, after that tribunal issued its decision in that case, the remaining six were fixed for trial before me. None of the six matters were joined under r 12 of the Employment Claims Rules 2017 ("EC Rules"), and they each proceeded as individual cases.

8 Ultimately, however, on essentially the same analytical basis, I decided all six cases against the respondent and awarded each of the claimants before me substantial compensation (relative to the ECT's monetary jurisdiction). The respondent has since filed applications seeking leave to appeal my decision in all six cases, and—notwithstanding the absence of a joinder (on why the cases had not been joined and the effect this had on the disputes, see [A.41] *et seq* below)—it would serve neither clarity nor economy to produce six largely repetitive sets of grounds. I therefore avoid such repetition by noting simply that although there were subtle differences between the six cases, none of those differences led to any differences in either analysis or conclusion. I therefore only produce full written grounds of decision in respect of the instant claimant's ("Ms C") case (*ie*, this set of grounds) and append them in full to the briefer oral judgments I gave in respect of the other five cases.

9 Whilst this approach suffers from the disadvantage of those five cases not benefitting from a full written statement of the parties' cases and my analysis thereof, that is preferable, in my view, to having largely unnecessary and

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4 ECT/11007/2024.

5 ECT/11010/2024 and ECT/11011/2024.

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duplicative grounds. As I stated, my analysis in respect of each of the six cases was essentially the same because I did not think there were material differences between the cases which ought to cause me to vary my approach in any of the cases. Accordingly, my detailed reasoning set out here in respect of Ms C's case can be taken as essentially that which I would have given in each of the other five cases.

Annexes

10 I append to these grounds of decision three annexes. The first records the consolidated procedural history across the related claims, including the two matters that did not proceed before me and the sequencing of the remaining six—so that the reader may see, in one place, the path that each case took through the ECT. The second addresses the other tribunal's earlier decision delivered in Ms X's matter, describes why the six cases before me had not been joined, and explains the consequences of that for how the evidence and submissions were handled, including the cognisance I took of the related cases in deciding each individual one. The third offers a structured analysis of the law on dismissals in Singapore. Although this exposition is general and, accordingly, largely *obiter* (*cf* [4] above), there are aspects of that analysis which bore on the subject of five questions of law which were engaged by the circumstances of Ms C's as well as the other five cases.

A general background

11 In late December 2023, a group-wide review was initiated by the respondent's parent company's ("RP") Group Human Resources ("Group HR") into reimbursement claims charged to Clinic X under employees' medical-benefit budgets. Group HR led and centrally coordinated the exercise across RPC and its relevant subsidiaries—this included the respondent. The review

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examined whether purchases reflected on Clinic X invoices had been claimed in a manner not permitted by the prevailing medical claims policies applicable to each employing entity; for the respondent, this was its MCP published on its intranet in 2022 and 2023. The relevant window of review was January 2022 to September 2023.

12 The first step was information-gathering. On or about 26 December 2023, Group HR issued to employees identified for review (including those employed by the respondent) a standardised Notice of Investigation with an accompanying questionnaire. The notice explained that Group HR was examining Clinic X-linked reimbursement claims against the applicable medical claims policy; it set a deadline for submission, required employees to upload itemised receipts (or complete a claims appendix where receipts were unavailable), cautioned that disciplinary action might follow, and reminded employees to keep the process confidential. The questionnaire then sought particulars of each Clinic X claim (including what was purchased and why, whether it was medically warranted or prescribed, and whether it was for self or dependant); asked the employee to confirm if the claims were permitted under the policy; and, if not, whether the employee agreed to repay the respondent in full.

13 Selection for the next stage flowed from a grouping exercise conducted after the questionnaires and supporting materials were returned. Employees were first placed into four broad categories (A–D). Placement turned principally on quantitative metrics—essentially, the number and aggregate value of Clinic X-linked claims over the review period. In broad terms, Group A was the lowest-activity band: in 2022, an employee had to have lodged between 1 and 12 claims with a total not exceeding $2,400, and in 2023, between 1 and 9 claims with a total not exceeding $1,800. Group B captured moderate activity: for

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2022, either 13–24 claims or a total between $2,401 and $4,800; for 2023, either 10–18 claims or a total between $1,801 and $3,600. Group C reflected heavier activity: for 2022, either 25–48 claims or a total between $4,801 and $9,600; for 2023, either 19–36 claims or a total between $3,601 and $7,200. Group D comprised very heavy activity: for 2022, more than 48 claims or a total exceeding $9,600; for 2023, more than 36 claims or a total exceeding $7,200. For classification, where an employee straddled more than one band, the higher tier applied.

14 Following the initial banding into Groups A–D (on quantitative metrics alone), the next step was interviews. As a rule, all employees in Groups C and D were called to attend so that they could explain their Clinic X purchases and their understanding of the MCP. Employees in Groups A and B were offered an interview and were scheduled unless they elected to waive their right to attend an interview pursuant to their applicable Disciplinary Procedures (be it that of the Group or the relevant subsidiary). Otherwise, employees were also called where their questionnaire answers left material points unclear or where regulatory status made an interview appropriate (for example, if they were regulated representatives). Interviews were conducted by HR on a confidential basis with contemporaneous notes, and employees were given an opportunity to review and confirm the interview record.

15 By end-January 2024, the interview phase and document review were substantially complete, and the investigation was formally closed on or around 31 January 2024. On 6 February 2024, the Investigation Team submitted its report and recommendations to the Group's Head of HR as well as the respondent's Global Head of HR ("Ms A"). At that stage, a second-round sort was applied to Groups A–C by reference to two features: first, the employee's monthly average value of Clinic X claims over the review window (*ie*, the total

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value of all Clinic X claims divided by the months of active service); and second, whether the employee—having accepted that the claims were impermissible—agreed to repay.

(a) Thus, for Group A, employees who agreed to repay were coded A1 if they had only a single sub-$78.50 claim in the whole review period, A2 if the monthly average value of their claims was below $78.50, and A3 if it was at or above $78.50. Those who did not agree to repay were coded A4.

(b) For Group B, employees who agreed to repay were coded B1 if the monthly average value of their claims was below $157 and B2 if it was at or above $157. Those who did not agree to repay were coded B3.

(c) For Group C, employees who agreed to repay were coded C1 if the monthly average value of their claims was below $314 and C2 if it was at or above $314. Those who did not agree to repay were C3.

16 The three benchmarks ($78.50 / $157 / $314) were derived from the then-applicable no-itemisation limits ($100 per claim up to September 2022 and $200 thereafter) and were used to approximate, respectively, half, one, and two such claims per month over the review period. To explain, the window comprised 21 months (January 2022 to September 2023), being 9 months at $100 and 12 months at $200; hence, one notional claim per month is (9 × $100) + (12 × $200) ÷ 21 ≈ $157, with the half- and double-rate figures approximated at $78.50 and $314. These notional monthly benchmarks essentially allowed the Investigation Team to distinguish, within Groups A–C, between occasional activity and regular or sustained activity, irrespective of the precise transaction pattern.

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17 A new qualitatively-defined Group E was also constituted. This group comprised: (a) employees who, but for their failure to accept that their claims were impermissible under the MCP, would otherwise have fallen within A2, A4, B1, B2 or C1; (b) employees who had shown an inability to understand or comprehend the MCP even after explanation; and (c) employees who had been uncooperative during the investigation. By way of illustration, an employee who had lodged, say, 14 claims in 2022 totalling about $2,300 (which would have placed her in Group B1 on the numbers) but who, despite explanation, insisted that her Clinic X purchases were claimable and declined to repay would have been placed in Group E.

18 With the further sub-divided bands (A–D) and the constitution of Group E in place, the Investigation Team recommended that the disciplinary process continue along two tracks. First, employees in Groups A1–A4, B1–B3 and C1 were to receive direct disciplinary outcomes under the Group or subsidiary's Disciplinary Framework. Second, employees in Groups C2, C3, D and E were to be referred to a DI before a three-member DC. Approval for this recommendation was obtained shortly thereafter. From late February 2024, HR began operationalising the plan: DCs were assembled, DI dates were coordinated, and notices were issued in batches setting out the charges to be examined and the materials on which the Group or its subsidiaries proposed to rely.

19 Shortly thereafter—around mid-March 2024—concerns were raised at Group level (including by the RPC Group CEO and the Group's Head of HR), with the respondent's Global Head of HR participating in that discussion, about the sheer number of DCs being convened to conduct DIs, the strain on resources, and the impact on staff morale. Group HR asked that the Investigation Team re-look at, in particular, the Group C2 cohort. On 21 March 2024, the team

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recommended that C2 employees (save for those who had already attended or completed a DI) should not proceed to DIs and instead be dealt with by direct disciplinary action under the applicable Disciplinary Framework. Approvals were then given at the employing-entity level on or about 27 March 2024, with Ms A giving her approval for the respondent. Accordingly, C2 DIs that had not yet taken place were cancelled (if scheduled) or not convened, and outcomes were issued directly—typically a letter of warning, often accompanied by a percentage reduction of the employee's 2023 performance bonus—while any C2 DIs already conducted were left to run their course.

20 Following the recalibration affecting only Group C2, the remaining DIs proceeded unaffected for the Group C3, D and E cohorts (and for any C2 matters where a DI had already been conducted). Through late March and April 2024, three-member DCs heard those cases, considered the consolidated materials (the questionnaires, receipts or claims appendices, interview records, *etc*) alongside the employees' explanations given during the DIs. Written reasons were then issued by the DCs, addressing, broadly speaking: (a) whether the relevant employee had breached the applicable medical claims policy; (b) if so, whether those breaches had been committed intentionally, wilfully, and/or dishonestly; and (c) the recommended sanction.

21 The DCs' recommended sanction had to be approved under the relevant entity's Disciplinary Framework. As far as the respondent was concerned, such recommendations had to be submitted to and approved by the respondent's Global Head of HR (Ms A) as well as the respondent's Global Head of Regulatory Compliance. Once approvals were given, the disciplinary outcome was communicated by a letter under Ms A's hand, which set out the gist of the grounds. In general, the DI track culminated, in most cases, in DC recommendations for dismissal. There was a minority which resulted in non-

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termination outcomes where either dishonesty was not found by the DC or—despite such an adverse finding—the DC considered the employee's mitigating circumstances sufficiently weighty to warrant a lesser sanction.

22 Each of the six claimants whose cases were before me fell within Group D and had been referred to DCs. Their respective DCs concluded that they had committed serious breaches of the MCP, and that those breaches had been committed intentionally, wilfully and/or dishonestly. In each case, the DCs recommended dismissal; those recommendations were approved, and the dismissals were effected. However, it is important to note that, though, in all six cases, the letters of dismissal communicated the DCs' conclusions—namely, that the employees were found to have committed serious breaches of the MCP intentionally, wilfully, and/or dishonestly—those letters also stated that the six claimants' employments were being terminated with full contractual notice. Timing wise, all six claimants were given notice of their dismissal in mid-April 2024 with notice running until mid-July 2024. The letters of dismissal also called the employees' attention to their entitlement to file an appeal against the decision, whereupon Ms A would determine whether to convene an Appeal Committee, her decision being final.

23 Each of the six claimants sought an appeal. However, in each of their cases, no Appeal Committee was convened. On Ms A's evidence, the Disciplinary Framework contemplated that, where a DI had already been conducted and a DC had reached its decision, an appeal would be entertained only if: (a) new material evidence had arisen after the DI; or (b) there were material procedural gaps undermining the reliability of the DC's decision. As neither basis was shown in any of the six matters, she decided that no Appeal Committees would be convened. Her decision was made and communicated to

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each of the claimants in the first half of May 2024 and, save for one,[6] the claimants were notified in the later part of May that their employments would be brought to an end with immediate effect, with the remaining notice being commuted to salary in lieu thereof.

24 After each claimant's employment came to an end, he or she lodged a mediation request with the Tripartite Alliance for Dispute Management ("TADM") under Part 2 of the ECA. The mediations—all of which were union-assisted—did not result in settlement. TADM accordingly issued each claimant two Claim Referral Certificates recording unresolved disputes. Thereafter, each claimant commenced two claims in the ECT against the respondent. The first and principal claim in each case was for "wrongful dismissal" under s 14(2) of the EA, and the second was a contractual claim seeking payment of his or her 2023 performance bonus.

The facts of Ms C's case

25 Ms C commenced employment with the respondent on 16 September 2021 under a written contract dated 20 August 2021 which provided, among other things, for three months' notice of termination.[7] She was eligible for medical benefits under the MCP and for variable remuneration assessed annually. On or about 26 December 2023, Ms C received the Notice of Investigation and standard questionnaire. She completed and returned the materials within the week, appending the available Clinic X receipts and a claims appendix.[8] Over the review window, her Clinic X usage arose only in 2023: between March and September that year she submitted 62 reimbursement

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6 The claimant in ECT/11008/2024 and ECT/11009/2024.

7 ECT/11019/2024 — R06 at p 12.

8 ECT/11019/2024 — R15; R16.

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claims totalling $9,989.64.[9] In 2022, she did not make any reimbursement claims for purchases made at Clinic X. In her responses, she indicated that her Clinic X purchases in 2023 consisted largely of vitamins, supplements and skincare items, that she had not consulted a doctor at Clinic X, and that the claims had been submitted under "Self".

26 On the respondent's metrics (see [13] above), those figures placed her in Group D and, in consequence, she was required to attend an HR interview on 10 January 2024, at which she broadly reiterated her questionnaire answers and explained that she had understood, from what colleagues and the clinic staff had said, that non-itemised claims below the stated threshold could be submitted. She indicated that she was prepared to repay the sums if the claims were not in order.[10] Consistent with the treatment of Group D cases (see [18] above), the respondent then issued Ms C a Notice of DI on 13 March 2024,[11] and the DI was convened before a three-member DC on 20 March 2024. The committee was chaired by one Mr T (Managing Director, Risk Management), with a Mr S (Managing Director, Group Finance) and a Ms Y (Managing Director, Group HR) as members.

27 Ms C attended and was invited to explain her claims. Before the DC, she accepted that she had not been examined by a doctor at Clinic X and that her purchases had consisted largely of vitamins, supplements, skincare products, and occasional household or personal-care items, including one electric toothbrush. She explained that she had first learned of Clinic X from a colleague who had represented that many employees frequented the clinic and had

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9 ECT/11019/2024 — R16 at PDF pp 3–18; R77 at para 10.

10 ECT/11019/2024 — R17.

11 ECT/11019/2024 — R18.

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successfully made claims for similar purchases. On her account, the clinic staff had also advised her to keep each receipt below $200, as amounts under that threshold did not need to be itemised for reimbursement; she said she had understood this to mean that such claims were permissible. Ms C stated that she had therefore believed her claims were consistent with prevailing practice and that she had not intended to deceive the respondent. She further said that she had agreed to repay the full amount once informed that her claims were not in order,[12] and that she deeply regretted the lapse.[13]

28 The DC considered the evidence before it, including Ms C's questionnaire and interview responses, and her oral explanations at the inquiry. It found that Ms C had made repeated claims for items plainly non-medical in nature and that these could not reasonably have been regarded as claimable under the MCP. The DC observed that the pattern of her purchases—62 transactions over a seven-month period, many on consecutive days, and typically just below $200—demonstrated a sustained and deliberate disregard for the policy's requirements. It therefore concluded that there was a serious breach of policy and, further, that Ms C had committed that breach intentionally and dishonestly.

29 That said, the DC also took into account Ms C's relatively junior position, her previously clean employment record, her full repayment of the sums claimed, and what it described as her "simple-minded" reliance on the representations of colleagues and the clinic staff. While maintaining its findings of intentional misconduct and serious breach, the DC regarded these matters as mitigating when calibrating sanction. Balancing them against the gravity and

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12 ECT/11019/2024 — R17 at p 2; C19.

13 ECT/11019/2024 — R19.

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pattern of the conduct, the DC concluded that, though her conduct would ordinarily have warranted dismissal, her personal circumstances justified some leniency. It therefore recommended that Ms C be issued a letter of warning together with a 100% reduction of her performance bonus for 2023.[14]

30 When the DC's report was submitted for approval on 17 April 2024, pursuant to the respondent's Disciplinary Framework (the "DF"),[15] Ms A (the respondent's Global Head of HR) expressed concern that the finding of dishonesty was not consistent with such a lenient sanction and requested that the DC reconsider its recommendation. The DC reconvened within the day, reassessed the matter, and—by a two-to-one majority—determined that the mitigating factors were insufficient to justify deviation from the standard consequence for misconduct of this gravity. It therefore revised its recommendation to "*termination*". Ms A accepted and approved that revised recommendation later that same day.[16] The next day, 18 April, the respondent issued Ms C a notice of termination, giving her three months' notice—which was the period provided for in her employment contract—that her last day would be 17 July.[17] Before the expiry of such notice, the respondent decided to bring forward the effective termination date and pay salary in lieu of the unserved notice period. By letter dated 24 May 2024, Ms C was informed that her employment would be terminated with immediate effect, with all sums due to her paid accordingly.[18]

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14 ECT/11019/2024 — R62.

15 ECT/11019/2024 — R08.

16 ECT/11019/2024 — R63.

17 ECT/11019/2024 — R10.

18 ECT/11019/2024 — R11.

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31 Although Ms C was formally terminated with notice (part of which was later commuted to salary in lieu), the letter of termination issued to her on 18 April 2024 made clear that the decision to end her employment was founded on the findings of the DC. The letter expressly recorded that she was found to have committed intentional misconduct involving dishonesty and a serious breach of the MCP. The letter also set out the evidential basis for those conclusions:

> **The decision of the Disciplinary Committee**
>
> The DC has concluded that you have committed the following disciplinary breaches alleged against you:
>
> - Intentional misconduct involving dishonesty committed wilfully by you, namely, to obtain claims for which you were not entitled to; and
> - Serious breach of the Medical Claims Policy, which was committed wilfully, or with conscious or repeated disregard of the requirements, by you.
>
> The above finding was based on evidence which included the following:
>
> - During the hearing, you admitted that you were aware of the $200 threshold, below which itemisation of receipt was not required. You also admitted that there had been instances where the clinic had asked you to split your purchases to keep each purchase below the threshold for itemisation of receipt.
> - You had made claims for items such as chicken essence and electric toothbrush. You accepted that these items were not prescribed by your doctors. You also admitted that you had never consulted a doctor at the clinic and would usually visit your own family doctor for medical consultations. However, you could not provide any satisfactory explanation as to why you submitted medical claims for your purchases of items such as chicken essence and electric toothbrush at the clinic, apart from saying that you were misled by your colleagues and the clinic staff.
> - You also admitted during the hearing that you had submitted claims for purchases of items (e.g. probiotics) which were for use by your child, even though you had submitted the claims under 'Self'.

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> In the circumstances, the DC has ordered that you shall be subject to the following disciplinary actions:
>
> - Termination of employment.
>
> **Disciplinary action**
>
> In the light of the above, [the respondent] has decided to terminate your employment further to clause 7 of your Contract of Employment dated 20 August 2021.

32 On 29 April 2024, after this letter was issued (but before notice given therein had been commuted to salary in lieu thereof), Ms C sought an internal appeal against the DC's decision, this being an avenue of recourse available to her under the respondent's DF. In her appeal email, she wrote, in substance: (a) that she had been told by clinic staff—and separately by a colleague—that claims below $200 need not be itemised and could be submitted, and that she had not previously appreciated the significance of this "$200 threshold"; and (b) that she had understood Clinic X to be a clinic used for the respondent's medical claims and, seeing many of her colleagues there "doing the same", she had not read the MCP. She also asked that leniency be shown, pointing to her performance, recent promotion, and remorse.[19]

33 Clause 8.4 of the DF required the respondent's Global Head of HR to determine whether an Appeal Committee ought even to be convened to consider the appeal and, whatever that decision, it was to be final (as stated at [22] above).[20] On 14 May, Ms A recorded her decision that no Appeal Committee would be convened. In her written report on the matter, she noted that Ms C had already attended a full DI hearing, that no new material evidence had arisen after the DI concluded, and that there were no material procedural gaps

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19 ECT/11019/2024 — C09.

20 ECT/11019/2024 — R08 at p 18.

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rendering the DC's decision unreliable.[21] Ms C's appeal therefore did not proceed further.

34 No further internal recourse was available to Ms C and, as such, on 24 May 2024, her employment came to an end (see [30] above). She thus initiated proceedings against the respondent, lodging the two present claims in the ECT on 12 November 2024. By her first claim for "wrongful dismissal" under s 14(2) of the EA, she sought compensation amounting to $25,998.[22] By her second, she sought the payment of her performance bonus for 2023 in the sum of $13,000.[23]

35 Concurrently, Ms C began her search for comparable employment. On her account, she had submitted résumés and contacted recruiters but had faced difficulty securing even first-round interviews, a difficulty she attributed to having been candid about the circumstances of her departure from the respondent. Ms C's explanation for her candour was that she had felt it necessary to declare upfront that she had been dismissed because the institutions at which she was seeking employment would, in any event, have conducted background checks with the respondent and learnt of her dismissal. As an illustration of how the dismissal affected her ability to seek new employment, Ms C referred to a role that required Japanese-language ability. Ms C said she held a JLPT N4 certification and, on the recruiter's initial view, had a strong chance because such candidates were uncommon. However, the recruiter later informed her that the prospective employer had taken her dismissal from the respondent into consideration in deciding not to proceed with an interview.[24]

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21 ECT/11019/2024 — R77 at para 17 and exhibit ACMA-1.

22 ECT/11019/2024 — C06.

23 ECT/11021/2024 — C09.

24 ECT/11019/2024 — C25.

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This was in early October 2024 and, on Ms C's account, she remained unemployed throughout the progression of her claims in the ECT, until as late as 29 August 2025.[25]

The claimant's case

36 Ms C's case comprised four principal planks. First, as to the grounds proffered for dismissal, she denied dishonesty and maintained that her Clinic X claims were submitted under a genuine (if mistaken) belief. Second, as to the fact of dismissal, she contended that dismissal was not justified even if some misconduct was found. Third, as to the process leading to her dismissal, she alleged material lapses in "due inquiry" required by s 14(1) of the EA and in the contractual procedure required by the various clauses in the DF. Fourth, as to her 2023 performance bonus, she argued that the respondent's non-award was not a good-faith exercise of discretion tethered to performance, but a punitive sequel to an already-infirm disciplinary outcome.

As to the grounds proffered for dismissal

37 The first plank of Ms C's case was that the grounds recorded in the respondent's notice of dismissal were not made out on the evidence and were, in material respects, overstated. The letter (issued on 18 April 2024) communicated the DC's conclusions that she had committed "intentional misconduct involving dishonesty" and a "serious breach" of the MCP, and cited (among other matters) her awareness of a "$200 threshold", split billing, and purchases (*eg*, chicken essence, an electric toothbrush) unsupported by any consultation at Clinic X. She denied that these facts, even if accepted, established dishonesty or wilfulness; rather, she said they showed a mistaken

[25] ECT/11019/2024 — C32; C48; C56.

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but genuine belief—formed from colleagues' practices and Clinic X's own representations about non-itemised claims below the prevailing threshold—that her claims were permissible. On that footing, she submitted the respondent could not discharge its burden of proof under s 27(2)(*b*) of the ECA to prove the specific reasons it chose to state (*viz*, dishonesty, wilfulness, intention), as opposed to misconduct *simpliciter*.

As to the fact of dismissal and the process leading thereto

38 The second and third planks of Ms C's case were that she ought not to have been dismissed at all, and that the process culminating in dismissal fell short of both statute and the respondent's own DF.[26] In particular, she relied on s 14(1) of the EA (the requirement of "due inquiry"), and on specific DF provisions. Specifically, Ms C relied on:

(a) Clause 6.4, which required a DC, when calibrating sanction, to consider relevant precedent cases so as to ensure consistency of treatment across like cases. Ms C's case was that the respondent failed to comply with this clause because neither the DC's written reasons nor the approval materials showed any engagement with precedent or parity analysis drawn from the same Clinic X episode. She identified comparators whose DIs were cancelled or who, despite adverse findings, received warnings and bonus reductions rather than dismissal, and said there was no principled, transparent explanation for imposing a harsher outcome on her.

