



Dear valued clients and friends,

We are pleased to bring you the following update from our [Employment and Administrative Law Practice Group](#).

Dismissal Can be Fair Even When the Employer Cannot Prove All the Charges Against the Employee

In a recent decision of the Industrial Court in **Dewalaxhmana a/I A S Param v Weststar Aviation Services Sdn Bhd** (Award No. 692 of 2020), we successfully defended the Company in a claim of unfair dismissal brought by a former employee. It is worth noting that in this case, even though the Industrial Court found that the Company had only proved four out of the seven charges against the former employee (the Claimant), the dismissal was still held to be fair.

The Claimant was employed as Human Resources and Administration Director of the Company and was terminated when the Company found him guilty of multiple charges of misconduct. The Company had issued a show cause letter with 28 charges against the Claimant, but only relied on seven of the more serious charges to prove its case at the Industrial Court, which were:

- i. Charge 1(A) — deliberately and intentionally misleading the Management as to the EPF/tax deductions for the distribution of *duit raya* for 2016;
- ii. Charge 1(B) — deliberately misleading the Management by failing to highlight that he was not eligible for the annual increment in 2016;
- iii. Charge 2(A) — unauthorised amendment of a draft memo containing the criteria for the increment eligibility to enable himself to qualify for the annual increment;
- iv. Charge 2(B) — deliberately misleading the Remuneration Committee about the recruitment of an HRMS Executive;

- v. Charge 3(D) — abuse of power and manipulation of authority to confirm an employee earlier than the end of her probationary period;
- vi. Charge 3(E) — deliberately misleading the Remuneration Committee about the recruitment process of an HRMS Executive; and
- vii. Charge 6(B) — raising his voice at his subordinates.

Based on the documentary evidence and testimonies of the witnesses, the Court found the Company had proved on balance of probabilities that the Claimant was only guilty of Charges 1(B), 2(A), 2(B) and 6(B).

Although the Company was unable to prove all the charges against the Claimant, the Industrial Court was mindful of the fact that the Company had successfully proved the more serious charges (i.e. Charges 1(B) and 2(A)) which involved the Claimant's integrity. The court opined that the Claimant had not been candid with the Company and had allowed his personal interest to be in conflict with his duties of loyalty owed to the Company. The Industrial Court noted that these actions, namely his failure to inform the Company of his situation as an unqualified employee for the annual increment when he spoke to the Company's then-CEO and when he amended the draft memo, were so grave that summary dismissal was justified. It was not a suitable case for letting the Claimant off lightly with just a warning. Therefore, despite finding that the Company had failed to prove all the charges against the Claimant, the Industrial Court found that the dismissal was warranted.

The Company was represented in this matter by [Vijayan Venugopal](#), who is a partner in our [Employment and Administrative Law Practice Group](#).

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