



EMPLOYMENT CONTRACT LAW SEMINAR :
PREVENTION & DEFENSE OF
CONSTRUCTIVE DISMISSAL CLAIMS

©2008 All Rights Reserved. Trevor George De Silva.





(A) WHAT IS "CONSTRUCTIVE DISMISSAL"?

- It is the Employee / Workman perceives him/herself as having been dismissed from employment, notwithstanding that THERE HAS BEEN NO DISMISSAL *per se*.

WONG CHEE HONG v. CATHAY ORGANIZATION [1988] 1 CLJ 298, SCT:-

"The word "dismissal" in s.20 of the Act should be interpreted with reference to the common law principle. Thus it would be a dismissal if the employer is guilty of a breach which goes to the root of the contract or if he has evinced an intention no longer to be bound by it. In such a situation the employee is entitled to regard the contract as terminated and himself as being dismissed."

- It is trite that s.20 has been couched in subjective terms :
GOON KWEE PHOY v. JP COATS [1981] 1 LNS 30, FCT:-

"It is not whether he had been dismissed without just cause or excuse; but it is how he considers he has been treated by his employer that constitutes the test for his action."



(B) “CONSTRUCTIVE DISMISSAL” : LEGAL CONSIDERATIONS

(i) Employee Must NOT act inconsistently with CD:

must leave promptly, not take action which shows still bound by contract

(ii) Employee Must Give Notice of CD before Leaving:

tendency of Employee resigning and then claiming CD

SBB v. NG KENG LIAN [2002] 5 MLJ 553: HC

RANBAXY v. RAVINDRA KUMAR [2005] 1 ILR 702: IC

IZLEENA MD IQBAR v. SAPURA [2007] 2 LNS 2010:IC

(iii) Employee Must Lodge s.20 within 60 days from Trigger Event:

SIM KOOI SOON v. MAS [2005] 2 CLJ 797: HC

ANG BENG TEIK v. PAN GLOBAL [1996] 3 MLJ 137: AC

(iv) Employee Must Begin Case : BOP to prove DISMISSAL



(C) PREVENTION / DEFENSE OF "CONSTRUCTIVE DISMISSAL"

(i) Well structured Internal Practice & Procedures : SOPs

e.g Complaints / Grievance Procedures for Sexual Harassment, Harassment, Victmisation by Superior etc.

(ii) IR Dept Reconciliation Stage :

Ensure that all relevant documents/evidence is placed before DGIR

(iii) HR Minister's Reference Stage : Whether to Quash

Difficulty due to reluctance by IC to entertain PO's, and to proceed once seized of jurisdiction

KATHIRAVELU GANESAN v. KOJASA [1997] 2 MLJ 685: SC

(iv) At Industrial Court Stage :

- Whether to raise PO : must go towards jurisdiction

MUSCATINE HLDGS v. CHUAH CHYE HIN [2005] 2 ILR 78:IC

- At Trial, whether to raise jurisdiction after evidence

IZLEENA MD IQBAR v. SAPURA [2007] 2 LNS 2010:IC

- At Trial, whether to raise arguments after all evidence tendered

LLOYDS REGISTER OF SHIPPING v. SARAH IBRAHIM [2005] 2 ILR 4:IC 4