



5 AUGUST 2021

## Breach of Duty to Protect and Further Interest of Employer

*Azizul bin Ab Aziz v Tesco Stores (Malaysia) Sdn Bhd*  
(Industrial Court Award No 188 of 2021)



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An employee has an obligation to faithfully discharge his duty to his employer and it follows that he should not act inconsistently with the interests of the employer. The claimant in this case had been employed as the company's lorry/trailer driver for approximately three years prior to his dismissal in 2019.



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While on a trip to deliver goods from Ipoh to Seremban on 20 June 2019, the claimant crashed into the back of another lorry. Based on the investigation of Polis Diraja Malaysia (**PDRM**, the Royal Malaysia Police), the claimant was found to have driven negligently and ordered to appear before the Kuala Kubu Baru Magistrates Court.

In order to investigate the matter, the claimant was suspended and issued a show cause letter to provide his explanation as to why disciplinary action should not be taken against him. Unsatisfied with the claimant's explanation, the company issued a notice of domestic inquiry, levelling an allegation of negligent driving against the claimant. Noting the position of trust that the claimant held in the company, the gravity of the misconduct that the claimant was found guilty of by an independent panel and his disciplinary record, the company could no longer repose the necessary trust and confidence in the claimant to continue in employment.

In his defence, the claimant averred that he was not given sufficient rest prior to commencing his shift on the day of the accident and that his assignment involved a long-haul trip which required two drivers. It was established before the Industrial Court that the claimant had clearly been negligent in handling the company's lorry which not only created danger to himself, but also to other road users on the public highway.

In dismissing the claimant's claim for unfair dismissal, the Industrial Court held, *inter alia*, that:

- (a) Although the claimant had averred that his assignment involved a long-haul trip which required two drivers, he had failed to prove his assertion and disprove the company's In-

Sourcing SOP, which provides that only one driver is required for mid-haul trips;

- (b) The main cause of the claimant's dismissal is the element of negligence which was proven by the PDRM's investigations and the claimant's admission of the PDRM summons also amounted to an admission of his negligence in causing the accident;
- (c) The claimant's previous misconduct of negligently handling the company's vehicle and colliding with another bus, causing injuries to two passengers in 2018, should have been a lesson to the claimant to take precautionary measures so as to avoid a repeat incident;
- (d) Thus, the claimant's dismissal on the repeated misconduct of negligent driving should not be disputed as the company had previously given the claimant an opportunity to continue in his employment and redeem himself after the incident in 2018;
- (e) The company has a right to determine which drivers are qualified and adhere to safety aspects so as not to endanger other road users and cause losses to the company as well as to protect the company's reputation. Further, the claimant had indeed been given enough rest before starting his shift on 20 June 2019; and
- (f) The company's dismissal of the claimant on the grounds of his misconduct was in line with the rules of natural justice and was conducted in good faith, without any discrimination or motive of victimisation.

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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Published by the Employment & Industrial Relations Practice

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