

EMPLOYMENT LAW PROGRAMME

ELP

Duration: 2 days; Instructor-led | Virtual Instructor-led

OVERVIEW

The Industrial Court throughout 2023 handed down several Landmark awards, wherein, the Court highlighted many shortcomings, amongst others:

- Failure to frame charges with essentials details of the alleged Misconduct.
- Failure to follow procedures for conducting a Domestic Inquiry
- Failure to take into consideration mitigating factors before imposing Punishment.
- Failure to consider Proportionality in imposing Punishment.
- These short coming have resulted in the Court ordering compensation running into a few million ringgit per case.

Fixed Term Contract-In Syed Hizam Alsagoff v. Cahaya Mata Sarawak Bhd

- The company did not renew the Term Contract because of allegations of financial mismanagement.
- The said dismissal was held to be without just cause.
- Company was ordered to pay the Claimant over Three Million Five Hundred Thirty-Four Thousand One Hundred Forty-Four Ringgit (RM3,534,144.00), probably the highest compensation to date.

Absenteeism, Abuse of Medical Benefits; sleeping on duty and related misconduct- Shantini Paramasivam; Husin Zakaria

- The Industrial Court in several decisions has said that punishment of dismissal is justified provided procedures to deal with misconduct are complied with.

Poor Performance – Clifford Lawrence Patrick v. MIMS Group of Companies

- Allegation of unable to meet-sales target and lack of strategic, skills.
- Offered Mutual Separation which Claimant rejected
- Placed under PIP and dismissed thereafter.
- The company failed to evidence to justify for PIP and dismissal.
- Court order compensation of RM2million

Consuming Drugs – Azlan Jaafar v. Sarawak Media Group Sdn Bhd.

- The Court set out the procedure to be followed in dealing with abuse of drugs and requiring employees to undergo test.

Employee charged under a specific rule but dismissed under a different rule-Sharir Mansor v. Petronas Dagangan Berhad.

- Manner Domestic Inquiry not conducted per procedures.
- The company ordered to pay RM627,000.00 as compensation for dismissal without just cause and excuse.

Harassment-Kuldeep Singh v. Tobacco Importers and Manufacturers Sdn. Bhd.

- Incident took place at a Club.
- Whether Claimant was in breach of Company Policy on Sexual Harassment.
- The company ordered to pay RM302,400.00 as compensation.

Breach of Company rules and policies.

- The company failed to adduce convincing evidence.
- Company ordered to pay RM156,000.00.

OBJECTIVES

This 2-day course will deal with recent 2023 and other past awards with the aim of equipping participants to deal with and handle Human Resource issues in a holistic manner rather than in silos. Many of the cases were lost due to failure to adhere to procedures laid down by the Industrial Court over years. Need for clarity in Company Rules & Regulations, compliance with Rules of Natural Justice, need for proper investigation before framing charges and proportionality in imposition of punishment. Reason for Dismissal must be correctly stated as no new or additional reasons will be entertained as has been stated by the Federal Court in a recent Judgement.

AUDIENCE

- C.E.O
- General Managers
- Human Resources Director
- Managers
- Officers
- Training Managers
- Industrial Relation Executives
- Executives

COURSE CONTENTS

DAY 1

Module 1: Probation

- Is there such a provision in our Labour Laws?
- The Federal Court, the highest Court in our country has dealt extensively with the position of probationers in R. Rama Chandran. v The Industrial Court.
- The High Court in the P. Pari case also dealt with the same issue and ruled that an employee who is not confirmed can be deemed to be confirmed.
- In the case of K.C. Mathew's the Court had said that there was no question of deemed to be confirmed.

- What stand should employers do and how must they ensure that they do not fall foul of the law?

Module 2: Resignation Under Duress

- Can an employee resign and still claim that he has been dismissed? What are the circumstances under which can an employee claim resignation under duress or forced resignation?
- The Industrial Court has dealt extensively with this matter in its Awards handed down on 24th August 2000.

Module 3: Frustration Of Contract

- Can an employer terminate a contract where an employee is no longer able to perform his contract?
- How and when is a contract of employment deemed to be frustrated?
- Does detention by police for a prolonged period amount to frustration

Module 4: Constructive Dismissal

- Can an employee just walk off his job and claim Constructive Dismissal?
- What should an employer do when face with a claim for Constructive Dismissal?
- The law and procedure to be followed when an employee claims Constructive Dismissal has again been dealt with.

Module 5: Poor Performance

- What are the procedures that an employer must comply with before terminating the service of an employer for poor performance?
- What is the effect of a Performance Improvement Plan (P.I.P.) and is its sufficient evidence?

DAY 2

Module 6: Sexual Harassment

- What should an employer do upon receiving a complaint of sexual harassment?
- Both the Industrial Court and the High Court have dealt extensively on the failure of the employer to act upon receiving a complaint.
- The importance of corroboration in cases of sexual harassment.

Module 7: Absenteeism / Sleeping / Medical Benefits

- Need for counselling for Absenteeism.
- Sleeping on duty is Gross Misconduct.
- Abuse of Medical Benefits.

Module 8: Consuming Drugs

- Procedure to be followed in dealing with abuse of drugs and requiring employees to undergo test.

Module 9: Compensation In Lieu Of Reinstatement

- In the past the Courts have refused to reduce the compensation in dismissal cases even though the dismissed employee had secured alternative employment.
- The Court of Appeal, in another landmark decision has altered the situation.
- What are the circumstances under which compensation in dismissal cases can be reduced?
- The issue of “mala fide” in enhancing compensation.
- Is the limitation of 24 months compensation still applicable?

Module 10: A Case for Redress – Conducting A Proper Domestic Inquiry

- Procedures to be followed.
- Duties and Responsibilities of Human Resource Department
- Duties and Responsibilities of Investigating Officer
- Duties and Responsibilities of Prosecuting Officer
- Duties and Responsibilities of Panel Members
- Duties and Responsibilities of Top Management
- Procedures prior to inquiry including issue of the show-cause letter and suspension pending inquiry.
- Procedures during Inquiry including composition of panel, evidence and recording of proceedings.
- Procedures subsequent to Inquiry including findings, disciplinary actions / penalties and appeals.
- Requirement to dismiss.