

Claim for Unfair Dismissal

Vigneswaran Thevar A/L Annanthan v Malaysia Airlines Berhad

7th March 2019

By Employment Law & Administrative Law Practice Group

In the recent Industrial Court Case of **Vigneswaran Thevar a/l Annanthan v Malaysia Airlines Berhad Award N: 679 of 2019** dated 25 February 2019, we had successfully defended the Company against a claim for unfair dismissal.

The former employee was dismissed on 3 charges of misconduct involving his actions in assisting and facilitating the release of a cargo which was wrongly declared as frozen fish and later discovered to be anteater-meat after it was confiscated by Jabatan Perhilitan Malaysia.

The Industrial Court held that the performance of the Company's witnesses were consistent and credible and therefore held that the Company had sufficiently proven Charges 1 and 2 against the Claimant. This case illustrates the value of the testimony of a witness before the Learned Chairman in coming to its decision.

In relation to Charge 3 against the Claimant which involves the Claimant corroborating with his brother in law in the release of the said cargo, the Court decided that the Claimant's actions of printing the Airway bills and by making payment of RM300.00 was done to assist his brother in law in obtaining approval which finally led to the release of the said cargo. The sequence of events drew a reasonable inference that the Claimant had abetted his brother in law. Despite an absence of conclusive evidence to the same, the Court relied on circumstantial evidence to rule that the sequence of events irresistibly pointed to the conclusion that the Claimant had given the original Delivery Order to his brother in law. This lends credence to the Company's charge in which the Claimant had corroborated with his brother in law to the false classification of cargo and the subsequent release of the cargo.

The case illustrates the fact that in spite of the absence of conclusive evidence, the Courts may nevertheless make a finding based on the circumstantial evidence readily available and also the evidence of credible witnesses.

The Company was represented in the instant matter by Vijayan Venugopal, who is a Partner in our Industrial Relations Practice.

Please click <http://www.shearndelamore.com/alerts/Industrial-Court-of-Malaysia.pdf> to read the text of the judgment.

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No Dismissal in Law When the Employment Contract Has Been Frustrated

Raj a/I Joseph Appadorai v Linde Malaysia Sdn Bhd

7th March 2019

By Employment Law & Administrative Law Practice Group

In the recent decision of the Industrial Court in **Raj a/I Joseph Appadorai v Linde Malaysia Sdn Bhd (Award No: 873 of 2019)** dated 6 March 2019, we had successfully defended the Company in a claim of unfair dismissal by a former employee.

In this case, the Company had medically boarded-out the former employee (Claimant) pursuant to a mutual agreement between parties. However, the Claimant alleged that he never agreed to be released from employment and instead contended that the Company had unfairly dismissed him.

In its decision, the Industrial Court Chairman had made the following findings-

- a) The Claimant was the one who had raised the issue of being medically boarded out to the Company;
- b) The Union who was involved in the meetings and dialogue between the Company and the Claimant was silent in this whole ordeal;
- c) The Claimant had weakened his own case when he had testified that he had proposed to leave the Company on a voluntary separation scheme. This clearly showed that the Claimant's sole intention was that he wanted more monetary payment from the Company.
- d) Despite an agreement reached between the Claimant and the Company to be released from employment, he had reneged against it.
- e) The Industrial Court further made a finding that the employment contract was in fact frustrated by the Claimant's prolonged illness and absence from work.

The Claimant had failed to report to work from 18 September 2014 to 30 June 2015 with no indication when he would be able to return to work. The Claimant also failed to provide evidence to the Company indicating that he was fit for work. After considering the documentary and testimony evidence, the Industrial Court ruled that there was no dismissal in law by the Company and that the employment contract was in fact frustrated by the Claimant prolonged illness and absence from work.

This decision by the Industrial Court shows the willingness of the Industrial to accept that a contract of employment can be frustrated, which results in the inevitable conclusion there is no dismissal in law.

The Company was represented in this matter by Vijayan Venugopal, who is a Partner in our Industrial Relations Practice.

Please click on <http://www.shearndelamore.com/alerts/Industrial-Court-Malaysia-No873.pdf> to read the text of the judgment.

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