

16th May 2019

By Employment Law & Administrative Law Practice Group

We successfully defended Malaysia Airline System Berhad in two recent decisions handed down by the Industrial Court.

Norazri Bin Abdul Rahman v Malaysian Airline System Berhad¹

We submitted at the Industrial Court that the hearing of the matter can proceed ex-parte even when the claimant himself had failed to attend the hearing date. In most circumstances, the Industrial Court has proceeded to hear the matter when it is the company who was absent and not the claimant. The Industrial Court agreed with us and proceeded to hear the company's witnesses.

The Claimant was a Flight Steward for the Company and was dismissed for the following reasons:

- a) Failure and / or refusal to attend to appointment on three separate occasions.
- b) Excessive medical leaves.

The Claimant alleged that he was affected by "santau" although no such evidence was ever produced by the Claimant. The Claimant's action in failing/refusing to attend the three separate appointments which were reasonable instructions by the Company was tantamount to willful insubordination by the Claimant and would justify summary termination. It was also in evidence that the Claimant's failure to attend work had resulted in the Company having to find a last-minute replacement which resulted in flight delays and additional operation costs such as airline parking fees.

Based on the evidence adduced by the Company, the Industrial Court held that the Claimant's dismissal in the circumstances was with just cause and excuse.

Aidi Shamsul Bin Arshad v Malaysian Airline System Berhad²

The Claimant in this matter was a driver for the Company and whilst on duty he had knocked down a fellow colleague which resulted in the death of the latter. The Company submitted that the Claimant at the time of the incident was driving above the speed limit on the tarmac which was 25 km/h. The Claimant alleged that he was not driving above the speed limit, that the vehicle's speedometer and brakes were not working and that the deceased had all of a sudden crossed the tarmac.

The Company had shown through documentary evidence that its investigation revealed that the brakes and speedometer of the said vehicle were in working condition at the material time. It was also in evidence that based on the damaged front window screen of the vehicle the vehicle was clearly driven above the speed limit of 25 km/h. The Industrial Court also held that ultimately whether the deceased was careless or not was not actually a relevant issue for its determination.

Based on the above, the Industrial Court disbelieved the Claimant's contention and ruled that his dismissal by the Company in the circumstances was with just cause and excuse.

¹ Industrial Court Award No: 1201 of 2019

² Industrial Court Award No: 1320 of 2019

For further information regarding employment and administrative law, please contact:

Sivabalah Nadarajah

sivabalah@shearndelamore.com

Vijayan Venugopal

vijayan@shearndelamore.com

Raymond TC Low

raymond@shearndelamore.com

Suganthi Singam

suganthi@shearndelamore.com

7th Floor

Wisma Hamzah – Kwong Hing

No.1, Leboh Ampang

50100 Kuala Lumpur, Malaysia

T: +603 2027 2727

F: +603 2078 5625

E: info@shearndelamore.com

W: www.shearndelamore.com