(b) Clause 7.1, which channelled a DC's recommended sanction to the approvers (there were two: Ms A as the respondent's Global Head of

[26] ECT/11019/2024 — R08

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HR and the respondent's Global Head of Regulatory Compliance) for approval and did not invite a merits review or substitution by approvers. Ms C's case was that this clause had been breached because, after the DC initially recommended a warning with a 100% reduction of her 2023 bonus, Ms A queried that lenient outcome and asked the DC to reconsider, which led to the DC revising its recommendation to termination, which was then approved (see [30] above). She said this sequence showed the approval stage being used to drive a different substantive outcome, thereby displacing the DC's sanction-setting role and offending cl 7.1 as well as the "due inquiry" requirement in s 14(1). In this connection, she also relied more generally on the DF's fairness and natural justice requirements (including cll 3.4 and 5.12).

39 She also said the process of requiring an employee to attend a DI before a DC had been applied arbitrarily across the broader cohort. First, she pointed to the respondent's two-stage grouping exercise (see [15]–[20] above). While she accepted that she had been sorted into Group D on the respondent's metrics, she argued the later re-examination of Group C2 (where DIs were cancelled/not convened) illustrated the malleability of the track to a DI and, therefore, the arbitrariness of routing decisions. On her case, materially similar conduct sometimes attracted only a warning and bonus cut without a DI, whereas she was sent to a DC and dismissed. If she had been routed differently (*eg*, as with the Group C2 cohort after the review), dismissal would not have arisen. She cited comparators whose DIs were cancelled and replaced by a warning with a partial bonus cut, and said the respondent gave no principled, transparent basis for treating her more harshly. This, she said, bore directly on "due inquiry" under s 14(1) and on the DF's parity/precedent requirements.

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40 Ms C also took issue with the internal appeal process. She contended that the appeal stage under cl 8.4 of the DF was administered in a way that compounded the earlier defects. Although she filed an internal appeal on 29 April 2024, Ms A decided not to convene an Appeal Committee, recording that a full DI had already been held and there was no new evidence or material procedural gap. Ms C's argument was that this was circular: the very issues she raised were treated as outside the remit to warrant an appeal, which meant no neutral forum ever assessed them. She said this departed from the DF's stated function for the appeal stage and also offended the "due inquiry" requirement in s 14(1) when set against the scale and variability of outcomes in the overall episode.

As to entitlement to performance bonus for work done in 2023

41 The fourth plank concerned her 2023 performance bonus. She accepted that her contract framed bonuses as discretionary and conditioned, *inter alia*, on notice and misconduct, but contended that discretion had to be exercised honestly, in good faith, for proper purposes and rationally—*ie*, tethered to performance and not used punitively as an add-on to a contested disciplinary outcome. On her case, the respondent announced "no declaration" of her 2023 bonus as a sequel to the dismissal decision, without engaging with performance or applying any transparent, even-handed approach across the cohort. She said that was arbitrary and punitive. She contrasted her outcome with others in the same episode who, despite adverse findings, retained some portion of their 2023 bonus under warning-type outcomes. In short, she argued the non-award was an unlawful exercise of discretion because it rode on the same flawed disciplinary process rather than on a *bona fide* appraisal of 2023 performance.

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The respondent's case

42 The respondent's case mirrored the claimant's four planks, but in the opposite direction. First, as to the grounds recorded in the dismissal notice, the respondent maintained that the DC's findings of "intentional misconduct involving dishonesty" and a "serious breach" of the MCP were borne out on the evidence. Second, as to the fact of dismissal and the process culminating in it, the respondent contended that s 14(1) of the EA was not engaged and that the DF was, in any event, irrelevant to the ECT's task under s 14(2). Instead, applying the *Tripartite Guidelines on Wrongful Dismissal* (Govt Gazette, Electronic Ed, 23 Jul 2024) ("*TGWD*"), the only question for me was whether the reason stated was false. Alternatively, if s 14(1) or the DF was thought to matter, the respondent said that "due inquiry" was in fact conducted and the DF complied with. Third, in the alternative, if it was found that Ms C had a claim under s 14(2), the respondent contended that any compensation should be minimal upon application of the Second Schedule to the Employment Claims Regulations 2017 ("EC Regulations"). Fourth, as to the 2023 performance bonus, the respondent denied any contractual entitlement and said its non-award was a lawful, rational exercise of discretion.

As to the grounds proffered for dismissal

43 The respondent's primary position was that the dismissal reason stated in the 18 April 2024 letter—intentional misconduct involving dishonesty and a serious breach of the MCP committed wilfully or with conscious disregard—was not false. It stood by the DC's conclusions and submitted that the contemporaneous materials, Ms C's own answers, and the objective pattern of claiming together established both the breach and the required state of mind.

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44 First, the respondent said the claims themselves could not be squared with the governing policy. The MCP budget was for "GP and specialist outpatient" spend, not general retail; Ms C's purchases (vitamins and supplements, skincare products, chicken essence, an electric toothbrush) were not medically warranted or prescribed and so were non-claimable under a fair reading of the policy. The respondent emphasised that the Group ran a separate "Flex Dollar" scheme that (unlike the MCP) catered for wellness items—a design choice undercutting any suggestion that over-the-counter products fell within outpatient medical treatment. On the respondent's case, no reasonable employee could have believed that stocking up on these items without any consultation amounted to outpatient treatment within the MCP.

45 Second, the respondent relied on the *modus operandi* as powerful circumstantial proof of intent. Over roughly six months (March–September 2023) Ms C lodged 62 claims totalling $9,989.64, with spends repeatedly clustering just below the non-itemisation threshold, on many occasions on consecutive days. The respondent pointed to instances of "split" invoices and to Ms C's admissions at the DI—including that she kept purchases below $200 and that the clinic would suggest returning the next day to stay under the threshold—as showing that she deliberately shaped her transactions to exploit the system rather than because she innocently mistook the rules. This repeated pattern, the respondent said, is inconsistent with a *bona fide* misunderstanding and is strongly consistent with intentional or at least consciously reckless misuse.

46 Third, the respondent said Ms C's own explanations confirmed the mental element. In the DI she accepted (in substance) that she never consulted a doctor at Clinic X; that she bought vitamins and skincare because she wanted to "stock up" or "try different brands"; and that she structured receipts around

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the threshold. The respondent argued that these statements—coupled with the scale and frequency of claiming—made out at least wilfulness or conscious/repeated disregard. Her reliance on colleagues' practices or on what clinic staff said could not convert retail purchases into claimable outpatient treatment, particularly against the policy text and the separate Flex Dollar channel.

47 Fourth, the respondent accepted that, because it had stated specific grounds, s 27(2)(*b*) of the ECA put the burden on it to prove those grounds—and it maintained that the burden was discharged. The respondent's submissions framed the issues as: (a) whether there was "misconduct"; and (b) whether the stated reason was false. The respondent's case was "yes" to the former and "no" to the latter. Even if I preferred the formulation "serious breach with wilful or conscious disregard" to "dishonesty", the respondent said the reason as stated in the letter remained accurate in substance and, under the *TGWD* lens, could not be impugned as false.

48 Finally, the respondent submitted that Ms C's *post hoc* expressions of regret and her preparedness to repay did not assist her on liability: remorse is not a defence. What mattered was the contemporaneous conduct—repeated, sustained, and deliberately structured claiming that, on an objective view, fell outside the MCP and undermined the trust inherent in the employment relationship. On that footing, the respondent invited a finding that the DC's conclusions on intentional misconduct (and, alternatively, wilful or conscious disregard) were properly reached and that the dismissal reason recorded in the 18 April letter was duly proven.

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As to the fact of dismissal and the process leading thereto

49 Here, the respondent's position was two-stranded. First, as a matter of remit, s 14(1) of the EA was not engaged because Ms C's employment was terminated with notice (later partly commuted to salary in lieu). On the respondent's case, both the text of s 14(1) and the *TGWD* confine the need for "due inquiry" to summary dismissals. Where notice is given or paid, the ECT's task under s 14(2) is simply to test whether the stated reason for dismissal is false, and not to audit the employer's internal processes.

> **Dismissal**
>
> **14.**—(1) An employer may after due inquiry dismiss without notice an employee employed by the employer on the grounds of misconduct inconsistent with the fulfilment of the express or implied conditions of the employee's service, except that instead of dismissing an employee an employer may —
>
> (*a*) instantly down-grade the employee; or
>
> (*b*) instantly suspend the employee from work without payment of salary for a period not exceeding one week.

50 Relatedly, the respondent submitted that the DF was not a justiciable yardstick for a s 14(2) claim. Disputes about adherence to the DF—which is contractual in nature—are not within the ECT's statutory remit, which is bounded by the *TGWD* (to which the ECT must have regard under s 20(7) of the ECA). In this vein, it bears noting that the respondent had also resisted process-focused applications (including the bid to compel Ms A's attendance: see Annex 1, [A.4]–[A.19] below), taking the position that such evidence was not legally relevant to the dispositive s 14(2) inquiry.

51 Second, and in any case (*ie*, if I considered s 14(1) or the DF to matter), the respondent said the requirements of "due inquiry" were satisfied and the DF was adhered to in substance and in procedure. Ms C was notified of the case against her, interviewed by HR, convened before a three-member DC, and

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afforded an opportunity to explain her purchases and the basis on which she believed claims were permissible. The DC considered the consolidated materials and her explanations, reached findings on breach and characterisation, and issued written reasons; any approval that followed was part of the DF's escalation architecture and not a merits-based rehearing at large. In short, the respondent's case was that the inquiry was real, the hearing was fair, and the conclusion reached was independently reasoned.

52 On approvals, the respondent emphasised that cl 7.1 of the DF requires DC-recommended sanctions to be approved by the respondent's Global Head of HR and the Global Head of Regulatory Compliance. In Ms C's case, after the DC's initial sanction recommendation, Ms A (as Global Head of HR) queried parity and asked the DC to reconsider in light of "precedent cases"—by which the respondent meant other matters that had actually been heard by DCs and resulted in DC findings. The DC then reconvened, reconsidered, and revised its recommendation. The respondent presented this as cl 7.1 operating as a final, independent check for consistency across like cases, not an impermissible substitution of the DC's role.

53 On the grouping exercise and Ms C's case *vis-à-vis* comparators, the respondent rejected any suggestion of arbitrariness in the wider cohort handling. It argued that employees whose DIs were cancelled or never convened (*eg*, within the Group C2 recalibration: see [19] above) yielded no DC findings and therefore could not be "precedents" for cl 6.4 parity analysis. On the respondent's case, it was entitled to decide which matters proceeded to DCs, and the absence of a DI in such cases meant there was nothing comparable to bind or calibrate Ms C's outcome.

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54 On the appeal stage, the respondent's case was that cll 8.1–8.4 of the DF were followed. Where a full DI had been conducted, an appeal would ordinarily be entertained only if: (a) new material evidence arose after the DI; or (b) there were material procedural gaps rendering the DC's decision unreliable. The Global Head of HR decides whether to convene an Appeal Committee, and that decision is final. In Ms C's matter, Ms A did not convene an Appeal Committee because the appeal advanced disagreement with the DC's findings and pleas in mitigation rather than "new" and "material" evidence or identified procedural gaps—a conclusion the respondent said was squarely within cl 8.2 and cl 8.4.

55 Stepping back, the respondent's submission on process was therefore twofold: (a) as a jurisdictional matter, process complaints and DF-compliance are not, without more, routes to a finding of "dismissal without just cause or excuse" under s 14(2), given the *TGWD*-anchored inquiry into the truth of the stated reason; and (b) even if process is relevant, the handling of Ms C's case—investigation, DI, DC findings, approvals under cl 7.1, and appeal screening under cl 8.2 and 8.4—satisfied both statutory "due inquiry" (to the extent it applied) and the DF's terms in substance.

As to the remedies for "wrongful dismissal"

56 The respondent's primary position was that no remedy arose because Ms C's s 14(2) claim failed. In the alternative, if I were to find a dismissal "without just cause or excuse", the respondent submitted that my task was confined to the compensatory framework prescribed by reg 17A and the Second Schedule to the EC Regulations. That is, I was to assess: "loss of income" and "harm" separately, the latter by applying the prescribed base amount and the listed aggravating and mitigating factors. The respondent emphasised that this framework is strictly compensatory and not punitive.

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57 On "loss of income", the respondent argued that the figure must be nil because Ms C did not lose notice pay: she was terminated with full contractual notice on 18 April 2024 and any unserved portion was commuted to salary in lieu on 24 May 2024. Accordingly, once the paid notice and salary in lieu were accounted for, there was no period of time where she ought to have earned an income but did not by reason of the dismissal "without just cause or excuse".

58 On "harm", the respondent invited me to start from the Second Schedule's base amount of two months and then apply a 50% downward adjustment. It said there were no aggravating factors (*eg*, malice or humiliation), and there was at least one material mitigating factor: even on Ms C's pleaded theory that the respondent failed to prove dishonesty, she had nonetheless made impermissible claims under the MCP, and that underlying misconduct (short of dishonesty, wilfulness, or intention) should mitigate the harm component. On that footing, the respondent asked that the base amount be reduced from two months to one month, which was to be computed using the gross rate of pay of Ms C's monthly pay ($4,333).

As to entitlement to performance bonus for work done in 2023

59 The respondent's position on Ms C's separate "bonus" claim was straightforward. Primarily, it said the claim cannot stand as a matter of contract. The governing clause framed bonus as discretionary—"eligibility does not infer entitlement" and "bonus payments are made entirely at the discretion of the Company"—and that ends the matter unless Ms C could show an accrued entitlement. In this connection, the respondent rejected Ms C's suggestion that bonuses had already "accrued" or were merely being "withheld", saying there had been no declaration and no vesting event; the bonus claim was therefore not a case of enforcing an accrued payment but of inviting the tribunal to substitute

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its view for the respondent's on whether to declare one at all. Indeed, the termination letter expressly stated that "[the respondent] will not be declaring and/or paying to [Ms C] any bonus/incentives for FY 2023", and that this was a contemporaneous exercise of the contractual discretion made in light of the DI outcome.

60 Further to its contention that Ms C had no accrued entitlement to a bonus for 2023, the respondent also pointed to express pre-conditions that must be satisfied "at the time of payment of the bonus", including that the employer has not given notice to terminate and that the employee "has not committed any act of misconduct". On the respondent's case, both conditions failed on the facts advanced by Ms C herself: the respondent had issued notice of termination and the disciplinary process had found misconduct.

61 In any event, the respondent also said the tribunal should not second-guess the exercise of discretion on a *Wednesbury*-type yardstick. Its decision not to declare any 2023 bonus was taken after the DI and by reference to a plainly relevant consideration—misconduct—and there was no suggestion of arbitrariness, capriciousness, or extraneous motives. That sufficed to defeat the claim even if one assumed (contrary to the respondent's primary case) that some implied constraint of rationality applied.

My decision

The specific questions of law which arose in the six related cases

62 Before turning to each point, it is useful to say why these five questions arose at all. The parties' stances pulled in different directions. The respondent anchored its case to the *TGWD* and framed the ECT's task as truth-testing the stated ground of dismissal; the claimants, for their part, relied on the text and

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structure of s 14 of the EA—including "due inquiry"—and on the respondent's own DF and comparators to contend for a wider, merits-led inquiry.

63 Those competing frames forced to the surface five threshold matters that had to be settled before facts could be sensibly weighed: whether a s 14(2) claim sits apart from, rather than subsumes, the common law action; whether "due inquiry" is engaged where notice (or pay in lieu) is given but the dismissal is nevertheless premised on misconduct; how far the contractual disciplinary framework affects (if at all) the statutory floor of "due inquiry"; what exactly an employer who states reasons must prove—and whether a failed aggravated ground can fairly give way to a lesser one—in order to discharge its burden; and, finally, whether and how the relative treatment of co-employees bears on proportionality and on the existence of "just cause or excuse". These are the questions I answer below.

On the relationship between the common law and s 14(2) of the EA

64 At the risk of repetition (see Annex 3, [A.48] *et seq* below), I emphasise that two different wrongs travel under the modern label "wrongful dismissal". The common law action sounds in contract and asks whether the employer brought the engagement to an end in accordance with the bargain (typically by giving or paying notice). Section 14(2) creates a statutory cause of action that asks a different question: whether the dismissal was "without just cause or excuse". The two may intersect factually, but they are analytically distinct.

65 In the ECT, a claimant who invokes s 14(2) litigates only that statutory wrong. Contractual matters may be used as context—for example, a failure to follow an agreed procedure may bear on how confidently a tribunal can infer "cause"—but they are not independently actionable within the s 14(2) claim. That separation of questions preserves the ECT's limited jurisdiction, avoids

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importing the common law's notice-based lens into a merits-led inquiry, and keeps the remedial frames coherent (contract damages in one sphere, and the statutory framework—reinstatement or compensation—in the other).

On the requirement of "due inquiry" when notice is given or paid

66 Two strands lead to the same conclusion that a due inquiry is required where an employer elects to terminate with notice (or salary in lieu) but nevertheless anchors the decision "on the grounds of misconduct".

67 First, on the text. Section 14(1) is framed in three linked elements: an employer "may after due inquiry dismiss without notice an employee on the grounds of misconduct". Read with ordinary syntax, "after due inquiry" is the condition that attaches to the act of dismissing for misconduct; "without notice" states the consequence that the statute permits when that condition and ground are satisfied. Put another way, the procedural safeguard ("after due inquiry") is tied to the ground (misconduct), not merely to the mode (summary dismissal).

68 To confine the inquiry requirement to naked summary cases would allow an employer to attach the grave label of "misconduct" while evading the very process Parliament coupled to that label by the simple expedient of paying notice. That reading would render the words "on the grounds of misconduct" partially otiose and create an incoherence across the EA: the same accusation would attract a statutory safeguard if the employer withholds notice, but none if it pays notice—even though the stigma and downstream effects for the worker are identical. A more coherent construction, and one that gives each phrase work to do, is this: whenever an employer relies on misconduct as the real basis for ending the employment, the due inquiry precondition is engaged; if the inquiry establishes misconduct, the EA permits dismissal without notice, but the employer may still choose to give notice. The choice to give notice does not

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dissolve the inquiry requirement that was triggered by the ground the employer chose to invoke.

69 Second, on purpose. The point of a "due inquiry" in the misconduct setting is not ceremony; it is to test, before a lasting stigma is affixed, whether the allegation is true, fairly put, and proportionately judged. Misconduct dismissals are qualitatively different from terminations for business re-organisation or neutral contract expiries: they speak to trust, character, and future employability. Requiring a fair internal inquiry—notice of the case, a real chance to answer it, and impartial consideration—ensures that an employer who seeks the benefit of calling a termination "for misconduct" also shoulders the responsibility of first confronting the employee with the charge and weighing it fairly.

70 It aligns incentives sensibly: if the employer wishes to keep matters at the level of contractual election (ending the bargain on notice with no accusation), it may do so without triggering the s 14(1) safeguard; but once it crosses the line into alleging misconduct, the safeguard travels with that choice. It also preserves coherence with the tribunal's task under s 14(2): a careful inquiry strengthens confidence that "just cause or excuse" existed; a cursory or skipped inquiry weakens it. Most importantly, it prevents a perverse outcome in which employers can weaponise the language of "misconduct" to justify harsher internal consequences while sidestepping the minimal procedural discipline the EA expects when that label is invoked.

On the effect of contractual disciplinary frameworks on "due inquiry"

71 The statutory floor is modest and fact-sensitive. Employers may—and often should—adopt more exacting internal rules as a matter of governance, proportionality, and transparency. But those internal rules do not, by

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themselves, ratchet up the legal threshold of "due inquiry" in s 14(1). Treating them as if they did would perversely penalise the conscientious and reward the minimalist. Breaches of a contractual framework are not freestanding grounds of liability in a s 14(2) claim; they are part of the evidential picture. A careful, even-handed process strengthens confidence in the truth, gravity, and proportionality of the employer's case; a cursory or lopsided one weakens it. That is the principled way in which contract and statute meet: procedure does not eclipse substance, but it often explains why a substantive conclusion is—or is not—justified.

On that which the respondent needed to prove in order to discharge its burden

72 The respondent's submission was that, having stated reasons, its task under s 27(2)(*b*) of the ECA was essentially to show that the stated ground was "not false"—and that once dishonesty (or an equivalent aggravated descriptor) was proved, nothing further was required. This answer is not wrong but it is incomplete in two ways.

73 First, the tribunal's task is not exhausted by simply deciding whether or not the reasons advanced by the respondent in its notice of dismissal were "false". Instead, the complete task needs to proceed in two steps. One, as to truth: are the material particulars of the stated reason proved on the balance of probabilities? Where the letter trades on aggravated descriptors—"dishonesty", "wilfulness", "intent"—the employer must prove the mental element that gives those labels their force; it is not enough to show a bare breach of policy. Two—and this is the part of the respondent's submission which is missing—sufficiency: if proved, do those facts, viewed in their proper context, amount to "just cause or excuse" to dismiss, as opposed to warranting a lesser industrial penalty?

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74 Admittedly, in the present cases, if the respondent's stated grounds of dismissal were found to be true, they would self-evidently amount to just cause or excuse and satisfy the second step of the analysis. In such cases, the exercise does in practice collapse into a truth-testing exercise. However, for completeness, it would not be accurate to suggest that the tribunal's task was limited to the respondent's framing. Rather, the above two-stage analysis accords with the long-standing Malaysian approach to the same phrase "just cause or excuse", under which the Industrial Court determines *de novo* both the truth of the charge and the adequacy of dismissal as a response (see the Federal Court's articulation of the Industrial Court's role in *Wong Yuen Hock v Syarikat Hong Leong Assurance Sdn Bhd & Another Appeal* [1995] 2 MLJ 753 and *Milan Auto Sdn Bhd v Wong Seh Yen* [1995] 3 MLJ 537).

75 Second, even if the respondent failed to prove that the grounds stated in its notices of dismissal were not false, that did not—in my view—automatically render the dismissals "without just cause or excuse" *if* a lesser wrong on the part of the claimants could still be established. However, there were guardrails to this substitution. Any "lesser" basis must: (a) sit within the gravamen of what was fairly put to the employee before dismissal (not a wholly new rationale devised after the fact); and (b) cohere with the notice of dismissal's core account of why the relationship had to end. If those conditions are met, the tribunal may still ask whether the lesser wrong, in context, supplied "just cause or excuse"; if they are not, fairness precludes salvaging a dismissal on a different footing.

On the relative treatment of employees within an employment organisation

76 Parity is not a freestanding ground of liability and it does not answer the anterior question of fact: whether the claimants did what was alleged. But once some misconduct is established, consistency across materially similar cases

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goes directly to proportionality and, therefore, to whether the dismissal of this particular employee was "with just cause or excuse". The touchstone is comparability: like cases ought, in general, to be treated alike unless there is a principled distinction (seniority and responsibility; degree and duration of participation; prior record; the employee's candour, cooperation and remorse; business risk and trust-sensitivities in role; and any safety or regulatory implications). Malaysian courts have framed the Industrial Court's merits task in precisely those terms of truth and proportionality; where disparity is asserted, it must be proved with concrete comparators and the court will ask whether the harsher penalty can be justified by real differences (see, *eg*, *Harianto Effendy bin Zakaria & Ors v Mahkamah Perusahaan Malaysia & Anor* [2014] 2 MELR 263).

77 There are, however, two boundaries. First, "consistency" is a cross-check, not a veto. A dismissal that is otherwise justified does not become unjustified merely because another employee elsewhere appears to have been treated more leniently; the question remains whether the present dismissal was a proportionate response to the proved misconduct in its full context. Second, the comparators must truly be comparable. The mere existence of a lenient decision in another broadly similar case does not, by itself, impeach a dismissal; what matters is whether there is a genuine inconsistency in the treatment of employees who are materially indistinguishable on the facts that matter to sanction. That is the sense in which parity assists—as a reasonableness and proportionality check, not as a rule of strict uniformity.

