



AVOIDING & RESOLVING DISPUTES IN EMPLOYMENT LAW & CONTRACTS :

"TERMINATION AND DISMISSALS : ISSUES ARISING AND HANDLING THEM EFFECTIVELY"

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OUTLINE OF ISSUES :

(A) Termination v. Dismissal : *Distinction without a difference ?*

(B) Unilateral Termination : *Procedure & Compliance;*

(C) Resignation & Non-Confirmation : *Employer's rights ;*

(D) Dismissal : *preliminary considerations & objective;*



(A) TERMINATION v. DISMISSAL

- **'DISMISSAL' : to send away from one's employment, to reject without further hearing** (Oxford Paperback Dictionary). i.e there is a connotation of unilateral-ness.
- **"TERMINATE" : to bring to an end** i.e could be both mutually as well as unilaterally.
- **s.20 IRA 1967** allows the workman to make a representation where he considers that he has been "**dismissed without just cause or excuse**".
- **E.A 1955** refers to "termination of contracts" (ss. 11, 12, 13, 14, 19).
NB: s.40(3) : offence to 'dismiss' female employee during period of maternity leave;
s.14(1)(a) : "dismiss without notice" after due inquiry
Reg 4 E(T&LO Benefits) Regulations 1980 : entitled only if '*termination*' not due to retirement, misconduct or voluntarily.



DR. A. DUTT v. ASSUNTA HOSPITAL [1981] 1 MLJ 304 FC, per Chang Min Tat FCJ:-

"It further follows that on a proper interpretation of the relevant sections of the Act, there is no material distinction between dismissal and termination. Either must be with just cause or excuse to justifiable; otherwise the Industrial Court may make an award."

HONG LEONG EQUIPMENT v. LIEW FOOK CHUAN [1996] 1 MLJ 481 AC, per Sri Ram JCA:-

"Whether a particular right is a fundamental liberty is a question that has to be dealt with on a case by case basis. This case concerned the right to livelihood which was one of the fundamental liberties guaranteed by Pt II of the Federal Constitution."



(B) UNILATERAL TERMINATION :

- Instances are misconduct, poor performance, redundancy.

➤ **'MISCONDUCT' : to subscribe to basic tenets of natural justice, BUT;**
DREAMLAND CORP v. CHOONG CHIN SOOI [1988] 1 MLJ 111, FC;
WONG YUEN HOCK v. SYKT HONG LEONG ASSURANCE [1995] 2 MLJ 753, FC;

"The Industrial Court is an independent statutory body capable of reaching a fair result by fair means on all matters referred to it. Therefore, if there had been a breach of natural justice by the employer at the initial stage, it could be cured at the rehearing by the Industrial Court".

➤ **'POOR PERFORMANCE' : basic '2 warnings' rule, BUT ;**
I.E.PROJECT v. TAN LEE SENG [1987] 1 ILR 165, IC;
IREKA CONSTRUCTION v. CHANTIRAVATHAN [1995] 2 ILR 11, IC;
GOODWAY RUBBER v. CHARLES GEORGE [2003] 1 ILR 279, IC;

➤ **' REDUNDANCY' : retrenchment being discharge of surplus labour ;**
WILLIAM JACKS & CO v. S. BALASINGAM [1997] 3 CLR 235, AC;
HARRIS SOLID STATE v. BRUNO GENTIL [1996] 4 CLR 747, AC;
KUMPULAN PERANGSAN v. ZAID HJ MOHD [1997] 1 MLJ 789, SC;



(C) RESIGNATION & NON-CONFIRMATION : EMPLOYER'S RIGHTS

➤ **'RESIGNATION' : requirement to accept resignation, BUT;**
RIORDAN v. WAR OFFICE [1959] 1 WLR 1046, HC per Diplock J;
PERCETAKAN KESELAMATAN NASIONAL v. JAMALIAH [2001] 2 ILR 536

NB (1) Recourse for employers for indemnity payment : s.69C (after 5.10.2000)

(2) 'Forced Resignation' :

STANLEY NG v. AAF PTE LTD [1978] 1 LNS 186;

HARPERS TRADING v. KESATUAN [1988] 2 ILR 314

BATA (M) BHD v. NORMADIAH SUUD [1991] 2 ILR 1106

➤ **NON-CONFIRMATION : prerogative and lower threshold ;**
K.C.MATHEWS v. KUMPULAN GUTHRIE [1981] 2 MLJ 320: FC
V. SUBRAMANIAMAN v. CRAIGLEA ESTATES [1982] 1 MLJ 317: FC
ABDUL MAJID v. PAARI PERUMAL [2002] 2 MLJ 640: AC
HARTALEGA SDN BHD v. SHAMSUL HISHAM [2004] 3 MLJ 117: HC



(D) DISMISSAL : Preliminary considerations & Objective

- *Employer's exposure in Industrial context, both financial and otherwise;*
DR. JAMES ALFRED v. KOPERASI SERBAGUNA [2001] 3 CLJ 541, FC;

- *Other Considerations :*
MOHD AHMAD v. YDP MAJLIS DAERAH JEMPOL [1997] 3 CLJ 135
NIK OMAR B. NIK MAN v. BSN [2005] 6 MLJ 616

END