Employees with a Medical Condition

The case of Gopalakrishnan Vasu Pillai v Goodyear Malaysia Berhad is a good starting point when considering the position of an employee who has a long term medical condition with little prospect of recovery. The Claimant, who was a master technician, suffered from a recurrent right knee injury. After numerous medical examinations, the doctors recommended that the Claimant be given light duties. The company was however, unable to accede to the Claimant’s request as its operations involved using heavy machinery. The company, whilst accepting that the Claimant had been an excellent worker, medically boarded him out due to the knee injury and the long periods of medical leave that had been taken. The Claimant, however, contended that his dismissal had been unjust as he had not been offered or recommended alternative employment in the company.

In handing down an award in favour of the company, the Industrial Court referred to the English authority of Spencer v Paragon Wallpapers Ltd wherein it was stated,

“Every case depends on its own circumstances. The basic question which has to be determined in every case is whether, in all the circumstances, the employer can be expected to wait any longer and if so, how much longer?” And he added that the relevant circumstances include “the nature of the illness, the likely length of the continuing absence, the need of the employers to have the work done, which the employee was engaged to do.”

In arriving at the conclusion that the dismissal was justified, the Industrial Court in Goodyear Malaysia Berhad considered the following issues:

(a) did the medical reports state that the Claimant will recover and return to normal;
(b) the number of days the Claimant had been on medical leave; and
(c) did the company foresee that the Claimant will be bound to take many more days of medical leave which will inevitably affect the productivity and profits of the company.

The Industrial Court in Goodyear Malaysia Berhad also acknowledged the fact that the company like any other company was incorporated to carry on business with a view to profit and was not a charitable organisation or a welfare home.

According to the English case of Lynock v Cereal Packaging Ltd,

“The approach of an employer in this situation is, in our view, one to be based on those three words which we used earlier in our judgement – sympathy, understanding and compassion.”
Lynock goes on to state that one should look at the entire historical background as the mere fact that a workman is fit at the time of his dismissal does not make his dismissal an unfair dismissal. The case further states that a company in reaching what must inevitably be a difficult decision, should amongst other things, also look into the following factors:

(a) the nature of the illness;
(b) the likelihood of recurring or some other illness arising;
(c) the length of the various absences and the spaces of good health between them;
(d) the need of the employer for the work done by the particular employee;
(e) the impact of the absences on others who work with the employee; and
(f) whether the Claimant has been appraised of the difficult situation which the company is faced with in respect of his medical condition.

The judicial approaches in Goodyear Malaysia Berhad and Lynock were recently adopted in the case of Kempas Edible Oil Sdn Bhd v Abu Bakar Bin Talib where the Industrial Court once again found in favour of the company.

In Kempas Edible Oil the Claimant sometime in 2000 had been diagnosed with a sleep/anxiety disorder. The Claimant subsequently in August 2001 had been diagnosed to be suffering from dysthymia with narcolepsy. Despite the medical attention which the Claimant had been receiving, the Claimant’s medical condition continued to deteriorate to the extent that the Company then tried to determine if the Claimant could be medically boarded out pursuant to the provisions of the insurance policy which the Company had taken out for the benefit of all its executive employees. The insurance underwriters, had, however, on two separate occasions rejected the Company’s application for the Claimant to be medically boarded out. In 2002, the Claimant had been on paid medical leave for 87 days. In 2003, the Claimant never came in to work at all. The Claimant in fact been on paid medical leave from the period 1 October 2002 till the date he was dismissed, on 11 September 2003. In view of the fact that the Claimant was unable to perform his work due to his medical condition, the Company terminated his employment on medical grounds.

The Industrial Court concluded that since the Claimant was unable to perform his duties any longer because of his illness, the contract of employment had therefore become frustrated.

In conclusion, the above mentioned factors should be taken into account by employers before making a final decision on the continued employment of an employee suffering a long term illness.

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1 [2007] 1 ILR 618
2 [1976] IRL 373
3 [1988] IRLR 510
4 [Award No. 586 of 2008]