

Contact Persons:

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Employment

Lim Heng Seng
Partner
DID: +603 6208 5861
Fax: +603 6201 0122
Email: lhs@lh-ag.com

Dato' Thavalingam C Thavarajah
Partner
DID: +603 6208 5857
Fax: +603 6201 0122
Email: tt@lh-ag.com

Shariffullah Abdul Majeed
Partner
DID: +603 6208 5881
Fax: +603 6201 0122
Email: sha@lh-ag.com

Applicability of s 43 Evidence Act 1950 in Industrial Court

Woo Chee Seong & Anor v Measat Broadcast Systems Sdn Bhd
(Court of Appeal Civil Appeal No W-02(A)-944-05/2017)

| by David Tan Seng Keat |

Last Thursday (2 August), the Court of Appeal upheld a decision of the High Court which had held that s 43 of the Evidence Act 1950 was applicable to awards of the Industrial Court, and that the latter tribunal had erred in relying on evidential findings made in a related case.

Section 43 provides that:

“Judgments, orders or decrees other than those mentioned in sections 40, 41 and 42 are irrelevant unless the existence of such judgment, order or decree is a fact in issue or is relevant under some other provision of this Act.”

Brief background

At the trial before the Industrial Court, the two ex-employees, who had been dismissed from service on the grounds of misconduct, had asserted that they were merely following the orders of their superior.

In finding their dismissals to be unfair, the Industrial Court had expressly relied upon the evidential findings and admissions made by the superior in his separate, unsuccessful claim of unfair dismissal.

Measat sought judicial review and the High Court, in quashing the decision of the Industrial Court, had observed that the basic rules of evidence, which necessitate each fact in issue be proven independently, precluded the importing of evidence reproduced in the award of another division of the Industrial Court and it followed that the Industrial Court had committed an error of law in deriving its conclusions from the findings of fact contained in Award 802/2015.

At the Court of Appeal

The ex-employees thereafter appealed to the Court of Appeal, arguing that the Evidence Act 1950 did not apply to the Industrial Court. They further contended that an award of the Industrial Court was not a

judgment, order or decree within the meaning of s 43.

In response, it was submitted on behalf of Measat that:

- (a) awards of the Industrial Court are binding on the parties involved, preclude further litigation and are ultimately enforceable as though they were orders of the High Court or Sessions Court (as the case may be);
- (b) the statutory duty reposed on the Industrial Court mandates that it scrutinise the evidence before it critically in order to reach its decisions; and
- (c) accepting the contentions advanced by the appellants would result in a breach of natural justice as it would deprive parties of the ability to critically test evidence through cross-examination.

The Court of Appeal concurred, and dismissed the ex-employees' appeal. In handing down its judgment, the court made the following observations:

- (a) it was not tenable to the court's mind that the Evidence Act 1950 was not applicable to the Industrial Court, and the application of evidential principles must be read conjunctively with the Industrial Court's statutory directive to "act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal form"; and
- (b) it would amount to a breach of natural justice to allow the Industrial Court to accept into evidence the factual findings of other decisions, as this would deny parties the opportunity to cross-examine witnesses.

In short, the Court of Appeal was satisfied that it would be contrary to both established jurisprudence as well as public policy for the Industrial Court to accept evidence derived from other decisions. It accordingly followed that the Industrial Court is confined to the materials and evidence before it when making its decisions.

Measat was represented by partner Dato' Thavalingam C Thavarajah and associate David Tan Seng Keat of [Lee Hishammuddin Allen & Gledhill](#).

David Tan Seng Keat (dt@lh-ag.com)

If you have any queries, please contact the author or his team partner [Dato' Thavalingam C Thavarajah](#) (tt@lh-ag.com).

T +603 6208 5888
F +603 6201 0122/0136
E enquiry@lh-ag.com
W www.lh-ag.com

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