78 In practical terms, the party who relies on relative treatment must lay the evidential groundwork: who the proposed comparators are; what they did (and over what period); what their roles and records were; how they were dealt with; and why those features render them materially alike to the employee. Where

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that showing is not made out—for example, where asserted disparity of punishment is pleaded at a high level of generality, or the comparators turn out to be meaningfully different—the contention would likely fail. Conversely, where the employer's own practice demonstrates that a particular norm for the same level of wrongdoing, that practice is powerful contextual evidence against dismissal being the principled response. Set against this framework, I treat relative treatment as part of the second stage of the analysis (proportionality), not as a device to dilute the first (truth). If the facts place a claimant within a cohort that the employer has, in practice, retained and corrected rather than dismissed, the onus then lies on the employer to articulate the principled difference that made dismissal necessary here. Absent such articulation grounded in the record, unexplained disparity will weigh against a conclusion that there was "just cause or excuse" to end the employment.

A brief summary of the applicable legal principles

79 A more complete statement of the law as I understand it is set out at Annex 3 read with [62]–[78] above. For present purposes, a brief summary of the key principles and propositions of law is sufficient:

(a) Notwithstanding the nomenclature, a claim under s 14(2) of the EA is a statutory wrong that is distinct from, and does not encompass, the common law action called "wrongful dismissal".

(b) The ECT is of limited jurisdiction. Though it may hear specified contractual claims that often arise on dismissal (*eg*, claims for salary in lieu of notice), it cannot adjudicate breaches of employment contracts at large, including alleged breaches of an employer's contractual disciplinary framework.

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(c) The ECT's task under s 14(2) is *de novo*. By this, I mean that the ECT is supposed to decide, afresh and on the evidence, whether the dismissal was "without just cause or excuse". It does not merely review the employer's decision or audit a domestic inquiry for error.

(d) The *TGWD* is to be taken into account as guidance in determining the claim. The guidelines are assistive; however, they do not control or narrow the statutory inquiry under s 14(2).

(e) Where an employer relies on misconduct as the basis for ending the employment, the due inquiry safeguard in s 14(1) is engaged even if notice (or salary in lieu) is given; the condition attaches to the ground (misconduct), not the mode (summary termination).

(f) "Due inquiry" is a modest, fact-sensitive standard of basic fairness: adequate and reasonably clear notice of the case, a real opportunity to answer it, and open-minded consideration of that answer before fixing on misconduct as the ground.

(g) Where the employment contract incorporates a disciplinary framework, that framework does not ratchet up the content of "due inquiry" and render the obligation to conduct that inquiry more onerous.

(h) Where "due inquiry" is required and fulfilled, the effect is evidential, not determinative: a fair internal process strengthens confidence in the reliability of the employer's case but does not, by itself, prove "just cause or excuse". Conversely, where it is required and not fulfilled, that omission does not of itself establish a claim under s 14(2); it is, however, a material weakness that may warrant adverse inferences, make it harder for the employer to discharge any burden

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under s 27(2)(*b*) of the ECA, and (though outside the ECT's remit) may sound in limited contractual consequences in the civil courts (assuming the parties have a contractual disciplinary framework that was breached).

(i) Where an employee is dismissed on grounds of either misconduct or poor performance and those reasons are recorded in the notice of dismissal issued to the employee, s 27(2)(*b*) of the ECA is engaged and the employer bears the burden of proving that the reasons cited amount to "just cause or excuse" for the dismissal.

(j) The analysis of whether the reasons cited amount to "just cause or excuse" for the dismissal proceeds in two steps: (i) truth (including any mental element the employer itself invoked, such as dishonesty or wilfulness); and (ii) sufficiency (whether the proved facts, in context, amount to "just cause or excuse" rather than warranting a lesser penalty).

(k) Where the employer's stated reason, as framed in the notice of dismissal, is not proved at that level but the evidence establishes a lesser wrong within the same gravamen, the tribunal may consider that lesser basis only within guardrails of fairness: it must have been fairly put to the employee before dismissal, cohere with the notice's core account of why the relationship had to end, and be something the employee had a fair chance to meet, whether during the internal process or in the proceedings.

(l) Parity of treatment between employees plays no part at the anterior truth question, but once some misconduct is established it bears on proportionality: like cases should generally be treated alike unless principled distinctions (*eg*, seniority, degree and duration of

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participation, prior record, candour and cooperation, trust-sensitivities, safety or regulatory implications) justify a different outcome.

(m) Where a claim under s 14(2) is established, reinstatement may be ordered where practicable and where sufficient trust and confidence remain. Otherwise, compensation is bifurcated into "loss of income" (the earnings shortfall caused by either or both the fact and manner of the dismissal without just cause or excuse, net of any salary-in-lieu and mitigation, and subject to statutory cap of three months' salary) and "harm" (a conventional base amount, adjusted by the listed factors), with double counting avoided.

80 With these principles in mind, I turn to the determinative factual issues.

The determinative factual issues

81 Against that frame, four questions determined the outcome and I take them in that order.

(a) First, process: was Ms C's dismissal preceded by adequate "due inquiry" within s 14(1)?

(b) Second, merits: was the dismissal supported by "just cause or excuse"—in particular, whether the dishonesty/wilfulness asserted in the notice was proved on the balance of probabilities, and, if not, whether any lesser wrong fairly within the same gravamen could nevertheless justify dismissal.

(c) Third, remedy: if the claim succeeds, whether Ms C was entitled to compensation under both "loss of income" and "harm" and how those heads were to be assessed on these facts.

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(d) Fourth, bonus: whether she was entitled to a 2023 performance bonus.

I address each in turn.

Was Ms C's dismissal preceded by adequate "due inquiry"?

82 The legal floor is quite modest. As the High Court explained in *Long Kim Wing v LTX-Credence Singapore Pte Ltd* [2017] SGHC 151 ("*Long Kim Wing*"), "due inquiry" in s 14(1) is a fact-sensitive standard aimed at basic procedural fairness, not a court-like trial. What is required is, in substance: (a) adequate and reasonably clear notice of the allegations the employer proposes to rely on; (b) a real opportunity for the employee to answer those allegations and to place her explanation before the decision-maker; and (c) an open-minded consideration of that explanation before the employer fixes on misconduct as a dismissal ground. The statute does not prescribe set forms, adversarial trappings, or strict rules of evidence. What matters is that the employee knows the case to meet, is genuinely heard, and that the employer's mind is applied in good faith to both accusation and answer before reaching its conclusion.

83 Measured against that yardstick, I was satisfied the notice requirement had been met. The sequence began with the December 2023 Notice of Investigation and questionnaire, which alerted the employee that Clinic X-linked claims were under review and required particulars of what had been purchased and why. It continued with the 13 March 2024 Notice of DI, which set out the disciplinary charges in clear terms—breach of the MCP and the characterisation of that breach—and indicated the materials to be considered at the hearing. In context, the two notices together conveyed, with sufficient particularity, both the conduct in issue and the lens through which it would be

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assessed. That advance clarity is what s 14(1) requires. It enabled the employee to understand, prepare for, and address the case she had to meet.

84 The second limb was likewise satisfied. There was an HR interview on 10 January 2024 at which the employee explained, in substance, how she came to make Clinic X purchases and why she believed claims under the threshold could be submitted. Thereafter, a three-member DC heard her on 20 March 2024. She reiterated that there had been no doctor consultation, described the items purchased, explained the colleague and clinic-counter context, and indicated her readiness to repay once told her claims were not in order. Nothing in the record suggests she had been prevented from advancing any line she wished to pursue. The hearing was certainly not like a trial, but it was not perfunctory either; it afforded a genuine chance to respond. That is what "opportunity" within s 14(1) contemplates—substance over form.

85 The third aspect—fair and open-minded consideration—is borne out by the committee's treatment of the materials and the issuance of written reasons. The DC did not proceed in a conclusory manner. It considered the consolidated record (questionnaire, receipts/appendix, interview account) alongside the explanations given at the DI, and it articulated why it regarded the pattern of claims as incompatible with the MCP and as evidencing, in its view, an adverse mental element. One may disagree with the weight or inferences—I do, for reasons stated later—but for present purposes, only the fact and form of deliberation matter. They demonstrate that Ms C's case was received and assessed before conclusions were drawn. That sufficed to meet the statutory minimum of consideration under s 14(1).

86 Impartiality in this setting means a decision taken with an open mind by those tasked to decide, rather than by someone disqualified by interest or

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predetermination. The committee's composition—senior personnel from Risk Management (the chair), Group Finance, and Group HR—was disclosed and not challenged for conflict. There was no cogent basis to infer predetermination from the mere fact of seniority or organisational role. Nor does the later approvals architecture, addressed elsewhere, retroactively taint the fairness of the hearing that preceded it. On the record as a whole, I found that the inquiry was conducted, and the decision was reached, without disqualifying bias or closed-mindedness. That is all the statute requires.

87 The contemporaneous documentation also reinforces compliance with s 14(1). There were kept notes of interview, a convening notice that particularised the charges, and a written DC report with reasons. None of these alone are either necessary or sufficient for the general standard of "due inquiry" to be met. But, taken together, they were probative that the process actually occurred in the way I have described: notice was given, the employee spoke to the case, and the decision-makers turned their minds to what she said before reaching conclusions. That is the practical point of requiring an inquiry: to ensure that the ground of misconduct, if to be relied upon, has been tested through a fair process antecedent to dismissal.

88 I should also address one point that featured prominently in the parties' submissions—the decision by Ms A not to convene an Appeal Committee to hear Ms C's internal appeal. The DF permits an appeal stage, but its non-activation does not, without more, vitiate what came before. Section 14(1) is concerned with the adequacy of the employer's inquiry prior to founding upon misconduct; it does not mandate a two-tier process or confer a right to appellate rehearing. An employer may choose to provide internal appeals as a matter of governance; that may be relevant context when assessing the overall justness of a dismissal under s 14(2). But the statutory minimum of "due inquiry" is

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satisfied if, prior to dismissal, the employee had fair notice, a genuine opportunity to be heard, and fair consideration of her case.

89 For completeness, I address Ms C's reliance on the appeal stage contemplated in the respondent's internal framework (*ie*, the DF). As explained in Annex 3 (see [A.57] *et seq*), the DF is not a justiciable yardstick in a claim under s 14(2) and cannot recalibrate the statutory content of "due inquiry" (see [71] above). The High Court's articulation in *Long Kim Wing* fixes that content, and nothing in that standard suggests a right to any internal appeal; still less does it make the availability of an appeal a constituent element of "due inquiry". Having found that the pre-appeal process crossed the statutory threshold, the subsequent decision not to convene an internal appeal does not advance Ms C's procedural complaints.

90 Notwithstanding my conclusion that the respondent met the standard of "due inquiry", two qualifications nevertheless tempered the weight I accord the committee's conclusions. First, although the DC heard the employee and issued reasons, its analysis did not grapple with salient contextual uncertainties—the prevailing understanding of the outpatient policy within the organisation at the material time, the influence of clinic-counter practices and non-itemised invoices on staff behaviour, and the potential for miscommunication about the $200 threshold. Second, its mental-element inference leaned heavily on frequency and patterns without engaging those uncertainties. These were analytical limitations, *not procedural defects*: they did not vitiate "due inquiry", which I found to be satisfied, but they did mean I approached the DC's inferential conclusions with caution when deciding the distinct issue of dishonesty and, if misconduct is proved, whether that supplied "just cause or excuse" for dismissal.

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Was Ms C's dismissal supported by "just cause or excuse"?

91 The respondent framed the termination as "misconduct" aggravated by dishonesty. Because that reason was recorded in the notice of dismissal, s 27(2)(*b*) of the ECA placed the burden on the respondent to prove it. My analysis followed two steps. The first was truth: were the material particulars of the stated ground—including the state of mind the respondent chose to allege—proved on the balance of probabilities? The second was sufficiency: even if some wrongdoing is proved, did those proved facts, read in their proper setting and against the employer's own practice, amount to "just cause or excuse" for ending the employment rather than calling for a lesser penalty. The exercise was *de novo*. The question was not whether the DC's decision can be defended; it was whether the evidence before me established the ground the respondent advanced, or some lesser basis that fairly sits within it.

92 On the first step, the respondent relied chiefly on patterns: counter purchases without consultations, repetition across months, clustering just under the itemisation threshold, and an aggregate quantum it thought high. Those features warranted scrutiny, but they did not, by themselves, prove the state of mind the respondent alleged. Patterns often admit of more than one explanation. Here, they were just as consistent with a cohort misunderstanding shaped by non-itemised invoices and an internal "sub-$200" heuristic as with a deliberate plan to mislead. Where an inculpatory and an exculpatory account are both plausible, the employer must point to affirmative indicators that this employee knew the claims were impermissible and pressed on nonetheless. There was no such indicator in Ms C's case—no training acknowledgment, no warning she accepted and ignored, no attempt at concealment, and no admission.

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93 The "just-under-$200" clustering was treated by the respondent as a particularly indicative tell. It could have been, but—as with the other patterns relied on by the respondent—it was not automatically probative of deceit. If employees believed, however mistakenly, that non-itemised counter sales below the threshold were claimable, then staying under that threshold was what one would expect of compliant, not evasive, behaviour. For clustering to carry the weight the respondent assigned, there had to be something more: evidence that Ms C knew the threshold did not convert counter sales into benefits, yet used it as cover. The reasons did not identify that "something more". They did not show that she split purchases to avoid itemisation, re-described items to mask their nature, or took steps to hide what she had done. Clustering, without those qualitative features, was a weak foundation for dishonesty.

94 The respondent's approach also assumed clarity of policy at the material time. Its case was that the MCP was clear, accessible, and known. If that were so, the fact that a large number of financially literate staff nonetheless made the same kind of counter-purchase claims would be surprising. The respondent's answer was to distinguish "dishonest" patterns from those less indicative of dishonesty. But that move sits uneasily with its own premise: if clarity truly prevailed, a single impermissible claim would tell strongly against honesty; repetition should not be necessary to prove knowledge. The need to rely on volume and frequency suggests the clarity assumption was overstated and that something more systemic—a practice aligned to non-itemised receipts and a $200 threshold—was shaping behaviour across the workforce.

95 The sums involved also matter. This was not a case of large, disguised benefits. The typical claim was modest; the overall quantum for most employees, including Ms C, was not high. Against the very real consequences for regulated financial-sector staff—loss of career, reputation, and future

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employability—it was difficult to accept that so many would knowingly risk everything for such returns. That did not render dishonesty impossible, but it lowered its probabilistic pull and requires stronger proof of knowledge and intent. The evidence did not provide that strength. There was no documentary sign that Ms C appreciated a prohibition and chose to breach it. Instead, the materials showed a pattern that matches the wider practice and a willingness to repay once told the claims were not in order. On that footing, the inference of dishonesty was not safely drawn.

96 Recklessness and wilful blindness were advanced in the alternative. Properly understood, those concepts require either recognition of a real risk and proceeding regardless (recklessness) or a conscious decision not to confirm what one strongly suspects (wilful blindness). The evidence did not reach those marks. There was no instance of Ms C being told unambiguously that counter purchases without consultation were non-claimable, nor of her reading a directive to that effect and ignoring it. Her consistent account was reliance on what colleagues and the clinic counter said, measured against a threshold used administratively across the organisation. That account may reflect a failure to check the formal policy carefully; it did not show that she perceived a real risk of non-claimability and pressed on anyway, still less that she shut her eyes to the truth.

97 Positive features of conduct also cut against adverse mental states. Ms C submitted claims through ordinary channels using the receipts she had. She did not alter documents, backdate forms, seek to bypass checks, or enlist others to support a false narrative. When the review flagged concerns, she accepted that there were no consultations and offered to repay. Those were not the actions of an employee pursuing concealment; they fit an employee who believed she was within bounds and, once corrected, attempted to make amends. None of this was

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conclusive, but in a case where state of mind was the fulcrum, such features weighed in the balance and made a deliberate intent to deceive less likely on the evidence actually before me.

98 The DC's own characterisation of Ms C also sat awkwardly with a finding of dishonesty. It had recorded her as junior and "simple-minded", following what she had been told by colleagues and the clinic. Its initial view was that a warning and a bonus reduction were appropriate. The escalation to dismissal followed Ms A's request to reconsider, not the emergence of new inculpatory facts. Where a decision shifts from a non-dismissal sanction to a dishonesty-based termination, one would expect the reasons to identify the additional evidence or analysis now thought decisive. They did not. That sequence suggests uncertainty about the mental element rather than a clear conclusion that Ms C knew the rules and chose to evade them. Thus, on the evidence as a whole, I found that dishonesty, recklessness, and wilful blindness were not proved against Ms C.

99 That conclusion did not, however, end the inquiry. The evidence supported a lesser wrong: negligently making impermissible claims by relying on practice rather than the formal policy. The notices and the domestic process put the underlying conduct squarely in issue—counter purchases without consultation and the MCP's scope—and Ms C had a fair chance to address those matters. On the guardrails I have set out (see [79(k)] above), the lesser wrong fairly sits within the same gravamen and may be considered. The question then is sufficiency: does that lesser wrong, read in context and calibrated against the employer's own settled practice, amount to "just cause or excuse" to terminate employment?

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100 In assessing sufficiency, three features are prominent. First, the systemic context: a widespread practice had taken root around non-itemised receipts and the $200 threshold. That does not excuse negligence, but it explains it. Second, Ms C's role and record: she was junior, there was no suggestion of prior misconduct, and the committee itself saw mitigation strong enough to warrant non-dismissal before escalation. Third, proportionality across the cohort: other employees with comparable patterns were warned or had bonuses reduced rather than being dismissed. When like cases are treated alike (see [79(l)] above), the sanction for negligent reliance on practice rather than policy points towards a lesser penalty, not dismissal.

101 I appreciated that even Ms C's lesser wrongdoing could have eroded the trust between her and the respondent and potentially justified dismissal. However, I did not think that this was particularly strong justification in the circumstances. The respondent's evidence of the grouping exercise showed that persons with broadly comparable spend patterns in Groups C1 and C2 were not uniformly dismissed. The respondent's own stance was that dishonesty triggered termination; absent dishonesty, warning and bonus consequences were within range. It would be difficult to justify singling out Ms C for dismissal on a lesser basis when others with similar conduct profiles received lesser sanctions. Parity is not a veto, but it is a cross-check on proportionality. In this case, it indicated that dismissal was a step too far for negligent reliance on practice rather than policy.

102 Drawing these threads together, I found that the respondent had not proved the mental element it chose to allege, and that while a lesser wrong was established—negligent submission of impermissible claims through reliance on practice rather than formal policy—that lesser wrong did not, in the circumstances and on the respondent's own evidence of sanction triggers and

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cohort treatment, amount to "just cause or excuse" for dismissal. The claim under s 14(2) therefore succeeded. The appropriate consequence was compensation (as Ms C did not seek reinstatement), assessed under the heads and guardrails I have outlined elsewhere (see Annex 3, [A.153]–[A.160] below).

Was Ms C entitled to be compensated for both "loss of income" and "harm"?

103 The remedy follows the wrong: it is not punitive, and compensation under s 14(2) seeks to place Ms C so far as money can, in the pecuniary position she would have been in had she not been dismissed without just cause or excuse, while separately recognising the non-pecuniary harm of such a dismissal. The heads are distinct. "Loss of income" addresses the earnings shortfall proximately caused by the wrongful dismissal, net of salary-in-lieu and mitigation and subject to the cap. "Harm" was a conventional award, adjusted by listed factors but carefully separated from any items already captured as income loss.

104 On "loss of income", the key question was the period of unemployment properly attributable to the fact and manner of dismissal without just cause or excuse. The starting point was the dismissal date (24 May 2024), and the end-point was when Ms C, acting reasonably, re-established earnings at a level comparable to her pre-dismissal role (or until the three-month statutory cap on compensation was reached: see para 2 of the Second Schedule to the EC Regulations).

105 On the evidence before me, Ms C remained unemployed for a sustained period—far more than the three months after the end of her contractual notice period—and adduced contemporaneous proof of difficulty securing new employment as a result of having been dismissed by the respondent. That

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reflected active and sustained efforts rather than any failure to mitigate, and it explained the continued absence of income as a consequence of the dismissal. There was no contention that she turned down suitable offers or otherwise acted unreasonably. I therefore awarded Ms C the full three-month period in which she claimed to have suffered lost income as a result of the dismissal: $4,333 × 3, or $12,999.

106 No deduction was made for the notice given and salary in lieu of notice already paid by the respondent because, as explained in Annex 3 (see [A.153] *et seq* below), compensation under s 14(2) does not replicate what Ms C would have earned had the contract simply run its course; it addresses the earnings shortfall proximately caused by the fact and manner of a dismissal without just cause or excuse. On that approach, the compensable window was the post-notice period during which the wrongful dismissal impaired her ability to secure comparable work. Salary in-lieu, by contrast, was consideration for bringing the contract to an end without service of notice and related to the notice period itself. Moreover, there was no temporal overlap. It thus followed that, even though Ms C received salary-in-lieu for the notice period, it did not answer or reduce the post-notice income shortfall I found.

107 I turn to "harm". As set out fully in Annex 3, I took a conventional base of two months as the starting point (see para 5 of the Second Schedule to the EC Regulations). That base recognises the non-pecuniary injury inherent in being dismissed without just cause or excuse—the affront to dignity, the reputational sting of the recorded reason, and the disruption to one's working life not captured by wage arithmetic—while promoting steadiness and comparability across cases. It also accorded with how the respondent itself framed the "base amount" in submissions: as the unadjusted anchor before case-specific factors were applied. On these facts, there was stigma in the reason

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recorded, though dishonesty was not proved; there were not, in my view, any "aggravating factors". The internal process crossed the statutory floor and there was no public humiliation or gratuitous censure.

108 However, I found there to be a "mitigating factor" in the respondent's favour. Although dishonesty, recklessness, and wilful blindness were not established, Ms C's conduct contributed to the sequence of events that culminated in the dismissal and it was therefore proper to make a one-month reduction to reflect Ms C's wrongdoing in negligently submitting impermissible claims by relying on practice rather than the formal policy. The "harm" award was therefore fixed at $4,333.

Was Ms C entitled to a performance bonus for work done in 2023?

109 The final question concerned Ms C's 2023 performance bonus. On the evidence, I was not satisfied that Ms C had an accrued contractual entitlement to a 2023 performance bonus. The governing documents framed the bonus as discretionary, subject to individual and firm performance and applicable risk-and-conduct considerations. There was no proof that, for 2023, the respondent had committed by word or practice to pay a particular quantum (or any quantum) to Ms C.

110 I also did not find that the discretion was exercised in bad faith or for an improper purpose. It is true that I have found dishonesty not proved and dismissal unjustified. But the internal materials showed the DC, at first instance, proposing a warning with a 100% reduction of the 2023 bonus. That proposal—whatever one makes of its ultimate calibration—was at least recognisably tied to the respondent's framework that treats conduct-related concerns in the relevant year as a risk factor in bonus setting. Given my finding that Ms C negligently submitted impermissible claims by relying on practice rather than

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policy, it cannot be said that conduct was an extraneous consideration for the 2023 exercise.

111 For completeness, I should also note that my finding that Ms C had been dismissed without just cause or excuse under s 14(2) did not, by itself, translate into a right to a performance bonus for the preceding year; the two inquiries address different questions. A prior-year bonus can, in principle, form part of the compensable loss of income if it was reasonably certain to be paid out but for the dismissal, would have been received within the compensable window, and its non-payment was causally linked to the dismissal. That route was not available for Ms C for three reasons. First, causation: on the respondent's materials, the 2023 bonus would have been set at zero for conduct reasons even absent dismissal (see [29] above). Second, certainty: the scheme remained discretionary and no evidence showed a near-inevitable payout. Third, cap: the full three-month cap was already exhausted by Ms C's proved losses. On any view, then, the 2023 bonus could not be added as part of her "loss of income" under s 14(2). The claim for a 2023 performance bonus was therefore dismissed.

