

CASE UPDATE 3/2026

Importance of Clear, Specific Charges in Alleging Misconduct

Pointers from *Lee Ee Chai v Kansai Paint Asia Pacific Sdn Bhd* [2026] MLJU 1463 (Court of Appeal)

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Brief Facts

The Appellant had been employed by the Respondent since 1984. In late 2021, the Respondent vacated its Port Tech Tower office ("**PTT office**") to relocate to Bukit Raja ("**Bukit Raja office**"). After the relocation, two (2) office chairs and two (2) projectors (collectively the "**Items**") were discovered missing.

What did the Respondent allege? The Appellant had stolen or taken the Items without authorisation. The actual charge is based on Clause 12.4 of the Respondent's Company Handbook, which reads (hereinafter the "**Charge**"):

"Serious offences requiring disciplinary action including dismissal

...

(b) Stealing or taking company property without permission"

What did the Appellant say? He only kept the Items in his car temporarily and later placed them at the Bukit Raja office.

What was the outcome? After a domestic inquiry, the Appellant was found guilty of misconduct and dismissed.

Findings of the Courts Below

The Industrial Court found in favour of the Appellant

- Broadly, the Charge is vague because it combined two (2) distinct allegations, namely "*stealing*" and "*taking company property without permission*", which necessitate different considerations and/or elements
- With reference to **sections 23, 24 and 378 of the Penal Code**, there is no evidence that the Appellant intended to permanently deprive the Respondent of the Items
- As such, the Respondent's dismissal of the Appellant was without just cause or excuse

The High Court found in favour of the Respondent

- On appeal, the High Court set aside the Industrial Court's award
- The High Court held that the Industrial Court had wrongly treated the misconduct as criminal theft under the **Penal Code**
- The High Court found that the phrase "*taking company property without permission*" was sufficiently clear and that the Appellant had breached the Respondent's Company Handbook

Findings of the Court of Appeal

The Court of Appeal had unanimously allowed the Appellant's appeal and restored the Industrial Court Award, for the following reasons:

The Charge was vague and ambiguous	• The Charge combined two (2) separate forms of misconduct into a single allegation • "<i>Stealing</i>" denotes dishonesty and an intention to deprive the Respondent of the Items, whereas "<i>taking company property without permission</i>" could occur without dishonest intent
The Industrial Court did not impose criminal standard of proof	• The Industrial Court only referred to the Penal Code as a guide because the Charge contained criminal elements • The applicable standard of proof remains on a balance of probabilities
Dismissal of the Appellant was not justified	• At the outset, the Respondent's instructions on the relocation were ambiguous • The Industrial Court was correct to find that the evidence showed poor judgment on the Appellant's part rather than dishonest intention

What are the Key Takeaways for Employers and Employees?

Clarity of charges is essential

- Disciplinary charges must be drafted clearly and precisely so that the employee is able to understand it without any ambiguity or confusion
- Avoid combining separate allegations into a single charge
- Be mindful when using "and", "or" and "and/or" as each term could convey a different meaning

Use criminal elements as a guide in framing and understanding criminal-type misconducts

- Employers should be careful when using criminal terminology in disciplinary charges but if they do, it is helpful to look at the **Penal Code** for guidance on how to frame the charges and what evidence to look for in the corresponding investigation
- Similarly, employees can also review these criminal elements to get a better understanding of the charges against them and how to address such charges

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Disclaimer: This update is provided for general informational purposes only and does not constitute legal advice. It should not be relied upon as a substitute for legal advice.

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