

LHAG Insights

Industrial Relations & Employment



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A Balancing Act: Managing Employees' Expectations and Ensuring Enterprise Survival during the MCO Period

Ho Kok Ming v Central Aluminium Manufactory Sdn Bhd (Industrial Court Award No. 1633/2022) heard together with Pang Koon Wooi v Central Aluminium Manufactory Sdn Bhd (Industrial Court Award No. 1632/2022)

2020 and 2021 were trying years for enterprises across the nation. Employers were pushed to make difficult decisions to ensure business sustainability, while also attempting to preserve jobs. In these cases, the Industrial Court shed light on the reasonableness of the measures taken by employers during the Movement Control Orders (“**MCO**”).

The MCO resulted in the temporary cessation of the Company’s sales and marketing activities at its Kuala Lumpur branch (“**KL Branch**”). Consequently, there was no work for the Employees.

To ensure business sustainability while preserving the Employees’ positions in the Company, the Company unilaterally placed the Employees on unpaid leave of 6 months. The Employees, however, insisted on being provided with work at the KL Branch, and demanded their salary in full.

The Company subsequently ordered the transfer of the Employees to its Headquarters in Perak. The Employees refused to comply with the transfer orders and walked out of their employment claiming constructive dismissal (“**1st Purported Breach**”).

The Employees then filed their respective representations at the Industrial Relations Department. A Memorandum of Agreement was executed with the Employees. The Employees then reported to work. A week later, the Employees proceeded to walk out of their employment yet again. They claimed that the Company had breached the Memorandum (“**2nd Purported Breach**”).

Decision

The Industrial Court found in favour of the Company in both cases. With regard to the 1st Purported Breach, the Court held that:

- (i) The transfer order was carried out in accordance with the Employees’ terms and conditions of employment;
- (ii) The decision to transfer the Employees to the Company’s Headquarters in Perak was made in good faith to preserve their employment; and
- (iii) The transfer orders did not occasion any economic loss to the Employees. The Employees would have earned their full salary on the same terms and conditions of employment, and have their housing and moving costs borne by the Company.

With regard to the 2nd Purported Breach, the Court held that the Company did not breach the Memorandum as:

- (i) The payment of the Employees’ backwages did not form part of the terms of the Memorandum; and
- (ii) The Company did not alter the Employees’ status to that of daily wage employees as alleged by the Employees.

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The Court also found that there were material contradictions in the Employees' respective cases. The Employees initially claimed that they were constructively dismissed by the Company due to the breach of the Memorandum – stating in their letters to the Company that they were driven out of employment on the basis that it was a “*penamatan terancang*”. Both Employees were, however, unable to explain the purported “*penamatan terancang*” and the contents of their respective letters during cross-examination. The plot thickened as the Employees later changed their position in alleging that they had been retrenched from the Company without any notice by their superior. They later conceded that their superior was not vested with the authority to dismiss employees.

These cases demonstrate the Courts' acknowledgment of the difficulties faced by employers during the COVID-19 pandemic, as well as the 'big-picture' evaluation when considering the fine balance between an employee's right to work, and an employer's interest in preserving their business.

The Company was represented by partner Amardeep Singh Toor and associate, Wong Lien Taa of Lee Hishammuddin Allen & Gledhill. The Industrial Court awards can be found [here](#) and [here](#).

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