Conclusion

112 For the reasons given, I found that Ms C was dismissed "without just cause or excuse" within s 14(2) of the EA. I awarded her compensation under two heads. For "loss of income", I awarded $12,999 (three months at $4,333), reflecting the proved post-notice earnings shortfall causally attributable to the dismissal. As regards "harm", starting from the conventional base of two months and applying a one-month reduction to reflect Ms C's negligent contribution, I awarded $4,333. The total award was thus $17,332. The claim for a 2023 performance bonus was dismissed. I awarded Ms C costs in the sum

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of $1,000 and disbursements of $70. I ordered that the sum, $18,402, be paid to Ms C within 14 days from my judgment on 16 September 2025.

Jared Kang Chern Wey
Tribunal Magistrate

The claimant in person;
The respondent in person.

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Annex 1: Procedural history of all related matters

A.1 Including the six mentioned (see [22]–[24] above), a total of eight claimant filed claims against the respondent in the ECT. They were Ms G, Ms X, and the six claimants whose cases ultimately proceeded before me—Ms N, Ms J, Ms L, Ms C, Ms W, and Mr Q. Save for Ms G, each advanced two claims: (a) one under s 14(2) of the EA for "wrongful dismissal"; and (b) another pursuant to contract, seeking the payment of a performance bonus for work done in 2023. Ms G only brought one claim under s 14(2).

A.2 All 15 claims by the eight claimants were filed at around the same time, which was mid-November 2024. They were fixed for case conferences in December. Chronologically, the earliest development was Ms G's application on 2 December to withdraw her claim, which was granted. The next to move was Ms X's case, which was trial-ready first. It was heard over two days, on 5 and 19 February 2025, and judgment was delivered on 14 March. Whilst Ms X's case proceeded to trial, the remaining six matters were held in abeyance. Once Ms X's case concluded, further case conferences were then convened in April.

A.3 In light of the decision in Ms X's case, the possibility of settlement was explored between the six remaining claimants and the respondent. Settlements were not achieved in any of the cases and, accordingly, they were fixed for trial. I heard the six trials separately on different dates: Ms C on 21 May; Ms W on 28 May; Ms L on 16 June; Ms N on 20 June; Ms J on 27 June; and Mr Q on 1 July. There were two subsequent hearings relating to the receipt of Ms A's evidence conducted in late July and early August. The first of those hearings was conducted jointly with all six claimants and the respondent present. However, the six cases had not been joined at any point. I will explain this and

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its consequence from [A.41] below. For now, it suffices to note that there was no joinder and the cases were tried separately.

A.4 Ms C's case, as stated, went first. In the run-up to the trial of her claims on 21 May 2025, she made an application to summon three individuals to give evidence. By way of brief background: on 22 April, I issued directions fixing Ms C's case for trial, which was to proceed remotely unless there was an application to convert it to a physical hearing. The directions also required each side, by 2 May, to state their proposed witness sequence and estimated timings for examination.

A.5 On 2 May, the respondent wrote in to set out its proposed witness order and time estimates, to request permission for written openings and closings, and to seek clarifications. The clarifications sought by the respondent included: (a) whether the trial of Ms C's case would be heard by the same tribunal as in Ms X's case; and (b) whether the arrangement adopted in Ms X's case would be applied in Ms C's case as well. In respect of (b), the respondent noted that the trial of Ms X's case was conducted physically and that the tribunal had dispensed with the attendance of witnesses who were not party to the dispute.

A.6 On 7 May, Ms C wrote in to comply with the 22 April directions. She set out her proposed sequence of witnesses (herself, followed by Ms W and Ms L) with time estimates, and indicated that she did not intend to question the respondent's Dubai-based witness, one Mr H, who was one of two notetakers in Ms C's hearing before the DC convened for her case. She also applied to *partially* convert the hearing to a physical one, requesting that Ms W and Ms L be allowed to give evidence remotely. On 8 May, I stated that the hearing would proceed in one mode only (either remotely or in-person), and that parties were to elect the mode by 12 May. I also confirmed the timelines for written opening

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statements by 19 May, with timelines for written closing submissions to follow after trial. In light of this, the parties elected on 12 May to proceed remotely.

A.7 Also on 12 May, Ms C filed the aforementioned Summons to Witness applications to compel the attendance of three individuals: Ms A, Ms CW, and Ms WK. The bases of the applications were explained as follows.

(a) First, Ms C sought Ms A's attendance because, as the respondent's Global Head of HR, Ms A had signed or endorsed the key disciplinary steps (warnings, investigations, DIs, dismissal decisions, and appeal outcomes) and, under the respondent's DF, was the designated decision-maker where no DI was convened or when DIs were convened but subsequently cancelled (on the cancellation of some DIs, see [13]–[18] above). Ms A's evidence was therefore, in Ms C's view, necessary to assess the rationale, consistency and procedural fairness of the actions taken.

(b) Second, she sought Ms CW because, although Ms CW had initially been slated to attend a DI and had, by Ms C's reckoning, claims of roughly $12,000, that DI was later cancelled and replaced with a Letter of Warning and a 30% bonus reduction. Ms C wished to verify the circumstances of that change and the rationale for a less severe outcome.

(c) Third, she sought Ms WK for the same reason: her DI had been cancelled and replaced with a Letter of Warning and a 30% bonus reduction, and Ms C wished to explore why her own case was treated differently despite, she said, a similar offence profile.

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A.8 On 19 May, the respondent wrote in with arguments opposing all three summonses on relevance and proportionality. Its position was that, as Ms C's employment was terminated initially with notice (and later with salary in lieu thereof without waiting for the notice period to expire), the governing inquiry under s 14(2) of the EA was confined to whether the stated reason for termination—misconduct—was false. In this regard, it relied heavily on the *TGWD*. It contended that the respondent's internal decision-making processes, including any views of Ms A, could not assist on the determinative question whether Ms C committed misconduct. Process complaints and comparators were simply immaterial.

A.9 On 20 May, I informed the parties that I would determine the summons issue at the trial, with attendance of the witnesses (if summoned) that day if practicable, or on a further day, if necessary. On 21 May 2025, I heard Ms C's case. At the close of trial, after receiving the evidence of Ms C, Ms W, Ms L, and the respondent's witness, Mr LE (Head, HR Risk and Compliance), I dealt with Ms C's summons applications. In short, I was not satisfied that summoning either Ms CW or Ms WK was necessary or proportionate for deciding the present claims. Their proposed evidence was, in substance, to prove disparate treatment and the internal calculus for outcomes—matters which I regarded as better addressed through the objective contemporaneous record (especially the DC's reasons) and in submissions. As to Ms A, I accepted that she might assist on the narrow question why some employees had been routed to a DI while others had not been. However, I was not persuaded at the time that this would materially affect the determinative issues in Ms C's claim. I therefore also declined to summon Ms A.

A.10 However, after confirming that the DC which dealt with Ms C had produced written reasons for the sanction it decided to mete out against Ms C, I

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directed the respondent to disclose those reasons. In my view, this document was plainly material because it constituted the best evidence of the factual findings and reasoning underpinning the DC's recommendation and Ms A's ensuing approval. It would, therefore, have allowed me to assess, in Ms C's specific case, whether the stated ground of misconduct was justified on the DC's analysis. I also made clear that disclosure would have to be filed and be subject to the ordinary implied undertaking against collateral use. If the respondent objected to disclosure, it was to write in by 23 May; absent objection (or if overruled), the DC report was to be filed by 28 May. Ms C was expected to read the DC's reasons, and I directed that both file their written closing submissions by 27 June for a verdict hearing on 3 July.

A.11 On 28 May, the respondent gave effect to my directions. It disclosed the DC's materials in Ms C's case, comprising: (a) the report of the DC dated 20 March 2024; and (b) an email of the DC dated 17 April 2024. It did not disclose the annexes listed in the DC's report, but clarified that several annexed documents were already on the record (the notice of disciplinary inquiry; the questionnaire response and the appendix/receipts; and the interview statement). The respondent further stated its understanding that disclosure was subject to the direction I had earlier given on 21 May that Ms C was not to use the documents outside these proceedings nor disclose them to third parties (including the other claimants in the ECT).

A.12 This, however, was not the end of the matter *vis-à-vis* the summoning of Ms A to give evidence. This was, in no small part, because my views on the relevance of her evidence evolved as proceedings in respect of the remaining five claimants came before me. As with Ms C, on 12 May, Ms W—whose trial was the next up on 28 May—filed Summons to Witness applications in respect of Ms A and Ms CW (though not Ms WK). The justifications underpinning her

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two applications essentially mirrored those put forth by Ms C (see [A.7] above). The respondent opposed Ms W's applications on the same footing as in Ms C's case. At this trial, however, while I similarly disallowed Ms W's application to summon Ms CW, and directed the respondent to disclose the DC's report in respect of Ms W's case (on the same undertaking as in Ms C's case), I did not dismiss Ms W's application to summon Ms A outright.

A.13 Instead, I indicated that there was utility in first anchoring the application in written evidence. I invited the respondent to file a witness statement by Ms A, confined to approvals and decisions taken in Ms W's case, with any attendance reserved for cross-examination only if, after disclosure, oral evidence proved necessary. After taking instructions, the respondent stated that, without prejudice to its earlier objections on relevance and proportionality, it was prepared to proceed on that basis. I accordingly directed: (a) the respondent to disclose the DC's report for Ms W's case by 30 May; (b) the respondent to file Ms A's statement by 11 June; and (c) Ms W to write in by 16 June—after reading Ms A's statement—to indicate whether she was seeking a second hearing day to cross-examine Ms A, whereupon I would decide whether there were good reasons for a second hearing day to be fixed.

A.14 This approach informed the remaining four matters, and led me to revise my directions in respect of Ms C's case as well. Accordingly, I moved to replicate the same evidential footing in all six cases. In respect of Ms L, Ms N, Ms J, and Mr Q's cases—which had trials upcoming on 16, 20, 27 June, and 1 July respectively—as well as Ms C's earlier-concluded case, I directed that correspondence be sent to the parties. As in Ms W's case, I invited the respondent to state whether it was prepared to adduce the DCs' reports and file written witness statements from Ms A in respect of each claimant's individual case. The respondent took the same position as it did in Ms W's case and duly

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disclosed to each claimant their respective DC's reports as well as the witness statement prepared by Ms A.

A.15 This just left the issue of whether Ms A's attendance ought to be required for her to be subject to cross-examination—an issue that I originally intended to deal with individually, in respect of each claimant's case. However, on 18 June, after the trial of Ms L's case—but before the trials of Ms N, Ms J, and Mr Q's cases—each of the six claimants wrote in to "jointly" request I compel Ms A's attendance to allow them to cross-examine her at a single session. They grounded the request on the five ideals in the Rules of Court 2021 (fair access, expedition, proportionality, efficient use of resources, and practical results), volunteered a limited waiver of confidentiality for that purpose, and invited me to consider all six DC reports collectively (while not seeking inter-party disclosure of those reports).

A.16 After consideration, on 24 June, I issued revised directions to deal with this development. Principally, I fixed a joint case management conference ("CMC") for 3 July to resolve the issue of whether Ms A ought to be summoned, and if so, the modality for receiving her evidence. Connectedly, in respect of Ms C, Ms W, Ms L, and Ms N's cases—whose hearings preceded my directions on 24 June—I overrode any earlier-given instruction which would contradict my latest direction that a CMC be convened on 3 July. I also directed the respondent to file its response to the claimants' joint letter by 30 June.

A.17 On 30 June, the respondent tendered its reply to the joint letter. In that reply, the respondent opposed the issuing of a summons to Ms A on the basis that her evidence was not relevant and material to the issues arising in any of the claimants' "wrongful dismissal" claims, citing *Basil Anthony Herman v Premier Security Co-operative Ltd* [2010] 3 SLR 110 ("*Basil Anthony*

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Herman") for the applicable test. However, if I was minded to summon Ms A in all six matters—for the economy of process—the respondent proposed a single joint session confined to evidence common to all claimants, with any claimant-specific questioning to be taken in separate sessions (which could, for administrative convenience, be fixed on the same day). The respondent made clear it did not consent to any joinder of the six cases, any "collective consideration" of evidence across cases, or any release from the *Riddick* undertaking in respect of disclosed documents.

A.18 At the joint CMC on 3 July, I heard the parties on both issues: whether Ms A should be summoned and, if so, the format. On the first, the claimants submitted that Ms A ought to be called because she had signed or endorsed the key disciplinary steps and, under the DF, was the designated decision-maker where no DI was convened; her evidence would therefore bear on common issues across the six cases—in particular, the investigation, the convening or non-convening of DIs, and the handling of appeals. The respondent maintained its opposition to the summons. Relying on the relevance/materiality test in *Basil Anthony Herman*, it argued the claimants had not shown that Ms A was in a position to give evidence that was legally relevant to the issues raised. In its submission, for a claim under s 14(2) of the EA, the determinative question was simply whether the stated ground of dismissal (misconduct) was false, and internal processes or DF compliance were immaterial. It submitted the application was, in any event, a fishing expedition.

A.19 After considering these submissions, I allowed the application and ordered that Ms A be summoned to give oral evidence. In brief, I was not prepared to accept the respondent's contention that the inquiry under s 14(2) (even when read with the *TGWD* pursuant to s 20(7) of the ECA) was confined to the falsity *vel non* of the reason stated in the six claimants' letters of dismissal.

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The proper ambit of s 14(2) and its interaction with the parties' contractual framework were, in my view, not so settled as to foreclose evidence bearing on the respondent's application of its DF. Further, the claimants' cases—as they were run—did not rest solely on denying dishonesty; they also contended that the respondent ought not to have reached the conclusion of dismissal at all when measured against its own framework and comparators. In that light, Ms A's approvals and directions on the convening (or not) of DIs and on appeal-stage decisions were, in my view, *prima facie* relevant and material to "due inquiry" and the consistency of application. The threshold in *Basil Anthony Herman* was therefore met.

A.20 As to the manner in which Ms A's evidence was to be received, I largely accepted the respondent's proposals (see [A.17] above) and I gave directions accordingly.

(a) First, Ms A's written statement already on file (see [A.13]–[A.14] above) would stand as part of her evidence-in-chief. The respondent also sought leave—which I granted—for Ms A to file supplementary statements in advance of her oral evidence.

(b) Second, her oral evidence would be taken in two stages: a limited joint session on matters common to all six cases, followed by separate claimant-specific sessions. At the joint session, one of the six claimants was to take the lead in questioning Ms A. The claimants elected Ms W. There would be no joinder, no collective consideration of evidence across files, and the existing *Riddick* undertaking would continue to apply.

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(c) Third, I confined cross-examination to topics material to the s 14(2) issues and to areas within Ms A's approvals or co-approvals under the DF (*eg*, the cancellation of certain DIs, the approval of sanctions, and the decision not to convene Appeal Committees). The session was not to become a general inquiry into matters the claimants were curious to explore.

A.21 Ultimately, I fixed the joint session on 29 July and the individual sessions on 8 August, with timelines for closings and the verdict hearing to follow thereafter. Specifically, I directed: for Ms C and Ms N, closing submissions by 25 August with the verdict to be delivered on 29 August; for Ms J and Ms L, closing submissions by 1 September with the verdict to be delivered on 5 September; and for Mr Q and Ms W, closing submissions by 8 September with the verdict to be delivered on 12 September. I originally dispensed with the parties' attendance at the verdict hearings and informed them that I would release my decision by correspondence. However, I subsequently revised my directions. I vacated the verdict dates and fixed all six matters for verdict on 16 September, which the parties were required to attend. At each of the six verdict hearings on 16 September, I gave judgment for the claimants, awarded them substantial compensation, and provided brief reasons for my decisions.

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Annex 2: Cognisance taken of the related cases in each of the cases before me

A.23 The six matters before me were, in substance, variants of the same dispute—each claimant advancing materially similar contentions and the respondent, in turn, maintaining a generally uniform position—and two prefatory points therefore require explanation. First, I state what notice I took of the tribunal's earlier decision in Ms X's case. Second, I explain the consequence of there having been no joinder under r 12 of the EC Rules.

A.24 I give these explanations because it would be wholly artificial to give any impression that I was able to maintain hermetic compartments of mind. The six matters were heard in close succession, involved overlapping questions, and, at points, shared procedural steps. Accordingly, without stating both the cognisance I took and its limits, there is a risk of the misapprehension either that I transposed findings wholesale, or that I ignored obvious overlaps. The account that follows therefore records what was treated as common and what remained confined to a particular file.

The tribunal's decision in Ms X's case

A.25 I begin with a summary of the dispute and decision in Ms X's case.

A.26 Ms X was employed by the respondent as a Senior Research Analyst under a 12 October 2017 contract. Her salary rose from $20,000 to $25,000 monthly in 2023. On 17 April 2024, the respondent terminated her employment with three months' notice under the contract and, on 24 May 2024, brought forward her last day by paying salary in lieu of the remaining notice. As stated at [A.1]–[A.2] above, in November 2024 she filed two ECT claims: (a) one for "wrongful dismissal" under s 14(2) of the EA, specifically seeking

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reinstatement; and (b) another for the payment of a performance bonus for work done in 2023. The respondent disputed both claims, maintaining the dismissal was for misconduct and that any bonus was discretionary. The tribunal identified three issues: whether Ms X was wrongfully dismissed; if so, whether she was entitled to reinstatement; and whether she was entitled to the bonus claimed. Because the respondent had stated reasons in its notice of dismissal, it bore the burden of proving those reasons under s 27(2)(*b*) of the ECA and the *TGWD*.

A.27 The respondent's sole reason underpinning the dismissal (as stated in its notice) was misconduct, advanced on two interconnected limbs: (a) dishonest acts; and (b) serious breach of policy committed "wilfully, or with conscious or repeated disregard". It alleged that between January 2022 and September 2023, Ms X abused the MCP by submitting 81 impermissible claims using non-itemised Clinic X invoices, totalling about $9,543.20, and that she did so with actual knowledge the claims were not permitted. It also resisted the bonus claim on the basis that payments were entirely discretionary under her contract and had been declined.

A.28 To analyse liability on the "wrongful dismissal" claim under s 14(2) of the EA, the tribunal adopted a four-step framework of analysis:

(a) Identify what Ms X did;

(b) State what "misconduct" means;

(c) Decide whether her acts amounted to misconduct; and

(d) Determine whether the respondent proved the pleaded grounds.

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The tribunal also split step (a) into two parts: the acts themselves and whether those acts contravened the applicable policy, noting that there was an upstream dispute about which policy even governed Ms X's claims.

A.29 On the first step, the tribunal found that, between January 2022 and September 2023, Ms X submitted 81 reimbursement claims linked to Clinic X, totalling about $9,543.20. The claims were supported largely by non-itemised invoices; none was rejected at the time and all were processed and paid. The underlying purchases comprised over-the-counter products (vitamins, supplements and wellness items) unconnected to any documented consultation or prescription at Clinic X. Ms X accepted she had not seen a doctor at Clinic X. She explained that colleagues and clinic staff had said claims below the non-itemisation threshold would be accepted, that many employees did likewise, and that she therefore believed such claims were permissible. The evidence also showed a recurrent pattern of transactions hovering at or below the threshold and, on occasion, split billing at the clinic's suggestion.

A.30 Turning to the governing policy, the respondent relied on its 2022/2023 MCPs hosted on the institution's intranet. Ms X maintained that, at the material time, she only knew of another document (the "Handbook MCP"). The tribunal found the respondent had not proven Ms X's actual knowledge of the 2022/2023 MCP texts. Even so, it held that the 81 claims were not, in any event, permitted under the Handbook MCP. On an objective reading of the phrase "outpatient GP treatment", even the Handbook MCP required treatment by a physician, typically via consultation. Purchasing over-the-counter items without seeing a doctor was not treatment. Moreover, a distinct "Flex Dollar" scheme offered by the respondent (which separately covered health supplements/products) underscored that over-the-counter purchases did not fall within the "outpatient GP treatment" category in the Handbook MCP either.

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A.31 At step (b), the tribunal stated that "misconduct" within s 14(2) of the EA is not confined to dishonesty. It encompasses serious wrongdoing that undermines the employment relationship, including breaches of policy and the implied duty of fidelity, and may be made out by reckless indifference to known constraints. It is not necessary that the conduct be criminal; nor is it necessary that it amount to summary-dismissal misconduct at common law. What matters is whether, assessed objectively, the employee's acts were inconsistent with the trust and obligations inherent in the role and in the employer's rules then in force. With that framing, the tribunal emphasised that repeated impermissible claims, despite obvious indicators of irregularity, could constitute misconduct even if unaccompanied by falsification or deceit.

A.32 Applying this standard at step (c), the tribunal held that Ms X's 81 Clinic X-linked claims were not permitted under the governing policy and, taken together, amounted to misconduct. She had not consulted any doctor, the purchases were over-the-counter products, and the invoices were largely non-itemised. Her reliance on clinic staff and colleague chatter, and the system's acceptance of non-itemised receipts, did not excuse her own compliance with the policy. The pattern, frequent sub-threshold spends and occasional bill splitting, reflected at least a heedless indifference to the Handbook MCP's requirements. On that footing, the tribunal found that the respondent was entitled to regard her conduct as misconduct, even if it fell short of deceit.

A.33 At step (d), however, the tribunal concluded that the respondent nevertheless failed on its pleaded characterisation. It had chosen to assert "wilful" and "dishonest" breaches. On the evidence, the tribunal was not satisfied that Ms X knew, or must have known, that the 2022/2023 MCPs prohibited her claims and nevertheless proceeded with a purpose to deceive. Broadcast notices and intranet availability did not prove actual awareness of

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those texts; and nothing suggested falsification or concealment. The tribunal also rejected the respondent's reliance on criminal law notions of "wilful blindness" on the grounds that they were not transplantable to the present context. Thus, the most that could be said was carelessness or recklessness. Because the respondent stated a particular reason, it bore the burden of proving that reason; having failed to do so, Ms X's s 14(2) claim therefore succeeded on liability. However, notwithstanding that, the tribunal observed that, had the letter accurately framed the ground as misconduct *simpliciter*, there would have been "just cause or excuse".

A.34 As to remedy on the s 14(2) claim, Ms X sought only reinstatement. The tribunal declined to order it. Reinstatement is a discretionary, exceptional remedy akin to specific performance and is inappropriate where mutual trust has been materially impaired or where the employer could lawfully terminate on a properly framed ground. Here, although the respondent failed to prove dishonesty, the underlying conduct remained misconduct. It would be neither just nor practicable to compel a resumption of employment in those circumstances. The tribunal therefore refused reinstatement and, as Ms X had not sought compensation in the alternative, made no monetary award on the s 14(2) claim notwithstanding success on liability.

A.35 Turning to the bonus claim, the tribunal rejected it as well. Ms X's contract and the respondent's variable-compensation framework conferred a discretion to award and calibrate any bonus. That discretion had to be exercised in good faith, for proper purposes, and rationally—not capriciously, arbitrarily, or on irrelevant considerations. The respondent's decision to award no bonus was found to be rationally tethered to legitimate factors: the established misconduct undermining the employment relationship, and the timing of the acts within the 2023 performance period. The tribunal would not re-weight

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those factors. The non-payment was therefore a lawful exercise of discretion and not a punitive add-on to the dismissal decision.

A.36 In the result, the tribunal held: Ms X succeeded on liability under s 14(2) because the respondent did not prove the stated ground of "wilful/dishonest" misconduct; reinstatement was refused as a matter of discretion; no compensation was awarded because it was not sought; and the contractual bonus claim was dismissed. Each party was ordered to bear its own costs.

A.37 For completeness, it bears highlighting that—although the tribunal's decision in respect of Ms X's s 14(2) claim did not ultimately turn on any allegation that the requirement of "due inquiry" (under s 14(1) of the EA) had not been satisfied—such allegations had been made by Ms X. Namely, that there were material lapses in the DI and in the respondent's application of the DF (*eg*, the framing of charges, disclosure of materials, the DC's composition, the handling of her explanations, and the screening of her appeal). The respondent responded that any such lapses were immaterial as it ultimately effected the termination of Ms X's employment with notice (partly commuted to salary in lieu thereof). The respondent contended that the tribunal's remit under s 14(2) of the EA and the *TGWD* was confined to testing the truth of the stated reason for dismissal. As the respondent failed to prove its own pleaded ground for dismissal and Ms X sought only reinstatement, the tribunal noted that it did not need to resolve the process complaints which, contrary to the respondent's contentions, could—in an appropriate case—bear on the tribunal's assessment of "just cause or excuse" or on relief.

