



ESSENTIALS OF EMPLOYMENT LAW MALAYSIA & ASIA 2008

Topic: MALAYSIAN EMPLOYMENT & INDUSTRIAL LAW : BRIEF OVERVIEW AND SPECIFIC INSIGHTS

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Malaysian Employment & Industrial Laws: Brief Overview

- 1(a) - Express Terms and Implied terms;
 - some express terms may be rendered void
 - Implied Terms : by virtue of common law and/or statute
e.g **Employment Act 1955, Industrial Relations Act 1967**
- (b) Employment relationship not solely governed by contract law
 - **Industrial Relations Act 1967** – a piece of social beneficent legislation
- (c) **Industrial Relations Act 1967, s.20**
 - Termination of Employment : must be with “*just cause and excuse*”
 - Test for “*workman*” is “*contract of service*” – *s.2 IRA 1967*
 - recent ‘*over-haul*’ of *IRA 1967 : IR(A)A 2007*



2. JUDICIAL APPROACH TO CONSTRUING THE ACTS

"It is beyond doubt that the Act is a piece of beneficent social legislation by which Parliament intends the prevention and speedy resolution of disputes between employers and their workmen. In other words the object of Parliament enacting the law is to promote industrial harmony."

3. In line with their avowed policy therefore, both the E.A 1955 and IRA 1967 are to be given a wide and liberal construction of their provisions. The Court of Appeal, in **NEOH CHOO EE & CO SDN BHD V. VASALAMANY GOVINDASAMY** [2004] 3 CLJ 321, left little doubt of this:-

"The Act, like the Industrial Relations Act 1967, is a piece of beneficial social legislation by which Parliament intends the prevention and peaceful and speedy resolution of disputes between employers and their workmen. In other words the object is to promote industrial harmony. The Act is therefore legislation which ex necessitae rei must receive a liberal interpretation."



BASIC OVERVIEW OF E.A. 1955

4. No such entity known as the "Labour Court" . The Court of Appeal in **AUSTRAL AMALGAMATED TIN BHD V. ABDUL WAHAB KOPON** [2004] 2 CLJ 316 made this clear:-

"The inquiry that was conducted by the senior labour officer in the present case is the inquiry by virtue of the powers under s.69 of the EA given to the Director General of Labour to inquire into any dispute between an employee and his employer. It is only an inquiry and not a court proceeding. It is therefore erroneous to classify the labour office as an "inferior court" in the definition of "subordinate court" under s.3 of the CJA or a Labour Court as it is normally called, simply because the Labour Office is not a court in the first place. Moreover, there is no provision for a Labour Court in the EA."

5. The procedure for the making a complaint and inquiry proceedings under the E.A 1955 is governed by s.70 to 74 thereof, which may be summarized as follows:-

- Complaint must be by written statement to DG Labor : s.70(a)
- DG Labor must, as soon as practicable, examine complainant on oath/affirmation and record statement in case book : s.70(b)



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- If there are matters which ought to be inquired into, DG Labor will issue a Summons setting out relevant details and date, time and place for attendance for the inquiry: s.70(c) – (f)
 - At the inquiry, DG Labor shall examine on oath or affirmation persons summoned and then give a decision on the matter : s.70(g)
 - Decision will be in prescribed form and may include prohibitory order against any third party : s.70(i) & 73
 - Decision can be enforced as though a judgment of the Sessions or Magistrates Court : s.75 . Also recourse for security bond : s.78.
6. The High Court's role under the EA 1955 is only by way of reference on a question of law [s.76(1)] or by way of an appeal as though from the Sessions Court [s.77 & O55 r13 RHC]



CONSEQUENCES OF TERMINATION:

6. A termination of employment must be viewed from a **Contract law** AND **Industrial Law** perspective. Under contract law, damages is the usual remedy save for exceptional cases : **FUNG KEONG RUBBER v. LEE ENG KIAT** [1981] 1 MLJ 238.

7. Under IRA 1967, all termination must be for 'just cause and excuse' under s.20 IRA 1967. Statutory regime imposed by s.20 for "wrongful dismissal" : **KATHIRAVELU GANESAN v. KOJASA HLDGS BHD** [1997] 2 MLJ 685, sets this out clearly as comprising of four (4) levels:-

- the **Conciliatory** level
- the **Reporting** level
- the **Referral** level
- the **Adjudicatory** level i.e the **Industrial Court**

8. Employment is regarded as a fundamental liberty guaranteed under the Constitution and as such, s.20 is a statutory exception to the harsh consequences of the common law:

TAN TEK SENG v. SURUHANJAYA PP [1996] 1 MLJ 261 :FC

HONG LEONG EQUIPMENT v. LIEW FOOK CHUAN [1996] 1 MLJ 481: AC



MOULDING THE EMPLOYMENT CONTRACT : IR(A)A 2007

- Whether a “Workman” within s.2 IRA 1967:
CHONG KIM SANG v. METATRADE SDN BHD [2004] 2 CLJ 439: AC
- Special features to be considered in constructive dismissal cases.
SOUTHERN BANK BHD v. NG KENG LIAN [2002] 5 MLJ 553: HC
- Validity of Transfer clauses or orders :
LADANG HOLYROOD v. AYASAMY [2004] 2 CLJ 697: AC
- Position of probationer under s.20 IRA 1967:
K.C.MATHEWS v. KUMPULAN GUTHRIE [1981] 2 MLJ 320: FC
HARTALEGA SDN BHD v. SHAMSUL HISHAM [2004] 3 MLJ 117: HC
- Fixed Term Contracts: consequences of non-renewal?
M. VASAGAM v. KESATUAN PEKERJA RESORTS WORLD [2003] 5 MLJ 262: AC

END
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