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Absenteeism: Shift in Burden of Proof

Asnida binti Abd Rahim v UMW Toyota Motor Sdn Bhd
(Industrial Court Award No 1207 of 2021)



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The relationship between an employer and employee is built on the concept of trust and confidence. This concept necessarily entails an obligation on the employee to faithfully discharge his duty to his employer which includes the duty to be present at the workplace and to render services expected of him.



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The claimant last held the position of Executive with the company's Customer Service Operations Division wherein she was entrusted with, among others, the responsibility of handling customer complaints and enquiries. In July 2018, the claimant had been warned of her high record of late comings and advised by the company to improve on her tardiness. However, despite clear reminders on her work performance and attendance record, the claimant failed to show any improvement and was subsequently placed under an Attendance & Performance Improvement Plan from January to July 2019.

Suddenly, in October 2019, the claimant gave the company one month's notice of her conditional resignation subject to specific terms of a mutual separation scheme which was never accepted by the company. Since her conditional resignation, the claimant was absent without any prior approval or excuse provided to her superior for a period of 20 days.

In line with the rules of natural justice and procedural fairness, the claimant was provided the opportunity to explain her unauthorised prolonged absence from work via a show cause letter. In her reply, the claimant admitted that she was unprofessional and had taken leave without prior approval from her superior, for which she apologised. Upon taking into account all the opportunities afforded to the claimant to show her improvements as well as her unequivocal admission in her reply, the company decided to terminate her on the grounds of her unauthorised prolonged absence from work.

Intriguingly, the claimant testified before the court that she had updated her superior of her absences by forwarding her medical

certificates via WhatsApp messages despite never pleading this in the cause papers filed in court. Nevertheless, in dismissing the claimant's claim for unfair dismissal, the Industrial Court held, *inter alia*, that:

- (a) As the company had established that the claimant was absent from work given that she had admitted her guilt in her reply to the show cause letter and apologised for not applying for unpaid leave, the burden then shifted and rested on the claimant to justify her absence;
- (b) The claimant failed to produce any documentary or oral evidence to prove that she had allegedly submitted her medical certificates to her superior via WhatsApp messages despite testifying to this;
- (c) The claimant had also failed to produce a single medical certificate for her absence or that she had applied for unpaid leave as alleged by her;
- (d) It was clear that the claimant was a habitual offender with a bad disciplinary record throughout her employment who had failed to improve herself despite the many opportunities given by the company; and
- (e) The punishment of dismissal in this case was appropriate and commensurate with the misconduct as the claimant was employed as a front liner entrusted specifically to monitor and deal with customer complaints and enquiries.

The company was represented by partner Shariffullah Majeed, and associate Arissa Ahrom, of [Lee Hishammuddin Allen & Gledhill](#).

The Industrial Court award may be viewed [here](#).

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