A.38 Returning to the bearing of Ms X's case on my decisions in the cases of the six claimants that were before me: the short and simple answer is that it *largely* did not have any bearing. This was not out of discourtesy to a coordinate

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tribunal, but because the fundamental approach I took towards articulating the law, and the footing on which I commenced my factual analysis were substantially different.

(a) Where the law was concerned, I took a wide view. As will be evident from Annex 3—where I articulate what I consider a (generally) coherent architecture for approaching s 14(2) claims—my approach was distinct from that of the tribunal in Ms X's case, which mostly centred on the falsity *vel non* of the specific grounds set out in the letter of dismissal issued by the respondent to Ms X. While my decisions in each of the six cases before me did address this issue as well, they did so as part of my wider view as to how tribunals are to approach s 14(2) claims.

(b) In terms of facts, I examined the entire Clinic X episode at a wider remove as I was chiefly concerned with how the respondent structured and implemented its disciplinary response, what signals employees received in practice, and whether the various DCs applied their minds to those contextual features before affixing to individual employees the grave finding of having misconducted themselves wilfully, intentionally, or dishonestly.

A.39 However, I say that Ms X's case "largely" did not have any bearing on my approach in the six cases because I was cognisant that, on its record, the tribunal in Ms X's case found insufficient claimant-specific evidence that Ms X acted dishonestly, wilfully, or intentionally in making the impermissible claims she did. I took note of that finding, but I afforded it limited weight for two reasons. First, it turned on Ms X's individual evidential footprint and the documents placed before that tribunal. Second, as already stated, my view as to the appropriate analysis centred on the broader context: the scale of the episode,

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the practical operation of the respondent's policies and systems, and the DCs' treatment of those matters.

A.40 Accordingly, Ms X's case functioned, in my reasoning, as mere background rather than blueprint. That is, as a data-point illustrating how the respondent had dealt with one other employee who found herself in broadly the same boat. It did not set the tone for the six decisions I was required to make. Those decisions turned on the respondent's proofs (or the lack thereof) in each file, measured against my view of the law.

The lack of a joinder and the six cases before me

A.41 As stated, no joinder of the six cases before me was effected, whether before or after the matters had been fixed for trial. Prior to my hearing the first case—Ms C's on 21 May (see [A.3] above)—I examined why no joinder had been ordered. From the Assistant Registrar's ("AR") case management notes in the seven matters that went to the CMC stage (all except Ms G's; and all were before the same AR), it did not appear that any of the claimants had applied for joinder under r 12 of the EC Rules. It also bears mentioning that—where the claimants before me were concerned—it was clear that at least some of them were in contact with each other. For example, several were listed as witnesses in others' trials. It could, therefore, reasonably be expected that they would have considered whether the similarity of their cases warranted an application for joinder and, if so, in respect of which cases.

A.42 Moreover, on my review of the responses filed in each of the six cases—again, prior to my hearing the first case—it was abundantly clear that the respondent's position was consistent: each claim stood on its own footing and was to be determined on its own evidential record. It logically followed that, by the time the six matters were fixed before me for trial, any suggestion of joinder

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would predictably have been met with firm resistance. In other words, even leaving aside whether joinder would have been practicable from a case-management perspective, it was plain that the respondent would have contested it as a matter of principle.

A.43 Notwithstanding that ECT proceedings are judge-led, in these circumstances, I did not think it appropriate to initiate the question of joinder of my own motion. There were two reasons. First, where a party (or parties) has elected not to seek joinder, it is ordinarily for the tribunal to respect that choice—particularly where the opposing party has made clear it will object—lest the tribunal be seen to be steering the litigation in a way that may prejudice one side. Second, while r 12 of EC Rules empowers the tribunal or Registrar to "allow" joinder, the statutory language does not say in terms that joinder may be ordered without an application. The wording is slightly ambiguous, and prudence suggested that I ought not to float joinder unbidden. To be clear, I do not mean to say that the tribunal or Registrar lacks the power to act of its own motion; given the judge-led character of ECT proceedings—as well as the wider institutional context of the ECT—it may well be that r 12 permits that. However, the very uncertainty just described weighed against raising joinder where no claimant had sought it and where the respondent had already signalled opposition.

A.44 In the event, during the course of the various hearings—especially when the "joint" application to summon Ms A was ventilated—it appeared that the claimants may not, earlier on, have appreciated the possibility of joinder at all (one of them suggested as much at the CMC on 3 July 2025). By then, however, the trials had been heard and all that was outstanding was the receipt of Ms A's evidence. The respondent also maintained its position that determinations under s 14(2) did not warrant joinder. In those circumstances, my view was that the

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moment had passed. By that stage, the cases had proceeded separately and introducing joinder would have risked procedural complication without assured gain. Accordingly, I still did not think it appropriate to canvass, of my own motion, whether the matters ought to be joined.

A.45 Nevertheless, although the six matters were not joined, as with Ms X's case, in approaching each of the six cases, I took cognisance of the fact that they were, in substance, variants of the same episode—the wider Clinic X incident—and that there were recurrent features across them (the MCP's text and operation; the grouping methodology; the DF's escalation and approvals architecture; and the DCs' mode of analysis). That cognisance, however, operated at the level of context rather than conclusion. It informed how I structured my mind and decided upon the appropriate approach to analysing the dispute. However, each case still had to stand or fall on the evidential record forming part of that *specific* case, measured against the legal approach I set out in Annex 3. For the avoidance of doubt, in deciding any given case, I gave no consideration to the evidence in the records of *other* case files.

A.46 Admittedly, however, my confirmation that I did not—in deciding any given case—rely on the evidence in the records of other case files does not wholly address whether my mind was led down a path it would not otherwise have taken but for the fact that there were, before me, six matters that were not joined. On this, my view is that it was not in any material respect. From the outset, during the trial of Ms C's case, I had already signposted lines of inquiry suggested by the scale of the episode—the size of the cohort, the broadly similar pattern of conduct, and the principled basis on which some employees were routed to DIs and dismissal while others were not. These were raised as cues to the points likely to matter in my decision and, before even hearing the remaining

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cases of Ms W, Ms L, Ms N, Ms J, and Mr Q, my mind was already tending in the direction it ultimately took.

A.47 That direction ultimately manifested in the way I framed and decided all six cases which, crucially, turned on whether the respondent had—in each case—properly applied its mind to the wider context of the entire Clinic X episode in reaching the conclusions of dishonesty. The importance, in my view, of such wider contextual sensitivity was quite clear from the outset and, although exposure to a greater number of cases may have helped crystallise this direction, it did not create it. The same concerns would have arisen, the same approach would have been taken, and the same conclusion would have been reached had I heard only one case.

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Annex 3: An analysis of the law on dismissals in Singapore

A.48 Annex 3 sets out the legal architecture that, in my view, must undergird the disposition of "wrongful dismissal" disputes in Singapore. This label now covers two different things—the common law action (concerned with notice and its equivalents) and the statutory claim under s 14(2) of the EA (concerned with the presence or absence of "just cause or excuse"). These six related cases exposed that the boundaries between those regimes—substance, process, forum, and remedy—are not consistently understood. To avoid deciding like cases unlike, I state the organising propositions and their consequences for proof and relief here. The aim is practical clarity: to mark what is for the ECT, what is for the courts, and how the two are to be kept in coherent step.

Wrongful dismissal at common law

A.49 At common law, "wrongful dismissal" refers to a breach of the employment contract by the employer in the manner of dismissal. In practice, this most often occurs when an employer terminates the employment without giving the contractually required notice (or payment in lieu of notice). In an indeterminate hiring, an employer is entitled to end the relationship by giving proper notice or salary in lieu; if it fails to do so, the dismissal is "wrongful" in the sense of being a premature termination contrary to the contract. Notably, the common law does not inquire into the merits or fairness of the reason for termination. An employer may dismiss an employee for any reason or none at all, so long as the contractual notice (if required) is given. There is no general duty to show good cause or to conduct a hearing before dismissal within the common law framework.

A.50 The focus is therefore on contractual compliance. If the employer gave the proper notice (or pay in lieu thereof), the dismissal is lawful in contract,

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regardless of how unjust or arbitrary the reason might seem. Indeed, in *D'Cruz v Seafield Amalgamated Rubber Co Ltd* [1963] 1 MLJ 154, it was said (at 156):

> I now come to the last question to be decided in these proceedings, namely, the question as to the length of notice for terminating a contract of service. I would preface what I have to say on this question by observing that the basis of the employer and employee relationship in almost all cases is contractual, so that the general principles of the law of contract apply to a contract of service. It is therefore clear that the right of the private employer to dismiss his servant is only limited by the terms of the contract. Thus, where a contract provides for the services of an employee to be terminated on a month's notice, *the employer can dismiss the servant by giving him a month's notice without stating any reason for doing so, without having any reason for doing so or indeed for the most disreputable and wicked reasons.*
>
> [emphasis added]

A.51 Conversely, even a dismissal for perceived misconduct will be deemed wrongful if effected in breach of the contract (for example, summarily without notice when the misconduct did not actually amount to a repudiatory breach by the employee). In short, wrongful dismissal *simpliciter* is about the mechanics of termination *vis-à-vis* the contract—chiefly whether adequate notice was given—and not about whether the dismissal was justified on its merits.

A.52 Because the common law views employment largely through a contractual lens, the remedies for wrongful dismissal are correspondingly limited. The primary remedy is an award of damages intended to put the employee in the position they would have been in had the contract been properly performed (*ie*, terminated with sufficient notice). Typically, this means the employee can only recover salary and benefits corresponding to the notice period that the employer should have given. There is no compensation for the mere fact of being fired beyond lost notice wages. Notably, the common law (following the rule in *Addis*) does not allow damages for the manner of dismissal

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or for any hurt feelings, mental distress, or reputational injury caused by the firing. In other words, however harsh or unfair the circumstances of the dismissal, the employee's damages are generally capped at their notice entitlement (plus any other accrued contractual entitlements such as earned salary or bonuses up to the termination date).

A.53 Reinstatement of employment is also not a remedy available in a common law wrongful dismissal claim. The courts will not order an employer to take back a dismissed employee, because that would amount to specific performance of a personal service contract—a remedy traditionally not granted for employment contracts. The law treats the employment as effectively at an end (even if the dismissal was in breach of contract), with the dispute only about financial compensation for that breach which, as stated, is relatively limited.

A.54 What if the employment contract itself imposes additional requirements or procedures for dismissal? For instance, some contracts (especially for senior employees or in unionised settings) might stipulate that the employer must conduct a disciplinary inquiry or follow a certain procedure before terminating for cause. Breach of such a term would technically render the dismissal wrongful as well—the employer would be in breach not only for failing to give notice, but also for violating the agreed procedure. In principle, the employee could claim damages for this breach of contract. However, the effect on remedies remains constrained by the common law's reluctance to award losses relating to the fact of dismissal. Even if a contractual disciplinary process was not followed, the courts generally will not award damages for the lost chance of retaining employment or for reputational harm flowing from the manner of termination. The recovery would likely still be limited to the notice period (or perhaps the period the procedure would have taken, if that is provable), unless the breach of procedure caused distinct loss separate from the dismissal itself.

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A.55 English case law has underscored this point. In *Johnson v Unisys Ltd* [2003] 1 AC 518 ("*Johnson v Unisys*"), the House of Lords held that an employee cannot circumvent the limited damages rule by framing a claim as breach of an implied term of trust and confidence in the manner of dismissal—such losses remain unrecoverable at common law. Later, *Eastwood v Magnox Electric plc* [2005] 1 AC 503 ("*Eastwood v Magnox*") clarified that if an employer's breach prior to the dismissal (*eg*, a failure to follow procedure or unfair suspension) causes loss independent of the dismissal, the employee might claim those losses, but anything directly attributable to the dismissal decision is off-limits due to what became known as the "*Johnson* exclusion zone". Similarly, in *Edwards v Chesterfield Royal Hospital NHS Foundation Trust* [2012] 2 AC 22 ("*Edwards v Chesterfield*"), it was confirmed that even where an employer breaches a contractual disciplinary process when dismissing an employee, the employee cannot recover damages for the consequences of being dismissed in breach of that process—no matter how career-ending the impact—beyond the normal notice pay. The dismissal remains effective, and the remedy is confined to contractually measured loss. These cases illustrate the enduring principle that wrongful dismissal at common law is tightly tethered to the contract and does not morph into a broader inquiry of fairness or equitable treatment.

A.56 The common law in Singapore has hewn closely to these principles. For many years, local courts were bound by precedent to follow decisions like *Addis*, and our jurisprudence has continued to reflect a contractual view of termination. For example, in *Dong Wei*, the Appellate Division affirmed that an employer's contractual right of termination (so long as exercised in accordance with the contract's notice clause) is essentially unqualified. In short, in the common law context, a dismissal that adheres to the contract (principally by providing the agreed notice or payment in lieu) is not "wrongful", regardless of

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motive. And if the dismissal is wrongful due to a contractual breach, the remedies do not extend to reinstating the job or compensating the employee's hurt or unfair treatment—only the economic loss of the premature termination is recoverable.

The meaning of "wrongful dismissal" in Singapore outside the common law

A.57 Section 14(2) and (3) of the EA provide:

> **Dismissal**
>
> **14.**—(2) Despite subsection (1), but subject to section 3 of the Employment Claims Act 2016, where a relevant employee considers that he or she has been dismissed without just cause or excuse by his or her employer, the employee may lodge a claim, under section 13 of that Act, for either of the following remedies:
>
> (*a*) reinstatement in the employee's former employment;
>
> (*b*) compensation.
>
> (3) If a Tribunal hearing the claim is satisfied that the employee has been dismissed without just cause or excuse, the Tribunal may, despite any rule of law or agreement to the contrary —
>
> (*a*) in a claim for reinstatement of the employee in his or her former employment, direct the employer —
>
> (i) to reinstate the employee in the employee's former employment; and
>
> (ii) to pay the employee an amount equivalent to the wages that the employee would have earned, if the employee had not been dismissed; or
>
> (*b*) in a claim for compensation, direct the employer to pay, as compensation to the employee, an amount of wages determined by the Tribunal.

A.58 Since 2019, this cause of action—despite the phrase "without just cause or excuse" suggesting a fundamentally different concept than that which exists at common law—has been associated with the phrase "wrongful dismissal" (see s 2(1) of and the Third Schedule to the ECA). Before I attempt to unpack the

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confusions that this has produced, it is useful to explain how two very different claims came to be called the same thing. To do this, I propose to start with a more abstract question: how, in the first place, we view employment in contemporary society.

A.59 Employment sits uneasily between contract and status. On the contractual view, the relationship is a bargain: obligations bite because the parties chose them; the law's role is to recognise that bargain and to permit its termination by notice, with remedies that track what was promised. On the status view, however, employment is a continuing relationship marked by the mutual obligations needed to sustain it. Its texture is softer, and the exercise of authority therewithin cannot be reduced to whatever the document happens to say. Modern labour law oscillates between these poles: it often presupposes a contract as the gateway to work even while resisting pure contractualisation by asserting non-negotiable norms that reflect the distinctive character of the employment role. The tension tends to matter most at the point of dismissal, where one must decide how far to treat the act as private termination of a bargain and how far to treat it as an exercise of status-based authority that—because it bears on a person's income, life, dignity, and standing—calls for principled justification and scrutiny thereof.

A.60 As already described above, at common law, dismissal is classically treated as a matter of contract and, for an indeterminate hiring, the employer may bring the relation to an end by giving notice (or paying salary in lieu thereof). The power is "unrestricted" in the sense that the law imposes no substantive or procedural controls: an employer may terminate for any reason or for none, and there is no duty to hear the employee before dismissal. When the employer fails to give the required notice, the action is in "wrongful dismissal" and the remedy tracks the bargain: damages are generally confined

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to the value of the notice period, with no recovery for the manner of dismissal, injured feelings, or stigma to reputation. This narrow remedial frame—usually attributed to *Addis*—reflects the common law's preference for a strictly contractual view of employment which, in turn, focuses the mind sharply on the issue of *notice*.

A.61 This preference is long-standing and, to sketch how it arose, one begins with the Statute of Artificers 1563 (a Tudor law regulating apprenticeship, wages and hiring). Reinforced by poor law settlement rules, it assumed yearly service: the presumption was that, where the parties did not fix a term, a general hiring was for one year (often expressed as "a year and a day"), with wages and expectations arranged on that basis. This was significant because a servant who completed a year could obtain parish settlement and relief (that is, the legal right to reside in—and, if destitute, be supported by—a particular parish). This made annual hirings the default for much of the pre-industrial economy, particularly in agriculture aligned to seasonal cycles. However, as industrialisation took hold, engagements began to shift to employments of indefinite duration and the presumption gradually fell into desuetude. The Statute's key provisions were repealed in 1813 and the remainder swept away by later 19th-century reforms. The presumption had also acquired its own life at common law and, though it was only laid to formal rest in *Richardson v Koefod* [1969] 1 WLR 1812, it too ceased being relevant long before then.

A.62 With engagements becoming, typically, for indefinite durations, courts were faced with a question: how can such engagements be brought to an end? Two lines of thought emerged. In the United States, courts crystallised an "employment-at-will" default: an indefinite employment may be terminated by either party at any time, for any reason or none (see, *eg*, *Payne v Western & Atlantic Railroad* Co 81 Tenn 507 (1884)). By contrast, the English courts

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declined that path and supplied an implied term of reasonable notice in respect of indeterminate hirings, with reasonableness commonly mapped to the wage period or trade custom—for example, a week for weekly-paid workers; a month or more for professional or managerial staff (see, *eg*, *Creen v Wright* (1875-76) LR 1 CPD 591). Thus, in English law, employment for an indefinite duration became one for an undefined duration subject to termination with reasonable notice. They were not actually for an indefinite duration, and employees were not entitled to expect that security.

A.63 Over time, the implied rule of reasonable notice was overtaken in practice by express notice clauses. In the UK, statute probably did most of the work. The Contracts of Employment Act 1963 introduced minimum notice periods and, for the first time, required employers to issue a written statement of main terms. This formalisation made it routine to set out the notice period expressly. Those duties are now carried forward in the Employment Rights Act 1996, which obliges employers to provide a written statement including, *inter alia*, particulars about notice, and permits the obligation to be met by a document in the form of a contract of employment. In practice these days, express notice terms also commonly sit alongside express pay-in-lieu and garden-leave mechanisms.

A.64 With notice entrenched as the default means for bringing employment contracts to a lawful end, the common law did not develop a general standard of "fairness" to exercise control over the employer's prerogative to dismiss. This can probably be attributed to two forces. First, *Addis* had fixed the lens. As stated above, wrongful dismissal was conceived as the premature denial of a promised period of employment (*ie*, either "reasonable" notice or a specified period of notice), and damages were ordinarily confined to the value of notice. The employee could not recover for the manner of dismissal, injured feelings,

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loss of reputation, or downstream employability. This framing the generated a *durable* complex of ideas which has kept wrongful dismissal tightly tethered to notice and left little room to police reasons or procedure (likely in no small part due to *Addis* being a forceful decision of five Law Lords—the Lord Chancellor Loreburn, Lords James of Hereford, Atkinson, Gorell, and Shaw, though Lord Collins dissented).

A.65 Second, when social and industrial policy in the UK pressed for scrutiny to be exercised over the employer's prerogative to dismiss—and, thus, for the employment relationship to be seen as more than mere contract—it was Parliament that led the change. Following the Donovan Commission's recommendations, unfair dismissal protection was introduced by the Industrial Relations Act 1971 (now Part X, Employment Rights Act 1996). As such, there was no real need for the common law to evolve a freestanding standard of "fairness". Parliament had channelled such disputes to a statutory forum and the courts were left, instead, to mark the boundary. For example (and as stated at [A.55] above), *Johnson v Unisys* held that an employee cannot recover common law damages for the *manner* of dismissal (whether pleaded as breach of trust and confidence or otherwise). Complaints about reasons and process have to be channelled to the statutory unfair dismissal regime. *Eastwood v Magnox* clarified that *Johnson v Unisys* does not bar a common law claim for loss caused by employer breaches before dismissal (such as unfair suspension or disciplinary steps), provided the loss is distinct from the dismissal itself. *Edwards v Chesterfield* confirmed that even where a disciplinary procedure is contractual, damages are not available for the consequences of being dismissed in breach of that procedure; recovery, if any, is confined to loss independent of the dismissal. The result has been a very deliberate bifurcation: contract governs the mechanics and price of ending employment; statute polices the fairness of the decision to dismiss.

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A.66 In Singapore, the development of our law governing dismissals is a little more difficult to set out simply. For a considerable period, our courts were—by hierarchy—bound to follow the decisions of the superior English courts, including of course, *Addis*. It can therefore be taken that the local courts, even in the early years of the nation's independence, viewed the legal protections an employee had against dismissal much in the same way. A simple illustration is *Ng Peng Hon Stanley v AAF Pte Ltd* [1977-1978] SLR(R) 460, where—although a "resignation" extracted under pressure was treated as a dismissal in substance—the employer was only held liable on a contractual footing to pay the employee what he would have earned had he been given "reasonable notice". Reasonable notice was assessed at three months and the employee was therefore awarded three months' salary in lieu of notice plus an additional one month's bonus he would have become entitled to receive under his contract had he been given reasonable notice.

A.67 Additionally, similar to the UK, the employer's unrestricted right to dismiss with notice and nothing more was given a statutory footing in 1968 when the Employment Act (No 17 of 1968) was first passed. Section 10(1) of the Act provided: "Either party to a contract of service may at any time give to the other party notice of his intention to terminate such contract of service." Section 11(1) further entitled the employer to convert the notice into payment: "Either party to a contract of service may terminate such contract of service without notice or, if notice has already been given in accordance with section 10 of this Act, without waiting for the expiry of that notice, by paying to the other party a sum equal to the amount of salary which would have accrued to the employee during the term of such notice."

A.68 That being said, however, the very same year that the Employment Act was enacted, a critical amendment would also be made to our then-Industrial

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Relations Ordinance (earlier enacted in 1960). The substance of this amendment would later shape how we, in Singapore, use the phrase "wrongful dismissal"—which, as alluded to earlier, is somewhat confusing. The amendment, which was to s 34 of the Industrial Relations Act, was this (see s 8 of the Industrial Relations (Amendment) Act (No 22 of 1968)): Parliament created an avenue for union-represented employees to complain that they had been dismissed "without just cause or excuse". Within a month of dismissal, such an employee could make written representations (through their union) to the Minister, who could then direct an inquiry by the Commissioner for Labour. If the dismissal was found to be without just cause or excuse, the Minister could order reinstatement or award compensation, with his decision being final and conclusive. At the same time, matters of dismissal or reinstatement were removed from collective bargaining (see s 5 of the Industrial Relations (Amendment) Act (No 22 of 1968)).

A.69 These amendments were broadly well-received. Labour members were initially concerned about withdrawing dismissal and reinstatement from the Industrial Arbitration Court and about the breadth of the changes. However, the Minister for Labour, then Mr S Rajaratnam, framed the scheme as a reallocation of forums that restored management's common law rights while preserving a ministerial safeguard for dismissals said to be "without just cause or excuse". Other members also tied these amendments to the new Employment Act as complementary measures aimed at creating an efficient, investment-ready industrial regime. With those assurances, and noting the Minister's final-and-conclusive power after inquiry, the House accepted the shift in forum for dismissal disputes and passed the Bill (see *Singapore Parliamentary Debates*, Official Report (31 July and 1 August 1968), vol 27, cols 733–790).

