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15 JANUARY 2019



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Contract for Services or Contract of Service?

SOCSCO v Kencana Marine Sdn Bhd
(Seri Manjung Magistrate's Court Case No AH-87-687-09/2017)

| by Sebastian Tay Hanxin |

Employers are required under the Employees' Social Security Act 1969 to make monthly contributions for employees to be insured ^[1] under SOCSO and to report any accidents involving its employees. An employee may lodge a complaint with SOCSO if an employer fails to fulfil its obligations.

In June 2014, the complainant entered into a contract for the provision of his services as a forklift driver for a specific project for an initial period of one year.

The complainant met with a road accident, which required him to be hospitalised. Following his discharge from hospital, the complainant continued to render his services until the end of the initial contract period.

On the expiry of the initial contract, a second contract on similar terms was entered into for the continuation of his services for the same project for a further six months.

More than a year after the expiry of the second contract, the complainant lodged a complaint with SOCSO, claiming that he had been an employee of the Company. After investigations by SOCSO, the Company was charged under the Act for failure to report the accident.

The primary issue before the Magistrate was whether the contractor was engaged as an employee under a contract of service, or an independent contractor engaged under a contract for services.

Following the close of the prosecution's case, the Magistrate, in dismissing the charge without calling for the defence, held that the complainant was not an employee and mentioned, among other reasons, that:

(a) The complainant's contracts did not contain terms such as

salary increment, annual leave, medical leave and medical claims which employees of the Company were enjoying,

(b) The complainant's agreement to the second contract demonstrated his understanding that he was engaged as an independent contractor,

(c) The Company's stipulation of its yard operating hours for security reasons and the record of the complainant's attendance for the purposes of calculating his monthly payments did not amount to the exercise of control over an employee,

(d) The complainant's role was not integral to the Company's business as his services were limited to the particular project.

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

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Published by the Employment Practice Group

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[1]

SOCSSO (the Social Security Organization) is the statutory body administering the national social security scheme for employees