

Withdrawal of Resignation is Ineffective Without the Employer's Consent

12th September 2019

By Employment Law & Administrative Law Practice Group

In a recent decision of the Industrial Court in **Chong Kok Kean v Citibank Berhad** (Award No. 2290 of 2019 dated 16 August 2019), we successfully defended the Bank in a claim of forced resignation brought by a former employee.

The Claimant tendered his resignation letter to the Bank on 13 October 2014. However, 4 days later, on 17 October 2014, the Claimant sent another letter to the Bank requesting to withdraw his resignation, before the Bank had formally accepted his resignation.

The Claimant then alleged that he was forced to resign by his superiors when they informed him that the Bank would be conducting an investigation against him pursuant to a complaint received. He further alleged that the Bank had a hidden motive in forcing him to resign. This is because his superiors had been checking on his whereabouts since August 2014. He claimed to be the only employee in the Bank who was being monitored on his whereabouts. The Bank, on the other hand, contended that the Claimant resigned because he wanted to avoid being investigated by the Security & Investigation Services.

In reaching its decision, based on the testimony of the witnesses, the Industrial Court was satisfied that the Claimant was not forced to resign. The Industrial Court upheld the principle that the onus is on the ex-employee to prove that he was being forced to resign from the company. In this case, the court did not find the Bank's instruction of checking on the Claimant's whereabouts oppressive, discriminatory or unusual. In fact, the court was of the opinion that it is normal for a superior to require their subordinates to report their whereabouts from time to time.

A salient point to note was that was that the Claimant's withdrawal of his resignation was ineffective, even though the Claimant tried to withdraw the resignation before the Bank formally accepted the withdrawal, as the Bank did not agreed with his withdrawal.

This case confirms that, once an employee tenders his resignation, he cannot seek to withdraw the resignation, unless the employer expressly consents to the said withdrawal. Even if the employer remains silent and does not formally accept the resignation, the employer still has the right to reject any subsequent attempts by the employee to withdraw his resignation.

The Bank was represented in this matter by Vijayan Venugopal, who is a partner in our Employment and Administrative Law Practice Group.

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