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A.70 It will be noticed that this amendment only concerned union members. There was no equivalent provision at the time enabling non-unionised employees to make representations to the Minister when they felt that they had been dismissed "without just cause or excuse". This right only came in 1973 with the Employment (Amendment) Act (No 41 of 1973). The amendment repealed and re-enacted s 14 to create a parallel route for all employees. As with the amendment to the Industrial Relations Act, this provision allowed a dismissed employee to, within one month, make written representations to the Minister. The Minister could direct an inquiry by the Commissioner for Labour; and, if satisfied that the dismissal was "without just cause or excuse", order reinstatement or award compensation, such decision being final and conclusive. In moving the Bill, the Minister for Labour, now Mr Ong Pang Boon, explained that non-unionised employees then had no real redress—only salary in lieu of notice, often no more than four weeks, which was "clearly no deterrent to those employers bent on maximising profits without any regard for the well-being of their employees" (*Singapore Parliamentary Debates*, Official Report (25 July 1973), vol 32, col 1159)—and that comparable protection to the union route was needed. He was met with some concerns from labour members that representations should pass through unions, but the House ultimately passed the Bill without amendment.

A.71 Thus, s 14 of the Employment Act as we roughly know it today was born. The precise contours of the provision upon its enactment will be of some importance later. As such, I set the provision out in full:

> **Misconduct of the 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 —

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(*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 the provisions of subsection (1) of this section, where an employee considers that he has been dismissed without just cause or excuse by his employer, he may, within one month of such 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) of this section, 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 Minister's direction.

(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) of this section 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) of this section shall be guilty of an offence and shall be liable on conviction by a District Court to imprisonment for a term not exceeding twelve months or to a fine not exceeding five thousand dollars or to both such imprisonment and fine.

(8) For the purpose of an inquiry under subsection (1) of this section, the employer may suspend the employee from work for a period not exceeding one week but shall pay him not less than half his salary for such period:

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> Provided that if the inquiry does not disclose any misconduct on the part of the employee the employer shall forthwith restore to the employee the full amount of salary so withheld.

A.72 Though the drafting of this provision was generally clear and most of its contents are largely self-explanatory, looking back at it now, there seems to be one major point of uncertainty. Section 14(6) provided that any direction by the Minister under s 14(4) "operate[d] as a bar to any action for damages by the employee in any court in respect of the *wrongful dismissal*" [emphasis added] (the equivalent provision in the Industrial Relations Act was s 34(7)). However, as established earlier this section, the action for "wrongful dismissal" at common law was simply not concerned with the question that s 14(2) of the Employment Act (as well as s 34(2) of the Industrial Relations Act) was concerned with: that is, whether a dismissal was effected with "just cause or excuse". At common law, a wrongful dismissal claim sounded in contract for want of notice, and it said nothing of the "just-ness" of the employer's reasons for dismissal. The phrase "without just cause or excuse" therefore plainly introduced a new safeguard which employees could invoke before the Minister. However, as the legislation precluded employees who invoked this safeguard from *also* bringing a claim in court for "wrongful dismissal", the question naturally arises: did the new enactments have the effect of reshaping the common law action for wrongful dismissal? If not, why would the complaint to the Minister under s 14(2) (or s 34(2)) be equated with a claim for wrongful dismissal?

A.73 Notwithstanding the curiosity of the equivalence, the answer to the question, according to the Court of Appeal in *Lim Tow Peng and another v Singapore Bus Services Ltd* [1974-1976] SLR(R) 673 was "no". It held that s 14 did not reshape the common law action. Rather, it created a distinct avenue to object to an "unfair" (reasons-based) dismissal, vesting the power to order

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reinstatement or compensation in the Minister, not the courts. In arriving at this conclusion, the court took notice of the UK's then-recently enacted unfair dismissal regime and observed:

> 16 Section 14 in its present form came into effect on 1 September 1973 and it is quite obviously based, to some extent, on the "unfair dismissal" provisions of the Industrial Relations Act 1971 of England, which has placed a statutory limitation on the employer's common law right to dismiss, whether by notice or for cause, which limitation has been described as the right of an employee to object to an "unfair dismissal". The provisions of the Industrial Relations Act 1971 are much more comprehensive than Pt II of our Employment Act and it is unnecessary to consider them save to point out that even under that Act, an employee who considers that he has been unfairly dismissed has no right to go to court and ask for reinstatement but may present a complaint to an industrial tribunal. If the tribunal finds that the complaint is well founded and considers that it would be practicable and, in accordance with equity for the complainant to be re-engaged by the employer, the tribunal may make a recommendation to that effect, stating the terms on which it considers that it would be reasonable for the complainant to be so engaged. Otherwise, if it thinks the claim well founded but does not make such a recommendation, or if the recommendation so made is not complied with, the tribunal makes an award of compensation. (Section 106 of the Industrial Relations Act 1971.)
>
> 17 It will be seen that the refusal of the ordinary courts under the common law specifically to enforce a contract of employment where the employment has been wrongfully terminated has been dealt with in England by the Legislature in the remedies available for unfair dismissal under the Industrial Relations Act 1971. And this refusal has also been dealt with by our Legislature in the remedies now available in Singapore for unfair dismissal from employment under s 14 of the Employment Act. Under s 14, an employee who considers that he has been unfairly dismissed, may present a complaint to the Minister who has the power to direct the employer to reinstate the employee in his former employment. The section gives a dissatisfied employee the right to complain to the Minister. It is a right to object to an unfair dismissal. The section does not give him any other right. It does not confer on an employee any status. It does, of course, indirectly restrict the employer's right to dismiss in that the dismissal can be enquired into and overruled by the Minister if a complaint is made to him. And it gives the Minister, not the courts, the power to order reinstatement of the employee. In our judgment the

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> provisions of s 14 are not mandatory. An employer is not obliged to comply with s 14 but if he disregards s 14 and dismisses an employee without an enquiry, as in this case, the dismissal can be enquired into and reinstatement with full pay ordered by the Minister whose decision cannot be challenged in any court. The effect of s 14 is that a dismissal without notice before due enquiry is wrongful and not that it is ineffective or null and void.

A.74 There is, however, a significant factual issue with the Court of Appeal's understanding above: it is not at all "obvious" that s 14 of our then-Employment Act was based on the UK's Industrial Relations Act 1971. As described earlier, s 14 was essentially the adaptation for non-union employees of s 34 of our own Industrial Relations Act, which had been introduced in 1968—well before the UK's unfair dismissal regime came into force. Indeed, seeing as the Donovan Commission's report (which led to the UK's 1971 Act) was only presented to the UK Parliament in June 1968, and our Industrial Relations Act amendments were first read in July 1968, it seems quite unlikely that our Ministry of Labour was influenced by the UK scheme when drafting the 1968 changes. And since s 14 in 1973 hardly changed anything from the already-existing s 34, it seems equally implausible that s 14 was consciously modelled on the UK's unfair dismissal provisions in 1971. Instead, the more plausible influence was closer to home. Notably, a similar "without just cause or excuse" safeguard had been introduced in Malaysia by s 20 of their Industrial Relations Act 1967, which allowed a workman to complain of dismissal without just cause or excuse. That Malaysian provision even contained a bar to any action for damages "in respect of wrongful dismissal" once an award of reinstatement or compensation had been made. The resemblance is too close to ignore. It is more likely than not that Singapore borrowed this concept from the Malaysian model, rather than from the nascent UK proposals.

A.75 Notwithstanding this historical mix-up, the parallels which the Court of Appeal drew between the protection afforded by s 14 and that afforded by the

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UK's unfair dismissal regime are broadly sound (though, as the court noted, the UK's regime is much more comprehensive than ours). The language of "just cause or excuse" clearly engages a form of reasons-based scrutiny that was not previously available at common law—and this is not dissimilar to the UK's regime, which inquires whether the employer had a fair or valid reason to dismiss the employee.

A.76 However, conceiving of s 14 as essentially a miniature unfair dismissal regime is not without its difficulties once we bring ourselves into the modern day. The precise nature of the protection—and specifically how it relates to the common law concept of wrongful dismissal—has become rather murky over time. For a considerable period after 1973, s 14 remained on the statute books in essentially the same form, which perhaps kept such conceptual tensions below the surface as representations to the Minister did not result in the production of any publicly available decisions in cases. But as we shall see, more recent developments have brought a conflation between "dismissal without just cause or excuse" and "wrongful dismissal" to the fore, contributing to the lack of clarity that is the subject of our present discussion.

A.77 Section 14 did not undergo any major structural change for decades after 1973, save for one amendment in 2013 that is worth noting. In 2013, Parliament introduced a new s 14(2A) defining who was a "relevant employee" entitled to make representations under s 14(2). This expressly brought within the fold: (a) managerial or executive employees who were dismissed with notice (or dismissed without waiting for notice but with salary in lieu), provided they had at least 12 months' service; (b) managerial or executive employees who were dismissed *summarily* (*ie*, without notice and without salary in lieu); and (c) all non-managerial, non-executive employees. At the same time, Parliament re-titled s 14 from "Misconduct of the employee" to simply "Dismissal". The

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effect, in substance, was to clarify who could invoke the Minister's jurisdiction under s 14(2), and to align the section's heading with its broader function beyond just misconduct cases.

A.78 Far more significant changes to s 14 were eventually made in 2018—but to set the stage, it is necessary first to note an even more fundamental shift in the employment law landscape that occurred slightly earlier. In 2016, the ECT was constituted as a new subordinate court within the State Courts, pursuant to the ECA. Initially, the ECT's jurisdiction was confined to adjudicating specified contractual and statutory salary-related disputes (generally after mandatory mediation), as set out in the First and Second Schedules to ECA. Wrongful dismissal issues, however, remained outside the ECT's remit at the outset—those continued to be handled by the Ministry of Manpower (the "Ministry") under the existing framework of s 14.

A.79 In 2018, following a comprehensive review of the Employment Act, Parliament passed substantial amendments with a view to enhancing the employment dispute resolution framework. One key reform was to transfer the adjudication of wrongful dismissal disputes (*ie*, disputes under s 14(2) alleging dismissal without just cause or excuse) from the Minister to the ECT. This change, which took effect on 1 April 2019, created a "one-stop service" for both salary-related and dismissal-related claims. Correspondingly, the final-and-conclusive decision of the Minister under the old s 14 was replaced by the prospect of an ECT tribunal decision (subject to appeal on points of law). In line with this transfer, the law was also adjusted to treat such disputes as a form of "wrongful dismissal" claim cognisable by the ECT. Indeed, Parliament and the Ministry began expressly labelling s 14 claims as "wrongful dismissal" claims in the lead-up to the transition, even though—as noted—the common law understands "wrongful dismissal" rather differently. Moreover, as the EA had

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been expanded to cover all employees (see [A.77] above) (save for excluded categories like domestic workers and seafarers), this meant that even managerial and executive employees could bring claims in the ECT under s 14 (subject to a qualifying period for new hires).

A.80 To provide guidance under the new regime, the Minister invoked a new s 34A of the ECA to promulgate the *TGWD*. These Guidelines, issued on 1 April 2019, set out illustrations of what does or does not constitute a "wrongful dismissal" (for example, dismissals for discriminatory or retaliatory motives; sham reasons masking other aims; asserted "misconduct" or "poor performance" that is not borne out on the facts). Under the amended framework, the ECT is required by law to have regard to the principles in these tripartite guidelines when adjudicating a dismissal dispute (s 20(7) of the ECA).

A.81 At the same time, the ECA was amended to spell out certain evidential presumptions and burdens of proof. In particular, where an employer dismisses an employee without notice (purporting to do so under s 14(1) on grounds of misconduct), the employer bears the burden of proving that the dismissal was with just cause or excuse. Likewise, if an employer dismisses an employee with notice but explicitly cites poor performance or misconduct as the reason, the employer bears the burden of proving that reason to be true. However—and significantly—if an employer exercises its contractual right to terminate with notice without proffering any reason at all, the new framework presumes the dismissal not to be wrongful, leaving it to the employee to rebut that presumption. The *TGWD* accordingly advise that in such cases an "employee must then substantiate a wrongful reason for the dismissal" (for example, by proving that the real motive was discrimination or to deprive the employee of some benefit).

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A.82 These reforms have, in a sense, come full circle to the original ambiguity noted in the 1970s (see [A.72]–[A.73] above), albeit in a modern form. By officially dubbing s 14 disputes "wrongful dismissal" claims and hinging the outcome in some instances on whether notice was given, the law today arguably conflates two distinct concepts—the contractual *form* of termination and the substantive *reason* for termination. This raises a fundamental question: is s 14(2) in substance about policing the employer's reasons for dismissal (putting the issue of notice aside entirely), or has it effectively become intertwined with the notice-based view of termination?

A.83 In short, the historical trajectory of s 14(2)—from its inception to the present amendments—has led us to a point where the exact character of this protection is clouded by the lack of a clear sense of identity. The six related claims against the respondent before me exposed aspects of this lack of identity and the corresponding uncertainty in how our present legal framework operates in practice. What follows is not an exhaustive catalogue of those uncertainties but a statement of four principal pressure-points that—in my view—most affect the everyday adjudication of s 14(2) claims in the ECT. Those four areas are:

(a) First, the relationship between the common law and s 14(2), including whether an employer's contractual disciplinary framework is legally material to the statutory inquiry.

(b) Second, the bearing of "due inquiry" in s 14(1) upon a claim under s 14(2), and whether "due inquiry" is required where notice (or salary in lieu) is given.

(c) Third, proofs and burdens: what exactly a claimant or employer must establish under the negative formulation of s 14(2), how that sits

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with the *TGWD* and s 27 of the ECA when reasons are (or are not) stated, and what follows if only lesser misconduct is proved.

(d) Fourth, remedies: what "loss of income" and "harm" compensate, and how those heads relate to the contractual notice regime. Further, when reinstatement is to be ordered.

A.84 The first area arose because the common law and s 14(2) travel on different tracks. At common law, "wrongful dismissal" is ordinarily a contractual question: was the termination effected in accordance with the contract (typically, notice or salary in lieu), reasons being generally beside the point. Section 14(2) is different. It turns on whether a dismissal was "without just cause or excuse", and it is accompanied by a statutory remedial scheme. The ECT may also hear certain contractual salary claims (see First Schedule to the ECA), but not the full suite of contractual complaints that sometimes travel with "wrongful dismissal" suits in court.

A.85 In these six matters, the tracks crossed because the claimants heavily anchored their statutory challenge in particular clauses within the respondent's DF, while the respondent robustly resisted the DF's relevance and maintained that, pursuant to the *TGWD* (which the ECT was obliged to take cognisance of by virtue of s 20(7)(*a*) of the ECA), its task was only to show that the reason stated in the dismissal notice was not false. Those competing positions raised first-order questions not clearly answered by the legislative scheme. If a disciplinary framework is only contractual, is it irrelevant to a s 14(2) claim such that complaints about routing to DI, parity of sanction, approvals, or appeal-screening must be litigated separately in court—with the attendant risk of claim-splitting and inconsistent findings? If it is relevant, in what way is it to

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be used: as a yardstick that constrains the employer, as contextual material bearing on whether "just cause or excuse" existed, or how else?

A.86 The second area concerns "due inquiry". Section 14(1) speaks in the language of process and, on its face, is triggered when an employer "dismiss[es] without notice … on the grounds of misconduct", whereas s 14(2) frames a distinct, substantive protection against dismissal "without just cause or excuse". In these six matters, the respondent terminated with contractual notice (later partly commuted) but stated grounds in the notices of dismissal and ran disciplinary processes beforehand. The claimants pointed to lapses they said infected that process and argued that "due inquiry"—both as a statutory minimum and as reflected in the DF—bore on whether the dismissals were "without just cause or excuse". The respondent, for its part, maintained that s 14(1) is textually confined to summary dismissals and was not engaged at all.

A.87 Those competing views expose two uncertainties. First, where notice is given (or paid in lieu thereof), does the employer's choice to state reasons and to conduct a DI render "due inquiry" relevant by election; or is the proper construction of s 14(1) such that process complaints are immaterial unless the employer *summarily* dismisses? Second, whatever the answer to the first question, so long as the requirement of "due inquiry" is engaged under s 14(1), does the compliance or non-compliance with that requirement matter to a claim under s 14(2)—if so, how? Is a real and fair inquiry merely contextual (that is, going to how confidently one can infer "just cause or excuse")? Or does a material procedural lapse itself support the conclusion that a dismissal was "without just cause or excuse"—similar to the UK's unfair dismissal regime, which openly recognises that a procedurally unfair process may render a dismissal "unfair" even if a substantively fair reason exists. The six cases brought this question to the fore.

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A.88 The third area concerns proofs and burdens. Section 14(2) is framed in the negative: the claim succeeds if the employee was dismissed "without just cause or excuse". In these six matters, the respondent issued notices that stated reasons (dishonesty; wilfulness; intention) and, by virtue of s 27(2)(*b*) of the ECA, the burden shifted to the respondent. The respondent's stance was that, having chosen to give reasons, its task under the *TGWD* was simply to show that the stated reason was "not false", and nothing more. That position, while textually anchored in s 20(7)(*a*) and the *TGWD*, sits uneasily with the actual statutory formulation of s 14(2). The facts therefore posed a basic question: when reasons are stated, is the tribunal's inquiry merely a truth-testing of that stated reason, or is it a wider assessment of whether "just cause or excuse" existed on *any* footing disclosed by the evidence adduced?

A.89 This uncertainty was not theoretical. The dismissal letters in these six matters did not stop at "misconduct"; they asserted dishonesty, wilfulness, or intention. If those mental elements were proved, the standard of "just cause or excuse" would very likely be met. But what if they were not? The earlier tribunal in Ms X's case thought that reckless misuse, though short of dishonesty, would have justified dismissal, yet found for the claimant because the respondent had over-particularised its reason for dismissal. That result frames the difficulty crisply: is the tribunal confined to testing whether the stated reason is true, or may it step back and ask whether the proven facts—even if less grave than pleaded—still amount to "just cause or excuse"? The six cases put that question squarely on the table.

A.90 The practical consequences run in both directions. If the tribunal is confined to the stated reason, an employer who over-particularises pays a litigation price; if the tribunal is not so confined, an employee may face a moving target—alleged dishonesty at the start, "mere" misconduct by the end.

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The common law's treatment of "after-acquired" or alternative justifications (sometimes discussed as the principle in *Boston Deep Sea Fishing*) suggests one way to think about the point, but s 14(2) is a statutory protection framed in its own terms. Should the common law approach be applied? The six matters illustrated that neither the statute nor the *TGWD* yet explains whether—and on what procedural footing—a failed aggravated ground may be "salvaged" by lesser misconduct for the purposes of s 14(2).

A.91 A second branch of uncertainty concerns the situation where no reason is stated in the notice. That was not what happened in this case, but it is important to consider. Section 27(2)(*a*) of the ECA leaves the burden on the employee unless the employer states a reason; only then does it shift under s 27(2)(*b*). The *TGWD*, to which the ECT must have regard (s 20(7)(*a*)), catalogues "wrongful reasons" (for example, discrimination or retaliation) and thus implies a *positive* case. Section 14(2), however, protects against dismissal "without just cause or excuse" and does not, in terms, require the employee to identify a proscribed motive. Put simply, s 14(2) suggests that the employee only needs to establish a *negative* case.

A.92 The present disputes therefore exposed a basic fork: in a no-reasons case, must an employee plead and prove a specific, *positive* "wrongful reason", or is it sufficient to prove, by inference from the overall record, that there was *a lack of* just cause or excuse? That fork has concrete evidential consequences. If a positive "wrongful reason" is required, an employee without access to the employer's thinking is driven to infer motive from shadows—a difficult exercise in any forum, more so in a tribunal built for expediency. If, instead, the employee may prove a negative, the case devolves into showing an absence of discernible cause by pointing to appraisals, commendations, tenure, and clean records, and inviting an inference that no substantive ground could have existed.

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Each path carries costs. The "positive reason" path—quite apart from being out of step with the actual statutory language of s 14(2)—risks turning claims under this provision into a guessing game about motives that lie wholly within the employer's knowledge. In the other direction, the "prove a negative" path—though more in step with how s 14(2) frames the claim—risks an amorphous trial about general goodness of service, inviting tribunals to infer absence of "just cause or excuse" from commendations, clean appraisals, and tenure.

A.93 This dilemma invites an obvious "solution": require the employer to state the reason it says truly underpinned the dismissal so that, at the very least, issues can be joined and the guessing and amorphousness avoided. Other systems have met this squarely. In the UK, an employee may obtain a written statement of reasons for dismissal (with an automatic entitlement for some categories and in any event on request) (s 92 of the Employment Rights Act 1996), failure attracting a financial sanction; that statement then supplies the benchmark against which fairness is assessed. Malaysia's Industrial Court, operating under s 20 of its Industrial Relations Act 1967, requires the employer to justify that the dismissal was for "just cause or excuse". If a reason was given at the point of dismissal, the Court determines whether that reason is proved and sufficient (see, *eg*, *Goon Kwee Phoy v J&P Coats (M) Bhd* [1981] 2 MLJ 129 ("*Goon Kwee Phoy*") at 136). If a reason was not given and the employee was terminated fully in accordance with contract, the employer still bears the burden of proving there was "just cause or excuse" (see, *eg*, *Dr A Dutt v Assunta Hospital* [1981] 1 MLJ 304)—a burden which cannot sensibly be discharged without first stating why the employee had been terminated in the first place. The logic of this is intuitive and attractive. A stated reason enables the dispute to be framed and defined.

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A.94 However, such a move would not be straightforward in our scheme. For one, there is no statutory footing for it, unlike in the UK. And, unlike the Malaysian Courts—which have not relied on legislation to require employers to articulate the reason they say amounts to "just cause or excuse", they do not have a provision like s 27(2) of the ECA, which specifically allocates burdens by reference to whether a reason was stated in the notice of dismissal or whether notice was given or paid. As such, if neither of these criteria are fulfilled, it follows—as the *TGWD* suggests—that the dismissal is "presumed not to be wrongful". A creative way out of this conundrum might be to say that an employer must, once a dispute is before the ECT, articulate the reason it contends justified the employee's termination with notice even though it does not bear the legal burden of proving the truth or sufficiency of that reason. However, this is a slippery path. If tribunals were to insist on a litigation-stage reason, the dynamics of a judge-led hearing may, as a matter of practical proof, press the employer to "prove its reason", subtly inverting the statutory scheme even where the legal burden was not supposed to shift pursuant to s 27(2). But, as I said at [A.92] above, if no reason need be stated, the trial risks devolving into either conjecture about motive or an amorphous attempt to prove a negative.

A.95 Even if there is a fixed target, a stated reason, there are still points of uncertainty. For example, as stated at [A.90] above, what would follow if the stated reason for dismissal—a relatively aggravated ground—fails but a lesser wrong is proved? The tribunal in Ms X's case treated the employer as bound to the reason it chose (see [A.32]–[A.33] above)—an approach that mirrors Malaysia's settled rule that, where a reason is given, the court asks whether that reason is proved and sufficient; if not, the dismissal is "without just cause or excuse", notwithstanding some lesser misstep (see *Goon Kwee Phoy*). That rule is intuitive but is not dictated by our statute or the *TGWD*. At common law, by contrast, the *Boston Deep Sea Fishing* line (as explained in *Phosagro Asia*)

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permits after-acquired or alternative justifications for termination. Whether—and how—that idea should translate to s 14(2) is unclear: is the ECT confined to the employer's stated reason, or may it conclude that lesser conduct established at trial nonetheless supplied "just cause or excuse"?

A.96 The fourth area concerns remedies. Section 14(2) confers a statutory protection tied to the presence or absence of "just cause or excuse", not merely to contractual form. Where a dismissal is found "without just cause or excuse", the ECT may order reinstatement or, in the alternative, compensation. The compensation framework is structured and bifurcated: "loss of income" (capped at three months of the employee's gross rate of pay) and "harm" (a base amount not exceeding two months, then adjustable up or down under listed factors). This sits alongside the ECT's general monetary caps on recovery. The design is clear enough in broad strokes, but its application throws up uncertainties.

