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Similar Misconduct by Others is No Excuse for One's Own

Teoh Yin Loo v Hewlett-Packard (M) Sdn Bhd
(Industrial Court Award No 2333 of 2019)

An employee cannot justify his or her own misconduct by relying on the existence of similar conduct committed by other employees.

In the above case, the employee was dismissed after it was found that she had been making personal expense claims through a number of contract staff who reported to her, whereby expenses were claimed in their names and were then approved by her (as the first-level approver) before being processed for second- and third-level approval. Once payment was made to the contract staff, they would then pay the monies to her via bank transfer.

Notably, the employee did not deny that the claims were for her personal expenses, including, among other things, birthday dinners for her husband, and that she had used the contract staff in this manner. However, she had asserted that this had been a long-standing practice in the company and was therefore considered permissible, although she did not, in the course of the company's investigations, provide any concrete evidence to back up the assertion.

At the Industrial Court, the employee reiterated her stance and claimed that the company had condoned it as all the expense claims had been approved by her superiors.

The Industrial Court, however, agreed with the company and held that where there are express written policies in place which prohibit certain conduct, the doctrine of condonation cannot be said to arise. The court further agreed that, as the employee had made the claims in the names of her contract staff, her superiors had been approving the claims under the belief that they were their claims which had been approved by the employee, and not those of the employee herself. For these reasons, the Industrial Court concluded that the doctrine of condonation could not be said to apply.

In respect of the employee's assertion that other employees had been similarly misusing the company's expense claim system, the court rightly rejected this as irrelevant, holding that it was not for an employee to question why the employer should take disciplinary action against her and not another.

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

The company was represented by partner Dato' Thavalingam Thavarajah and associates, David Tan Seng Keat and Farah Dini binti Zaini, of [Lee Hishammuddin Allen & Gledhill](#).

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