



THE ROLE, FUNCTIONS AND POWERS OF THE INDUSTRIAL COURT IN RELATION TO RETRENCHMENT, TERMINATION AND DISMISSAL

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The long title of the **Industrial Relations Act 1967 (Act 177)** which was amended by the Industrial Relations (Amendment) Act 2007 (Act A1322) prescribes the following:-

"An act to promote and maintain industrial harmony and to provide for the regulation of the relation between employers and workmen and their trade union and the prevention and settlement of any difference or dispute arising from their relationship and generally to deal with trade disputes and matter arising there from".



Role of the Industrial Court:-

- Uphold social justice;
- To act in accordance with equity, good conscience and substantial merits of the case;
- Creating a harmonious industrial environment through the process of arbitration and the decisions of the Court (Award) consistent within Industrial Relations Act 1967.



Power of the Industrial Court:-

*"..The Industrial Court is a creature of statute, i.e. the **Industrial Relations Act, 1967**. Its powers are derived from provisions of the statute which are the rules of the game and the Industrial Court has to decide according to these rules. The powers conferred upon the Industrial Court have the force of law behind it and are not exercisable by reason of discretion vested in it. In other words, the Industrial Court has to function within the limits imposed by the statute that created it and to act according to its provisions..."* **Mostek Malaysia Sdn. Bhd., Penang v. Cik Aniza Yaacob & 763 Ors, Penang** [1986] 2 ILR 876.



In the case of ***Dunlop Estate Bhd. v. All Malayan Estates Staff Union*** [1980] 1 MLJ 243 at p. 246, Mohd. Azmi J held the following:-

"In my view, having regard to the principles enunciated in the cases cited, the Industrial Relations Act, being a social legislation enacted with the prime object of attaining social justice and industrial peace, demands practical and realistic interpretation whenever necessary, for the purpose of maintaining good relationship and fair dealings between employers and workers and their trade union, and the settlement of any differences or disputes arising from their relationship."



Functions of the Industrial Court:-

- To hear and hand down decisions or awards in industrial disputes referred to it by the Minister or directly by the parties.
- To grant cognizance to the collective agreements which have been jointly deposited by the employers/trade union of employers and trade union of employees.



In ***Hotel Malaya Sdn. Bhd. & Anor. v. National Union of Hotel, Bar & Restaurant Workers & Anor.*** [1982] 1 CLJ 640; [1982] 2 MLJ 237 at 240, Raja Azlan Shah CJM described the function of the Industrial Court as follows:

"It exercises a quasi-judicial function. It gives a full reasoned judgment in the nature of an award (s. 30). Its functions comprise an investigation of the facts, an analysis of the facts, findings of facts, and lastly, the application of the law to those findings."



Types of Cases heard in the Industrial Court:-

- Dismissal of workmen which have been referred to the Industrial Court by the Minister;
- Trade disputes between employers/trade unions of employers and trade union of workmen which have been referred to the Industrial Court;
- Applications by any party bound by an Award or collective agreement for the interpretation/amendment/variation thereof;
- Applications made by any party bound by an Award to refer to the High Court on questions of law;
- Complaints of non-compliance of an Award or collective agreement;
- Cases of victimization in connection with trade union activities.



The Industrial Court is armed with the jurisdiction to decide upon complaints of dismissal which are alleged to be without just cause or excuse. The Industrial court may award the following remedies:-

- Reinstatement of the employee concerned;
- Monetary compensation in the form of Backwages.



Basis for Appeals against Industrial Court decisions in the High Court

The Industrial Court would exercise its discretion whether or not to refer certain questions of law to the High Court for determination.

Section 33A (1) of the IRA 1967 provides the following;-

“Where the Industrial Court has made an award under Section 30(1) IRA 1967 it may, in its discretion, on the application of any party to the proceedings in which the award was made, refer to the High Court a question of law :-

- (a) Which arose in the course of the proceedings;
- (b) The determination of which by the Court has affected the Award;
- (c) Which, in the opinion of the Court is of sufficient importance to merit such reference; and
- (d) The determination of which by the Court raises, in the opinion of the Court, sufficient doubts to merit such reference.”



The High Court's Supervisory Jurisdiction – Judicial Review

Judicial review jurisdiction is distinguished from the appellate jurisdiction of the High Court. The case of ***Tanjong Jaga Sdn. Bhd. v. Minister of Labour and Manpower & Anor*** [1987] 2 CLJ 119; [1987] 1 MLJ 125 clearly provides that judicial review is concerned with the decision making process of the tribunal as opposed to the decision made by the tribunal. At the review level, the High Court will only look at the decision making process as opposed to merits of the case. In the event the error of law goes to the issue of jurisdiction, the High Court will then intervene. There may be instances wherein the High Court makes an order quashing the award of the Industrial Court and the case is then remitted back to the Industrial Court for a fresh award in accordance with the law.



Pembenaan Hashbudin (M) Sdn. Bhd. v. Thambipillai Sivagnanam Anor. [1990] 1 ILR 135.

"...if there is an error or law on which the award of the Industrial Court is founded, such error whether of interpretation or otherwise must necessarily be without jurisdiction or in excess of jurisdiction. Any decision in any award based on an invalid interpretation or construction of the law must surely be a nullity, and this must be construed as a nullity resulting from the Industrial Court doing or failing "to do something in the course of the inquiry which is of such a nature that its decision is a nullity" as referred to by Lord Reid at page 171 in Anisminic's case, or the Court "having asked themselves the wrong question" as referred to be Lord Diplock at page 187 in Re Racal Communication..."



Analysis of Awards of Dismissal Cases (2000 – 2007)

TYPES OF TERMINATION	2000	2001	2002	2003	2004	2005	2006	2007
Constructive	20	26	35	40	34	22	42	97
Misconduct	479	726	810	763	1638	2144	2051	1200
Retrenchment	21	41	52	61	61	16	32	422
Others	-	-	-	-	-	-	-	402
TOTAL	520	793	897	864	1733	2182	2125	2121



Trends in Industrial Court Awards:

Backwages-

- Pursuant to **Section 30(6a) of the IRA 1967**, the Second Schedule of the Act - in the event the Industrial Court awards backwages, it does not exceed 24 months backwages from the date of dismissal based on the last drawn salary of the person who has been dismissed without just cause or excuse.
- As for a probationer- backwages would not exceed 12 months backwages from the date of dismissal based on the last drawn salary.
- In the event of post-dismissal earnings, a percentage of such earnings, to be decided by the Court, shall be deducted from the backwages given;
- Any relief given takes into account contributory misconduct of the workman.



Suhaila Suleiman v. Vigers (JB) Sdn. Bhd. [2008] 2 ILR 1
– Backwages based on claimant's last drawn salary but limited to 24 months.

Dr. James Alfred (Sabah) v. Koperasi Serbaguna Sanya Bhd. (Sabah) & Anor [2001] 3 CLJ 541 - the Industrial Court in assessing the quantum of backwages, must take into account the fact, if established by evidence or admitted, that the workman has been gainfully employed elsewhere after his dismissal.



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~ THANK YOU~