A.97 First, how does "loss of income" relate to salary in lieu already paid? In the six cases, the respondent argued that, because notice (or its equivalent) had been tendered, any "loss of income" head was exhausted. The claimants took the opposite view: "loss of income" compensates the statutory wrong—the employee's being dismissed without just cause or excuse—and therefore addresses post-termination loss flowing from that wrong, rather than duplicating the notice entitlement. The text of the legislation provides no helpful answer and, though one might assume that, because the interest of the employee being protected by s 14(2) is distinct from that being protected by the common law, the remedy would be distinct. However, that is not obvious because—as mentioned at [A.94] earlier—the *TGWD* specifically states that dismissals *with notice* are *presumed* not to be "wrongful". If a dismissal with notice is presumed not to be "wrongful" (or, in the opposing direction, to be "with just cause or excuse"), then it would at least be arguable that the lawmakers intended to

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analytically equate the giving of notice with non-"wrongfulness" under s 14(2). Otherwise, the connection drawn between the two would be somewhat illogical and conceptually incoherent. But, if the "loss of income" compensable when an action under s 14(2) is established is equivalent to an employee's notice pay, then why would there even be a need for such a head of claim to exist at all, given that employees may bring claims under s 11(1) of the EA (para 13 of the Second Schedule to the ECA) or in contract for salary in lieu of notice (para 17 of the First Schedule to the ECA)?

A.98 Second, even if we assume that the connection the *TGWD* draws between the giving of notice and non-"wrongfulness" bears only on liability and not on remedy, a threshold question remains: what kinds of "loss of income" are compensable beyond what the common law already yields? Is the head confined to losses flowing from *the fact of* the dismissal without just cause or excuse (for example, a transitional shortfall while the employee seeks new work)? Or does it also extend to losses flowing from *the manner of* dismissal (for example, where an accusation impedes re-employment)? Put shortly: does compensation for "loss of income" follow from the fact of dismissal alone, or from both the fact and the manner of dismissal?

A.99 If the answer is that "loss of income" attaches only to the fact of the dismissal, attribution becomes difficult in practice. A neutral termination, followed by a slow job market or a skills mismatch, can produce the same earnings shortfall as a tainted dismissal. The legislation is silent on the causation test to be applied. A but-for test risks sweeping in losses that, in truth, flow from market conditions rather than the employer's wrong; a looser "material contribution" approach risks uneven outcomes. Mitigation also complicates matters. What would count as reasonable diligence on the part of the employee and how should those matters scale the award? Without clearer signposts,

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tribunals are left to construct their own standards for proof, causation, and mitigation to resolve disputes.

A.100 If, instead, "loss of income" is taken to reflect both the fact and the manner of dismissal, a different difficulty emerges—overlap with "harm". The same allegation may depress earnings (by inhibiting re-employment) and also wound dignity or reputation. Unless a principled line is drawn—for example, "loss of income" relates to earnings and "harm" concerns non-pecuniary consequences—there is a real risk of double counting, or, conversely, of undue conservativeness if tribunals discount one head because the other has been allowed. The six cases illustrated the point in a concrete way: evidence used to show stigma for purposes of employability cannot easily be separated from a claimant's account of distress and reputational hurt.

A.101 A related point concerns the "harm" head's "base amount not exceeding 2 months" (para 5 of the Second Schedule to the EC Regulations). Is there a presumptive base whenever liability is made out—on the footing that being dismissed without just cause or excuse is, in itself, a cognisable harm? If so, the scheme would be recognising a limited form of job security beyond the notice bargain, which sits uneasily with long-standing assumptions about lawful termination in Singapore (which remains evidenced even in the *TGWD*). If, on the other hand, the base is not presumptive, what evidence is required to unlock it and how is that evidence to be distinguished from the earnings effects already claimed under "loss of income"? The text gives little guidance on where that line should be drawn.

A.102 Finally, reinstatement. Although none of the six claimants before me ultimately sought reinstatement, Ms X did in her case (see [A.26] above), and it is not entirely clear how tribunals are supposed to determine when

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reinstatement—contrary to the common law's great resistance to specifically enforcing contracts of service—*might* nevertheless be appropriate to order for claims under s 14(2). These disputes would have furnished a useful backdrop against which this issue can be considered. The respondent's own approach was to reserve dismissal for cases where dishonesty or wilfulness was found; employees found only to have erred in lesser ways were retained, warned, and in some instances had bonuses reduced. If, in a given case, dishonesty is not proved but some lesser wrong is, and the employer's actual practice is to keep such employees, reinstatement would be a live option. Ms X's tribunal declined that relief, but guidance is needed on the principled exercise of discretion—including parity with workplace comparators, elapsed time, practicability, genuine (and evidenced) loss of trust and confidence, and the availability of a suitable role.

A.103 Stepping back with all the foregoing in mind: certainly, the general structure of a s 14(2) claim is easy enough to state and, in broad outline, easy to grasp. However, beneath the surface of that general structure, there are a fair number of doctrinal knots that are not merely difficult to untangle but that go to basic matters of determination—what materials the tribunal may treat as legally material; how far "due inquiry" travels when notice is given; what exactly must be proved when reasons are or are not stated; whether lesser misconduct can sustain a dismissal pleaded on aggravated grounds; and how "loss of income", "harm", and reinstatement are to be approached. If left unresolved, these uncertainties risk like cases being decided unlike and outcomes varying more by tribunal than by principle. In the following sections, I set out my views to these questions.

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The nature of a "wrongful dismissal" claim before the ECT

A.104 At the outset, it bears emphasis that the ECT is a tribunal of limited jurisdiction. It may only hear the types of claims explicitly set out in its governing legislation. These include certain salary-related contractual disputes (for example, unpaid wages, overtime, and salary in lieu of notice) and the statutory "wrongful dismissal disputes" **(**referring specifically to disputes under s 14(2) and s 84(2) of the EA**)**. The ECT does not have residual power to adjudicate common law claims for wrongful dismissal in the broad sense. A traditional breach-of-contract suit for wrongful dismissal (*eg*, alleging termination without proper notice or alleging termination in breach of a contractual term) lies outside the ECT's remit unless it is framed within one of the specified claim categories. In short, the ECT cannot entertain a free-ranging claim that an employer breached the employment contract, except to the extent that the claim fits into a prescribed slot (such as a claim for owed notice pay or other defined contractual entitlements: see the First Schedule to the ECA). Any other aspect of a "wrongful dismissal" at common law that an employee might wish to pursue in contract—for instance, damages for breach of an implied term of fair dealing, or breach of a contractual disciplinary procedure—would have to be brought in the civil courts, not the ECT, because it is beyond the ECT's limited jurisdictional compass.

A.105 This means that the statutory "wrongful dismissal" claim and the common law wrongful dismissal claim are related but not co-extensive. There is some overlap in practical effect. For example, if an employee is terminated without notice, that may give rise to: (a) a common law claim for damages (the unpaid notice salary); and also (b) potentially a statutory wrongful dismissal claim (if the employee alleges the termination was without just cause). While, as stated, certain aspects of the common law claim are probably actionable

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before the ECT, in so far as the six claimants' cases against the respondent was concerned, nothing in the ECA seems to confer upon the ECT the jurisdiction to determine an employee's contractual claim for damages arising from the breach of an employment contract's disciplinary framework or for other breaches surrounding the manner of termination that are not enumerated in the ECA's schedules. Those would fall outside the ECT's "specified dispute" categories. The ECT's task was confined to determining the s 14(2) question of "just cause or excuse" for the dismissals, and any contractual lapses of a contractual disciplinary framework could only feature as contextual facts insofar as they were relevant to that statutory inquiry, not as a freestanding cause of action.

A.106 The fundamental point, therefore, is that a wrongful dismissal dispute before the ECT focuses on a statutory wrong, not a contractual one. The inquiry is whether the employer had just cause or excuse for dismissing the employee (or, under s 84(1), sufficient cause when dismissing a pregnant employee), regardless of whether the dismissal was carried out in technical compliance with the contract. The presence or absence of contractual notice, or adherence to contractual procedure, is not determinative of the statutory claim. An employer might fully comply with the contract's requirements—for instance, by giving the required notice or paying salary in lieu—and yet may still be found to have dismissed the employee without just cause or excuse. Conversely, an employer might breach the contract (say, by summarily dismissing without notice) but still defeat a s 14(2) claim by showing that there was a legitimate justifying cause (*eg*, serious misconduct) for the dismissal. In essence, the statutory cause of action under s 14(2) EA zeroes in on the reason for the termination (and the presence of a justifiable basis), whereas the common law cause of action centres on the manner of termination *vis-à-vis* the contract (notice and related obligations). The two axes can sometimes point in different directions, which is

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why compliance with contract and existence of just cause are logically independent issues.

A.107 Several examples illustrate this divergence. Suppose an employer decides to terminate an employee purely out of spite or bias (say, due to the employee's race or family responsibilities), but scrupulously follows the employment contract by giving one month's notice. In the eyes of the common law, that termination is perfectly lawful—the notice requirement was satisfied, and the motive is irrelevant. However, in the eyes of s 14(2) of the EA, the dismissal would likely be "without just cause or excuse" because it was based on a discriminatory or illegitimate reason. In such a case, the employee would have no common law claim (no breach of contract), but could succeed in a statutory wrongful dismissal claim.

A.108 Now flip the scenario: suppose an employer fires an employee without notice, citing alleged gross misconduct. If the misconduct allegation is true and amounts to serious breach (*eg*, proven theft), the employer has just cause for dismissal under s 14(2) (misconduct is a legitimate reason), so the employee's statutory claim might fail—yet that same scenario entails a breach of contract (no notice given) if the misconduct did not meet the contract's definition of grounds for summary dismissal. The employee in that scenario might win a small notice-pay claim (contractual damages) while losing on the claim of wrongful dismissal without just cause. These examples underscore that the contractual validity of a termination and its statutory justifiability under s 14(2) are separate questions. A dismissal can be contractually proper yet unjustified in substance, or contractually improper yet justified in substance. The law provides different remedies in each realm: the contract claim yields notice pay (but nothing for the unfairness of the reason), whereas the statutory claim (if

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made out) yields remedies aimed at the unfairness, potentially including reinstatement or compensation beyond notice.

The nature of a "wrongful dismissal" claim before the courts

A.109 In *Longitude 101*, the employer was a small accounting outfit within a group controlled by Mr Haeusler; Ms Pillai served as Head of Finance and, on paper, as the company's sole director, while Mr Haeusler—although disqualified from formal office (see *Re Haeusler, Thomas* [2021] 4 SLR 1407)—functioned in substance as the controlling mind. Relations soured after Ms Pillai informed Mr Haeusler in mid-December 2020 that she was pregnant, and between January and March 2021 she effected cash withdrawals totalling $100,500 from company accounts which she maintained were shareholder distributions and dividends to Mr Haeusler. On 27 April 2021, Longitude terminated her employment by a "Notice Of Termination With Salary In Lieu Of Notice" that cited only the contractual notice clause, demanded the return of "Returnable Items", and stated that the $43,500 salary-in-lieu and a $15,000 bonus were "yet to be paid". These sums, however, were not ultimately paid before legal proceedings commenced.

A.110 In the aftermath, Longitude sued for the return of company materials, damages for breach of handover obligations, and payment of the $100,500. Ms Pillai brought a counterclaim against Longitude and Mr Haeusler for "wrongful dismissal" contrary to s 84(1)(*b*) of the EA and for conspiracy. Her "wrongful dismissal" counterclaim was pleaded on the basis that the termination occurred during her pregnancy and was "without sufficient cause" within the meaning of s 84(1)(*b*). Ms Pillai quantified her dismissal claim at $234,289, comprising: (a) $43,500 salary in lieu of three months' notice; (b) $62,350 said to be maternity and childcare-leave benefits (118 days); (c) $35,525 in unused annual-leave

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encashment (49 days); (d) $43,500 as three months' bonus; (e) $34,914 in employer CPF contributions; and (f) $14,500 in an annual wage supplement ("AWS").

A.111 For context, s 84(1)(*b*) and (2) of the EA provide:

> **Right to benefit unaffected by notice of dismissal given without sufficient cause**
>
> **84.**—(1) Without affecting sections 81 and 84A, a notice of dismissal given without *sufficient cause* by an employer to a female employee which —
>
> …
>
> (*b*) if given on or after 1 May 2013, is given at any time of her pregnancy (as certified by a medical practitioner before the notice of dismissal is given), where the female employee has served the employer for a period of 3 months or more immediately preceding the day the notice is given; or
>
> …
>
> does not have the effect of depriving her of any payment to which, but for that notice, she would have been entitled or would, on or before the date of her confinement, have become entitled to under this Part.
>
> (2) Subject to section 3 of the Employment Claims Act 2016, where a female employee in the circumstances mentioned in subsection (1)(a), (b) or (c) considers that a notice of dismissal given to her was not given for sufficient cause, the female employee may lodge a claim, under section 13 of that Act, for either of the following remedies:
>
> (*a*) reinstatement in her former employment;
>
> (*b*) compensation.
>
> [emphasis added]

A.112 Given this provision, the court addressed Ms Pillai's counterclaim by asking whether the termination letter issued to her on 27 April 2021 had been given "without sufficient cause". As to what "sufficient cause" means, the following question arose: although there is no provision equivalent to s 20(7) of

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the ECA requiring the civil courts to have regard to the *TGWD*, if a claim for "wrongful dismissal" is brought before the civil courts, can those courts refer to the *TGWD* to inform their decision in respect of the claim? The court observed that answering "no" to this question would be "illogical", "as it would lead to the adoption of different rules in respect of the same wrong between the courts and the [ECT]; and invite forum shopping by aggrieved parties in search for the court or tribunal that is most likely to provide them a favourable outcome for wrongful dismissal claims" (at [117(c)]).

A.113 The most crucial insight which the court then gathered from the *TGWD* was this: "relying on a contractual notice period or paying salary in lieu thereof does not of itself constitute sufficient cause, and an employer must show something more" (*Longitude 101* at [118(a)]). Applying this standard—amongst others which do not need to be restated here—the court went on to test each putative justification offered by Longitude. Performance was expressly disavowed by Mr Haeusler under cross-examination; alleged tensions and staff-management issues were unparticularised and unproved; and the vague difficulties alluded to in Mr Wee's (appointed Longitude's sole director after Ms Pillai's dismissal) affidavit of evidence-in-chief were unexplained and carried no weight. Further, to the extent Ms Pillai had refused to carry out instructions that would have breached statutory or regulatory requirements, dismissal on that basis could not constitute "sufficient cause".

A.114 In the circumstances, because the termination letter articulated no contemporaneous reason for Ms Pillai's dismissal, and no cogent alternative emerged at the trial, the court saw no other reasonable explanation for the decision. It therefore found *both*, in the negative, that Longitude had not shown "sufficient cause" for Ms Pillai's dismissal; *and*, in the positive, that she had been dismissed *because of* her pregnancy. As to relief, the court awarded Ms

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Pillai $122,123.93, comprising: (a) $43,500 as salary in lieu of notice; (b) $26,769.20 in maternity benefits limited to eight weeks (the child being a non-citizen); (c) $25,430.74 for encashment of 38 days' unused annual leave; (d) the declared $15,000 bonus; and (e) $11,423.99 in employer CPF contributions. Interest was fixed at 5.33% per annum from 27 April 2021. The balance of her claim, including a further three-month bonus, any AWS, and other asserted sums, was dismissed.

A.115 In my view, the court's approach conflated two essentially different wrongs. As the express words of s 14(2) and s 84(2) both make clear, the claims that arise therefrom are to be filed in the *ECT*. No other judicial forum is listed and ordinary rules of interpretation would lead us to conclude that such claims, therefore, may *only* be filed in the ECT, not the ordinary civil courts. If the civil courts are, as a result, not conferred jurisdiction to determine claims under s 14(2) or s 84(2), that means that any action for "wrongful dismissal" before the civil courts must be the action at common law. As such, a dismissal that is challenged in the civil courts is, in legal substance, not the "same wrong" as a dismissal challenged via s 14(2) or s 84(2) of the EA. The District Court in *Longitude 101* therefore seemed to overlook that the employee's pregnancy-dismissal claim was grounded in a statutory scheme that prescribes a specific forum for vindication of that claim.

A.116 This may seem unintuitive and unfair: after all, why should claims under s 14(2) and s 84(2) not be actionable before the civil courts? Quite apart from the lack of express statutory basis, there is, in truth, also no substantive unfairness in having different rules for different wrongs. The common law has never recognised a general right to compensation for being dismissed without good cause (so long as the contractual requirements for termination have been satisfied); that domain is occupied by statute. And statute here is not simply law-

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in-the-books; it arguably reflects an institutional choice about cost, risk, and incentives. Employment regulation is not just law, it is also economics. Litigation exposure is a business cost; it shapes hiring, investment, and sectoral practice. In this regard, it bears noting that the ECT is limited not only by subject matter but by *quantum*—ordinarily $20,000 (or $30,000 in specified circumstances)—which caps risk and likely keep disputes tractable for employers. The civil courts are not subject to that cap. If *Longitude 101's* approach were right, *TGWD*-style "wrongful dismissal" would migrate into the Magistrates'/District Courts and, by parity, to uncapped claims in the General Division of the High Court as well—a result difficult square with the legislative architecture.

A.117 In sum, a "wrongful dismissal" claim before the civil courts is confined to the common law action—breach of the employment contract (typically want of notice, or failure to satisfy contractual preconditions to termination) with remedies measured in contract—for two reasons. First, there is no statutory footing for courts to adjudicate s 14(2) or s 84(2) claims: those provisions route such disputes to the ECT. Second, the allocation reflects economic and industrial policy: Parliament has coupled a broader, reasons-based protection with calibrated, capped exposure before a specialist tribunal. Collapsing that line expands liability beyond the chosen limits. The risk is not theoretical. The Magistrates' Court in *Cisilia Oktavia Lim* exhibits a similar oversight. Nor is the boundary policed only by the legislative provisions. Even without reference to s 14(2) and s 84(2), the *TGWD alone* articulates a concept of "wrongful dismissal" wider than the common law. Quite apart from ensuring that s 14(2) and s 84(2) actions are not permitted to be pleaded and determined before them, courts should also be careful to avoid importing notions of "wrongful dismissal" captured in the *TGWD*.

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Substantive protections against dismissal accorded by s 14(2) of the EA

A.118 We have no appellate jurisprudence giving guidance on the substantive scope of s 14(2). Given this, I will canvass the issues in five strokes. First, how the *TGWD*'s positively framed illustrations should be read against the statute's negatively framed protection, which in my view must prevail. Second, the nature of the tribunal's task—whether it decides the merits *de novo*—and why the better answer is that it does. Third, what "just cause or excuse" has meant in Malaysia and the broad substantive rubrics that recur. Fourth, a composite set of questions on proofs and burdens—what follows when s 27(2)(*b*) is engaged, including whether an employer is confined to its stated reason; and what follows where no burden-shifting rule applies. Fifth, a brief note on the phrase "sufficient cause" in s 84(2).

A.119 The first point is one of text, hierarchy, and tone. Section 14(2) is cast in deliberately negative terms—the protection is against being dismissed "without just cause or excuse". Read on its own words, it invites the tribunal to ask whether justification was *absent* on the facts. The *TGWD*, by contrast, contains only positive illustrations. In my view, they are only meant to be assistive. Although the ECT is required to "have regard to" them, that does not render them binding. They remain guidelines and cannot have the effect of narrowing the statute. If the *TGWD* and the legislative provisions are read together harmoniously, the illustrations can be said to identify situations that will necessarily render a dismissal unjustified if proved. However, they do not convert s 14(2) into an action that must be premised on a positive wrongful reason relied upon by the employer in deciding to dismiss. The practical consequence is straightforward. If a *TGWD* example is established—discrimination, retaliation, a sham ground—the conclusion follows: there was no just cause or excuse. The converse does not follow. A claim does not fail

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simply because it does not fit a listed, positive example. The negative framing of s 14(2) keeps the inquiry open to any evidential path by which the absence of justification can fairly be found and guards against importing limits from examples never meant to be exhaustive.

A.120 The second point is the nature of the tribunal's task. In my judgment, the better view is that the assessment under s 14(2) is *de novo*. The tribunal does not review the employer's decision for some external standard or audit a domestic inquiry for error; it determines, on the evidence led, whether the dismissal was with or without just cause or excuse. Internal process matters as context—a careful inquiry may strengthen confidence; a flawed one may weaken it—but the statutory question remains a merits question. A *de novo* approach also clarifies what materials matter. Where misconduct is alleged, the truth, gravity, and nexus to trust are central, as is proportionality of sanction. Where performance is invoked, the focus turns to objective shortfall, prior warnings, and opportunity to improve. Where redundancy is cited, genuineness, criteria, and fair selection matter. Capability or qualification cases turn on inherent requirements and loss of essential licences. Process features may inform each of these, but the inquiry is ultimately substantive.

A.121 The third point draws on Malaysian experience with the same words—"just cause or excuse". Their courts have long taken a simple, merits-led view that labels matter less than facts, and dismissal—being the gravest industrial penalty—requires a reason that is both proved and proportionate. Within the phrase "just cause or excuse", four broad categories repeatedly appear. First, misconduct: this typically involves dishonest or serious rule breaches that erode trust and may warrant dismissal; trivial matters rarely ever suffice. Second, poor performance: that is, persistent, proven shortfall, ordinarily after warning and opportunity to improve. Third, retrenchment: this requires there to be genuine

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redundancy tied to business needs, and fairly implemented. Lastly, capability or qualification: ordinarily, this would involve the loss of an essential licence or an inability to perform inherent requirements.

A.122 Where Malaysian law is concerned, the employer bears the burden of establishing the underlying facts with clear and cogent evidence, and showing that dismissal—rather than a lesser penalty—was warranted. Moreover, if the employer conducts an inquiry in the lead-up to the employee's dismissal, that does not insulate them from liability. That said, an inquiry is not wholly futile. Though the Malaysian Industrial Court ultimately decides cases *de novo*, the presence of a careful and robust inquiry may help persuade the court that the factual case, at least, is sustainable. If, however, the inquiry conducted is flawed, and the contemporaneous opportunity to collect evidence was not well used, that would likely hamper the employer's case. In my view, this approach travels well to Singapore. It enables tribunals to keep focus on the truth, gravity, and proportionality while allowing sensible weight to be given to process without allowing procedure to eclipse substance.

A.123 The fourth point concerns proofs and burdens. Unlike Malaysia, our Parliament has fixed the allocation of burdens through s 27(2) of the ECA. Given this, my view is that the tribunal's task is two-fold whenever a reason is stated: first, to decide whether the material particulars of that reason are proved; second, to step back and ask whether the proved facts, so understood, amount to "just cause or excuse" in the sense used by s 14(2). The first is about truth; the second is about sufficiency and both must be answered in the employer's favour before the dismissal can be concluded to have been effected with "just cause or excuse".

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A.124 What counts as the "material particulars" of a stated reason depends on how the employer has framed it. If the letter records "dishonesty", the employer must establish the mental element that gives that label its force. It is not enough, in such a case, to prove only a breach of policy. Conversely, if the letter uses a more general formulation such as "misconduct", the employer does not, by that choice alone, escape having to explain what the misconduct consisted of. The point is simply that the tribunal should read the letter in a common-sense way and hold the employer to the gist it chose to assert, rather than to hyper-technical phrasing on the one hand or to loose generalities on the other.

A.125 If the aggravated element fails but a lesser wrong is proved, the inquiry does not, in my view, necessarily end. Section 14(2) asks whether there was "just cause or excuse", not whether the employer won on every adjective it used. At the same time, fairness matters. In my judgment, three constraints govern whether the tribunal may treat a lesser proved wrong as sufficient "cause" when the stated ground fails at the level that it is framed. First, the lesser basis must be within the gravamen of what was fairly put to the employee before dismissal; a wholly new and different rationale cannot be introduced after the fact. Second, it must not contradict the notice of dismissal's core account of why the relationship had to end. Third, the employee must have had a real opportunity to meet that lesser case during the internal process or, at least, in the proceedings. If these constraints are observed, the tribunal may then consider whether the lesser wrong, viewed in context, nevertheless supplied "just cause or excuse".

