

Contact Persons:

16 AUGUST 2018

**Employment**

Lim Heng Seng  
**Partner**  
DID: +603 6208 5861  
Fax: +603 6201 0122  
Email: [lhs@lh-ag.com](mailto:lhs@lh-ag.com)

Dato' Thavalingam C Thavarajah  
**Partner**  
DID: +603 6208 5857  
Fax: +603 6201 0122  
Email: [tt@lh-ag.com](mailto:tt@lh-ag.com)

Shariffullah Abdul Majeed  
**Partner**  
DID: +603 6208 5881  
Fax: +603 6201 0122  
Email: [sha@lh-ag.com](mailto:sha@lh-ag.com)

**Intention to be Innovative is No Excuse for Non-Compliance with Company Policies and Procedures**

*Celcom Axiata Berhad v Mahkamah Perusahaan Malaysia & Anor*  
(High Court Judicial Review Application No WA-25-93-04/2018)

| by David Tan Seng Keat and Aida Yasmin Binti Cheree Mohamad |

Earlier today, the High Court overturned an award of the Industrial Court which had found the dismissal of an employee to be unfair on the grounds that the employee's misconduct could be excused as a mere mistake.

The employee had been dismissed on the grounds that he had acted without authority and had failed to comply with the company's procurement policies vis-à-vis the appointment of a web developer, resulting in fees of RM85,000 being charged back to the company through a third-party contractor.

Although these breaches were found to have been proven by the Industrial Court, the chairman had ultimately concluded that the dismissal was unfair on the basis that the employee's breaches of the company's policies and procedure were made without any ill-intention, and that he was merely "*being innovative*" with the convenience and success of the company in mind. The dismissal was, therefore, too harsh a punishment for him.

In challenging the Industrial Court's award, the company stressed the paramount importance of adherence to established policies and procedures, especially those that govern the use of company funds. The company also contended that in so far as the misconduct of non-compliance was concerned, the intention of the employee was entirely irrelevant. Therefore, the decision of the Industrial Court was not made on a rational basis.

The learned judge in the High Court agreed with the company, and held that the Industrial Court had erred in law in exculpating the employee on the grounds that it did.

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

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

**David Tan Seng Keat** ([dt@lh-ag.com](mailto:dt@lh-ag.com)) and **Aida Yasmin Binti Cheree Mohamad** ([ayc@lh-ag.com](mailto:ayc@lh-ag.com)).

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

Lee Hishammuddin Allen & Gledhill

Level 6, Menara 1 Dutamas  
Solaris Dutamas  
No. 1, Jalan Dutamas 1  
50480 Kuala Lumpur  
Malaysia

T +603 6208 5888  
F +603 6201 0122/0136  
E [enquiry@lh-ag.com](mailto:enquiry@lh-ag.com)  
W [www.lh-ag.com](http://www.lh-ag.com)

Published by the Employment Practice Group

© Lee Hishammuddin Allen & Gledhill. All rights reserved. The views and opinions attributable to the authors or editor of this publication are not to be imputed to the firm, Lee Hishammuddin Allen & Gledhill. The contents of this publication are intended for purposes of general information and academic discussion only. It should not be construed as legal advice or legal opinion on any fact or circumstance.

[Feedback](#)

[Unsubscribe](#)