A.126 Context includes the employer's own settled practice. If a workplace has, in fact, retained employees found to have committed the same lesser wrong, issuing warnings and reducing bonuses rather than dismissing them, that practice is strong evidence that dismissal is not the ordinary or principled

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response to that level of misconduct. In such a setting, even where a lesser breach is proved, parity and consistency weigh heavily against a conclusion that "just cause or excuse" existed to end the employment. In the six cases before me, this was not to import the respondent's DF as a freestanding yardstick. It was to recognise that arbitrariness in routing or sanction is relevant to whether the employer truly had cause to dismiss, properly so called.

A.127 Where no reason is stated, the legal burden remains with the employee. I do not read the scheme as forcing the employee to guess at a specific proscribed motive. The claim may be made out by proving, on the record as a whole, that no legitimate cause likely existed. This may be done by reference to objective materials which show that the employee would not have been dismissed by an ordinary and reasonable employer. Opposing this, an employer who has chosen silence at the point of dismissal can still choose to remain silent once a dispute is joined. However, the employer does so at its own risk since, if the employee is able to adduce sufficient evidence to shift the evidential burden to the employer to demonstrate that there was just cause or excuse, having chosen to stay silent and (as a consequence) adduce no evidence, the employer may find themselves without the materials to answer.

A.128 The fifth point begins with an oddity of language. Section 14(2) speaks in the negative—protection against being dismissed "without just cause or excuse"—while s 84(2), in the special setting of pregnancy, permits dismissal only for "sufficient cause". Taken literally, the two phrases might be thought to mark different thresholds. However, in my view, read in their statutory contexts and in light of purpose, they more probably do not. Section 84(2) isolates a protected period and insists that any dismissal then must rest on a reason that is both factually sound and weighty in that setting, and crucially, is genuinely

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independent of pregnancy as a motivating factor. That sits alongside, rather than apart from, the general merits inquiry under s 14(2).

A.129 Two consequences follow. On substance, "sufficient" does not denote a looser or stricter tier than "just cause or excuse". It draws the tribunal back to the same core questions—truth, gravity, and proportionality—with an added sensitivity to timing and context. Minor lapses or routine performance issues, especially where an employer's ordinary practice is to warn or coach, will rarely suffice in the pregnancy context. On motive, the tribunal must be satisfied that pregnancy did not operate, in fact, as a real cause of the decision: chronology, prior record, comparators, consistency of sanctions, and the pathway through internal processes are all fair indicators. If pregnancy materially contributed, there is no "sufficient cause".

A.130 Procedurally, the approach remains the same. The tribunal determines the matter on the merits; ss 27(2)(*c*) and (*d*) allocate the burden of proof to the employer when a female employee is dismissed in the circumstances mentioned in ss 84(1)(*a*), (*b*) or (*c*) of the EA; and where those circumstances are not present, an employee may still succeed by showing, on the record as a whole, that no legitimate cause likely existed. In practice, when s 84(2) is engaged, an employer who relies on a non-pregnancy ground—misconduct, capability, redundancy, or performance—should expect to establish both the underlying facts and why dismissal, rather than a lesser measure, was the proportionate response, tested against the employer's own settled practice. Moreover, whatever ground relied on by the employer needs to be demonstrably independent of pregnancy.

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Procedural protections accorded by the law in respect of dismissal

A.131 Section 14(1) of the EA explicitly requires that an employer may only summarily dismiss for misconduct "after due inquiry". The EA itself does not spell out the steps of an inquiry, but *Long Kim Wing* makes clear that it must comport with basic fairness. In particular, the inquiry process must give the employee: (a) notice of the specific allegations and evidence against him; (b) a genuine opportunity to respond or explain; and (c) an impartial forum. These elements align with basic natural justice principles and, although the inquiry need not be unduly formal, the more informal the process, the greater the risk that it will fail the threshold.

A.132 If an employer fails to conduct the required inquiry, the dismissal is typically treated as unlawful (at least at common law). For example, in *Long Kim Wing,* the High Court found that summary dismissal without a proper inquiry breached the contract clause mirroring s 14(1). The claimant succeeded to the extent of receiving pay for the (reasonable) period the inquiry should have taken. However, that remedy was awarded as contract damages (and indeed was very limited in time—the court found only about seven days' pay was due). Crucially, this was not framed as a victory on the "without just cause or excuse" statutory claim, but as breach of the agreed disciplinary process. Indeed, the EA itself does not say that a summary dismissal is automatically "without just cause" if no inquiry is held; it simply forbids summary dismissals *except* after due inquiry. Thus, it is unclear how a breach of s 14(1) when compliance is required bears on a claim under s 14(2).

A.133 To answer this, the language of s 14(2) is crucial. Most important, the text speaks only to substance—whether a legitimate ground for dismissal existed. It makes no mention of procedure. In other words, to succeed under

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s 14(2), the employee must show that the employer had no valid reason (no just cause) for terminating employment; the claim is not triggered merely by proof that a hearing was omitted. This is evident in the drafting and in the legislative scheme. In my judgment, that reading must carry through to how tribunals treat process in a s 14(2) claim. The statutory question is merits-led: did just cause or excuse exist? Procedure matters only in aid of answering that question. A careful inquiry that fairly put the case to the employee and recorded the employer's reasons will often strengthen confidence in the reliability of the underlying facts and in the proportionality of dismissal; a cursory or one-sided process will tend to do the opposite. But it is the merits that decide the claim. A dismissal reached by an imperfect route may still be justified if the proved facts show a legitimate and proportionate cause to end the employment; a dismissal reached after a model procedure will still fail if those facts do not ultimately add up to just cause or excuse.

A.134 This approach accords with the Malaysian understanding of the same phrase "just cause or excuse", which treats the domestic inquiry as helpful but not dispositive. The Industrial Court determines the issue *de novo* on the evidence before it: a proper inquiry is a reason to be more confident in the employer's case; a flawed or omitted inquiry is a reason to be cautious and, where appropriate, to draw adverse inferences. It does not, by itself, convert a substantively justified dismissal into one "without just cause or excuse". By contrast, the UK's unfair-dismissal regime openly accommodates a freestanding concept of procedural unfairness—a dismissal may be "unfair" even if a fair reason existed—but that is a function of the UK statute and should not be read into our differently worded s 14(2).

A.135 The practical consequences are straightforward. First, where an employer summarily dismisses for misconduct without holding any inquiry at

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all, there may be a contractual breach (mirroring s 14(1)) for which the employee can recover only limited loss; but before the ECT on a s 14(2) claim, the tribunal still asks whether just cause or excuse existed on the record. Second, where an employer gives notice (or pay in lieu) and nevertheless runs an internal process, lapses in that process do not of themselves establish liability under s 14(2). They are weighed for what they show about the strength, reliability, and proportionality of the employer's case—including whether the employer can, in truth, discharge any burden it bears when it has chosen to state reasons. Third, even when the inquiry was scrupulous, the tribunal's task remains to determine the truth and gravity of the conduct and whether dismissal, rather than a lesser measure, was warranted.

A.136 Two further points follow. One concerns inference. A thin or lopsided inquiry can justify a cautious view of credibility, completeness, and proportionality; if critical matters were never put to the employee or were investigated only superficially, the tribunal may be less willing to accept that dismissal was the principled response. The other concerns parity and consistency. Where the employer's own practice shows that comparable conduct ordinarily attracts warnings or reduced bonuses—rather than termination—the absence of a careful inquiry into why the present case warranted a different outcome will weigh against a conclusion that just cause or excuse existed. These are not procedural vetoes. They are evidential consequences that keep the focus where s 14(2) puts it: on substantive justification.

A.137 As an aside, I will also note that there is a structural oddity in how s 11(2) sits with s 14(1). Section 11(2) permits termination without notice for a "wilful breach of a condition" of the contract; s 14(1) permits summary dismissal for "misconduct", but only after due inquiry. If, as the Court of Appeal

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has held in the contractual context (see *Phosagro Asia*), "wilful" means intentional breach, the same facts can sometimes be framed either way. It is unclear whether Parliament intended the "due inquiry" safeguard to travel with s 11(2). On the present text, it does not. That leaves employers tempted to invoke s 11(2) to avoid inquiry and employees arguing that the same conduct was "misconduct", so that an inquiry was required. The better view is a disciplined one tied to elements: if the employer truly relies on an intentional contractual breach, it must prove intention; if, in substance, the case is misconduct, then s 14(1)'s due-inquiry condition applies. Either way, when the dispute comes to the ECT under s 14(2), the tribunal's task remains a merits assessment of cause—process features bear on confidence and proportionality but do not themselves answer the statutory question.

A.138 Stepping back, I therefore proceed on these working propositions. Section 14(2) is a substantive protection. It does not create a freestanding procedural ground of liability. "Due inquiry" in s 14(1) is a statutory condition that governs the lawfulness of summary dismissal for misconduct; breach of that condition may sound in contract, and in a s 14(2) dispute it is legally relevant only insofar as it affects the tribunal's assessment of whether just cause or excuse existed. This is the same, in substance, as the position I prefer from Malaysian law noted at [A.122] above: process informs the analysis but does not eclipse substance.

The power to order reinstatement

A.139 Equity's traditional remedy of specific performance is rarely applied to contracts of personal service. In classical terms, a court will not compel an unwilling employer to continue employing an individual, nor force an unwilling employee to keep working for that employer. The rationale lies in the deeply

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personal and trust-based nature of employment: requiring parties to remain in a hostile or fractured relationship is viewed as oppressive and unworkable. As Fry LJ cautioned in the famous case of *De Francesco v Barnum* (1890) 45 Ch D 430, courts must be "jealous lest they should turn contracts of service into contracts of slavery". In other words, it offends public policy to shackle parties to an employment arrangement against their will, so the usual remedy for wrongful dismissal is an award of damages rather than reinstatement.

A.140 This longstanding equitable aversion to specific performance in employment means that at common law, once an employer terminates a contract (even wrongfully), the employment is effectively at an end. The court will not order the employer to take the worker back; it will only award monetary compensation for breach (typically the notice period or other contractually due sums). Reinstatement as a remedy arises, instead, only under special statutory regimes designed to address unfair dismissal. Both the UK and Malaysia have such regimes, which empower labour tribunals or courts to order reinstatement in appropriate cases of unjustified dismissal. However, these jurisdictions also circumscribe that power with important conditions, and in practice the specific enforcement of employment is uncommon in both.

A.141 In the UK, if an employee succeeds in an unfair dismissal claim before an Employment Tribunal, one remedy available is an order for reinstatement. Reinstatement means putting the employee back into their previous job as if the dismissal had never occurred, with full restoration of pay, benefits, and continuity of employment rights. In fact, the employer must treat the employee as if they had never been dismissed, ensuring no loss of seniority or entitlements in the meantime. From the employee's perspective, this remedy is more comprehensive than a simple damages award—it restores their actual job and status within the company, not merely a sum of money.

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A.142 Re-engagement, a closely related remedy, requires the employer (or an affiliate) to offer the employee a comparable role if the original job is no longer available. The terms and conditions of re-engagement should be as favourable as if the employee had been reinstated in the old position. In either case, the employer must compensate the employee for any wages lost in the interim. If a tribunal orders reinstatement or re-engagement and the employer refuses to comply, the law imposes an additional penalty award—essentially extra compensation of between 26 and 52 weeks' pay—on top of the ordinary unfair dismissal compensation. This mechanism stops short of physically forcing the employment to resume, but it strongly discourages employers from flouting a reinstatement or re-engagement order.

A.143 Although the statutory power to reinstate exists in the UK, it is exercised sparingly. Tribunals are obliged to consider whether to order reinstatement or re-engagement in every successful unfair dismissal case—they will usually ask the claimant if they want their job back—but several criteria must be satisfied. A key consideration is whether reinstatement is practicable for the employer. This means the order must be capable of being carried out in reality and lead to a viable working relationship. For example, if the employee's former role has been eliminated or permanently filled, reinstatement may be impractical. Likewise, if the dismissal occurred in a small enterprise or other particularly strained setting, putting the parties back together might be untenable.

A.144 Equally important is whether the necessary mutual trust and confidence remains between the employer and the employee. Reinstatement is a forward-looking remedy predicated on a functioning working relationship; if that relationship has been irretrievably broken by the dismissal episode, an order to resume employment would be futile. Accordingly, where the evidence shows a total breakdown of trust, the tribunal will not compel a return to work. The

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tribunal essentially asks whether a workable employment relationship can be restored; if not, making the parties resume work would only prolong the conflict. This approach accords with the settled assumption that equity will not specifically enforce a contract of service once the personal relationship has collapsed. Additionally, the tribunal will weigh whether the employee's own conduct contributed to the situation leading to the dismissal. In essence, even when an employer is found to have acted unfairly, an employee who significantly contributed to the breakdown of the employment relationship might not be restored to their role, since the overall equities would not favour forcing the employer to take them back—for instance, if the employee's conduct or performance, while not enough to justify dismissal on its own, played some part in the situation, that contributory factor can weigh against requiring the employer to take them back.

A.145 In practice, reinstatement orders in the UK are extremely rare. There are few successful unfair dismissal claimants receive an order for reinstatement or re-engagement. The vast majority of employees seek—and obtain—monetary compensation instead. This preference is understandable. By the time a case concludes, most individuals have little desire to return to an employer who dismissed them, especially after what is often a contentious legal battle. The employment may have been soured beyond repair, or the employee may have found alternative work in the meantime. Moreover, the statutory compensatory award (capped at 52 weeks' pay or a prescribed sum) often provides a sufficient remedy in most cases, without the personal and practical complications that reinstatement entails.

A.146 Nonetheless, there are occasional cases where reinstatement or re-engagement is actively pursued by the claimant. Higher-earning or specialised employees sometimes prefer this remedy because compensation in the UK is

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capped, whereas an order to re-employ them comes with full back-pay of lost earnings (which can be substantial).

A.147 Turning to Malaysia, the legal framework ostensibly places even greater emphasis on reinstatement. Under s 20 of the Industrial Relations Act 1967, a workman who considers himself dismissed "without just cause or excuse" can lodge a representation to the Director-General for Industrial Relations to be reinstated to his former employment. The very phrasing of the statute—"representations… to be reinstated"—signals that the primary relief envisioned is restoration of the job. In other words, the Malaysian mechanism, from the outset, treats a wrongful dismissal not merely as a breach to be compensated but as a unilateral injustice to be set right by putting the employee back in his position wherever possible.

A.148 For many years, the Malaysian position was that an employee had to genuinely seek reinstatement in order to invoke this remedy. The Industrial Court would not entertain a purely monetary claim for wrongful dismissal in isolation from reinstatement. If a claimant made a representation ostensibly for reinstatement but in truth had no intention of returning to the job, that was deemed an abuse of the process. In the case of *Holiday Inn Kuching v Elizabeth Lee* [1992] 1 MLJ 230, for example, the claimant initially asked for reinstatement but later, during proceedings, stated that she only wanted compensation. The court held that once reinstatement was "no longer applied for", it effectively had "no more jurisdiction" to grant relief. This stringent view underscored how central the idea of getting one's job back was to the Malaysian unjust dismissal scheme (at least in theory).

A.149 Notably, recent appellate decisions have relaxed that stance, clarifying that even if an employee ultimately seeks only compensation, the Industrial

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Court does not automatically lose jurisdiction so long as the matter was properly referred under s 20. As a result, a claimant's failure to explicitly seek reinstatement during the Industrial Court proceedings is no longer fatal to the claim. The focus lies on whether the case was properly referred under s 20; if so, the court may adjudicate the unfair dismissal and grant relief (typically compensation) even if reinstatement is not ultimately pursued. But the conceptual primacy of reinstatement remains—it is regarded as the first remedy to consider, with compensation as a fallback.

A.150 However, as in the UK, practical realities frequently impede the use of reinstatement in Malaysia. Considerable time often elapses between the dismissal and the final resolution of the case—sometimes a few years—given the need for conciliation and the proceedings before the Industrial Court. In that interval, circumstances may change. The position previously held by the employee might have been filled or rendered redundant. The business could have undergone restructuring. It is also quite common that the dismissed individual finds other employment (indeed, sometimes at a higher salary) before the case concludes. Any of these developments can make reinstatement impracticable or undesirable. The Industrial Court will not insist on reinstatement if doing so would, in effect, create more problems than it solves—for example, by displacing another employee or by thrusting the claimant into a role that no longer exists in the same form.

A.151 Beyond logistics, the trust and confidence factor looms large in Malaysia's context as well. Industrial Court awards frequently note that, given the acrimony inherent in dismissal disputes, an order for reinstatement is not common because the employment relationship's foundation of mutual trust has been irreparably damaged. If the court is satisfied that the employer–employee relationship cannot be restored to a state of mutual respect and cooperation, it

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will decline to reinstate even a wrongfully dismissed worker. As one commentary observes, reinstatement is the primary remedy in theory but "an order for reinstatement, however, is rarely made" in practice due to the reality that the employment bond has often been irrevocably eroded by the dispute. The longer and more contentious the conflict, the harder it becomes to imagine the parties resuming their former working rapport.

A.152 Singapore's statutory framework (under s 14(2) of the EA) likewise empowers the tribunal to order reinstatement of a wrongfully dismissed employee. However, to date I know of no tribunal that has actually done so. In the absence of precedent, the principles gleaned from the UK and Malaysia may be instructive for our context. First, reinstatement is a discretionary remedy rather than an automatic consequence of an unjust dismissal—even a wronged employee will not be put back in their job unless certain conditions are met. Chief among these is the prospect of a workable future relationship: there must remain sufficient mutual trust and cooperation between the parties to sustain renewed employment. If that foundation is lacking, no court or tribunal will force a reunion. Connectedly, if the employee's own conduct contributed to the dismissal (even if it fell short of just cause for termination), a tribunal may view reinstatement as inappropriate. Second, practical feasibility is crucial: a position must be available and the employer must be able to re-employ the individual without undue hardship or disruption to the business. Ultimately, even where all these prerequisites are satisfied, reinstatement remains the exception rather than the norm. In the vast majority of cases, an award of compensation is deemed an adequate and more practical remedy. Until our own jurisprudence develops on this point, these touchpoints provide a sensible roadmap to guide the exercise of this discretion in Singapore.

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Compensation for a successful claim under s 14(2) of the EA

A.153 As a starting point, compensation under s 14(2) must track the nature of the statutory wrong. The wrong is not the want of contractual notice; it is the employee's being dismissed "without just cause or excuse". The remedial scheme therefore has to respond to the consequences of that wrong, and not merely replicate the common law's notice bargain. Read this way, the bifurcation between "loss of income" (capped at three months of the gross rate of pay) and "harm" (a base amount up to two months, subject to adjustment) makes structural sense: the first restores earnings actually lost because of the wrongful dismissal; the second recognises, and then calibrates, the intrinsic wrong of being deprived of one's job without cause. This construction also resolves the queries I posed from [A.96]–[A.101] above.

A.154 First, on "loss of income"—I read this as compensating for earnings foregone because the employee was dismissed without just cause or excuse. It is not confined to the contract's notice entitlement, and it is not exhausted by salary in lieu. Rather, it captures the real post-termination loss occasioned by the wrongful dismissal, subject to the statutory cap. Properly analysed, it covers losses caused by both *the fact* and *the manner* of dismissal. The fact of dismissal may generate a transitional earnings gap; the manner of dismissal—for example, an accusation that undermines employability—may reasonably prolong unemployment or depress re-entry wages. Both are losses "of income" flowing from the statutory wrong and both are recoverable.

A.155 This does not license double recovery. Where salary in lieu has already been paid to the employee, the tribunal should avoid counting the same period twice. In practice, the calculation is net and sequential. One identifies the period of actual earnings loss caused by the wrongful dismissal, then credits any

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amounts already received (including notice-in-lieu covering the same time) and any earnings actually obtained. If, for example, one month's salary in lieu was paid and the employee remained unemployed for three months because of the tainted dismissal, the recoverable "loss of income" is, in principle, the additional two months (subject to cap), plus any demonstrable shortfall on re-employment within the compensable window.

A.156 The ordinary rules on factual causation and remoteness should apply, adapted to the statutory context and its caps. The inquiry is practical and common-sense: did the wrongful dismissal materially cause the earnings shortfall claimed? A pure "but-for" test, untethered to evidence, risks attributing to the employer market vicissitudes or personal choices; equally, a standard pitched so high as to require near-certainty would defeat the statutory aim. In my view, a "material contribution" approach anchored in contemporaneous proof (for example, recruitment correspondence, reference practices, market evidence of time-to-place for comparable roles) strikes the right balance. Where the manner of dismissal plausibly impeded re-employment—for instance, where specific allegations featured in reference checks or were communicated to potential employers—a longer compensable interval may fairly be found (again, within the cap).

A.157 Second, on "harm"—in my view, the "base amount not exceeding two months" refers to a default quantification of the intrinsic wrong in losing one's employment without just cause or excuse. It treats the job itself as something with inherent value beyond wages—a status, security, and standing that the statute protects—and fixes a conventional figure for that wrong. The listed factors then adjust the base up or down. Properly understood, the aggravating factors are proxies for how lacking the employer's cause was and how capricious or egregious the conduct proved to be; the mitigating factors capture

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employee-side considerations that—while falling short of just cause or excuse—make dismissal more understandable (for example, a real performance concern handled clumsily). Those considerations move the needle, but they do not erase the default recognition that a job was wrongly taken away.

A.158 This framing also answers the overlap concern. "Loss of income" is for pecuniary consequences—the earnings gap and wage depression caused by the fact and manner of dismissal. "Harm" addresses the non-pecuniary dimension of being dismissed without cause—the affront to dignity, the loss of status and security, and reputational sting as such—as conventionally valued by the base amount, then tuned by the factors. The same evidence may be relevant to both heads (for example, an allegation of dishonesty), but it does different work: it may lengthen or deepen the earnings loss under "loss of income"; it may also aggravate the assessment of "harm" because it shows how unjustified or humiliating the dismissal was. The tribunal must guard against double counting by allocating the earnings effect only to "loss of income" and reserving "harm" for the non-pecuniary remainder.

A.159 Two practical points follow for proof of "harm". First, because the base amount is a default recognition of the intrinsic wrong, it does not depend on bespoke medical or expert evidence; such evidence, if present, may justify an upward adjustment, but its absence does not preclude the base. Second, adjustments should be principled and explained by reference to the listed proxies: egregiousness (public humiliation, knowingly false accusations, retaliatory motive) on the one hand; employee-side mitigants (a real performance cloud, prior warnings) on the other.

A.160 Third, on mitigation—the duty to take reasonable steps to reduce loss should apply, in substance, as it does in ordinary damages claims. It bears

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principally on "loss of income": an employee should make sensible efforts to find alternative work and, once placed, any wage shortfall (within the cap) is the relevant measure. What counts as "reasonable" depends on all the circumstances, including the manner of dismissal. Where the employer's conduct has made re-entry materially harder—for example, by circulating stigmatic reasons, withholding standard references, or threatening garden-leave or restraint in a way that chills prospective offers—the law does not demand heroic or self-defeating steps from the employee. Conversely, where the manner of dismissal was neutral, the employee can be expected to search actively, consider comparable roles and, if necessary, accept a reasonable interim position. The evidential burdens in respect of mitigation should be orthodox. The employee must adduce a coherent account of search and outcome (applications, interviews, offers, timing, salary differentials). If the employer alleges unreasonable failure to mitigate, it should particularise what jobs could reasonably have been obtained and when.

A.161 Finally, I note two corollaries that the parties in these matters raised. First, the existence of contractual notice (or payment in lieu) does not immunise the employer from "loss of income" liability. It may reduce the quantum (to avoid overlap), but it does not answer the statutory wrong. Second, discretionary bonuses and allowances may be relevant under "loss of income" if, factually, they would probably have been earned within the compensable window but for the wrongful dismissal; that is a question of proof and of the employer's settled practice, not of labels. Where such items are better analysed as part of the employee's gross rate of pay for the relevant period, they should be treated accordingly.

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