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Prolonged PIP Process Does Not Render Dismissal Unjust

Saw David Thien v BASF (Malaysia) Sdn Bhd
(Industrial Court Award No 717 of 2020)

The claimant was the company's Senior Manager, Facilities and Administration. During his yearly appraisal, he was assessed to be performing below the levels expected by the company. Due to his ongoing poor work performance, he was placed on seven rounds of Performance Improvement Plans which spanned a period of 29 months. The claimant, however, did not show any improvement and continued to perform poorly, and this eventually led to his dismissal.

The Industrial Court dismissed the claimant's allegation that his dismissal was without just cause or excuse. Taking into consideration the principle that employers should be very slow to dismiss an employee on the ground of poor performance without first informing him of his shortcomings, warning him of the possibility of dismissal and giving him an opportunity to improve, the court held that the company was "slow enough" before deciding to dismiss the claimant. The claimant had been provided sufficient time and opportunity to improve himself. He had, however, deliberately refused to cooperate and failed to demonstrate his persistence to improve his work performance.

On the claimant's work performance, the court set out the areas which the company had identified as the claimant's shortcomings. The court held that the claimant had been made aware of such shortcomings and that the company had consistently addressed its discontent with the claimant's work performance. The claimant had been given adequate space to explain himself, but his explanations were trivial and unconvincing. He had blamed other departments and his staff for his own shortcomings. He had chosen to act inconsistently with what was expected of him by his supervisors, and his action or inaction in solving the issues caused small problems to become huge issues.

In dismissing the claim, the court also observed that the claimant held a senior managerial position and was expected to work independently with less supervision and guidance from his supervisors. It further held that the performance of an employee is subjective and that the best person to judge should and must be the company.

The company was represented by partner [Hoi Jack S'ng](#) and senior associate Amardeep Singh Toor, and supervised by Employment Practice partner Lim Heng Seng, of [Lee Hishammuddin Allen & Gledhill](#).

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

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If you have any queries, please contact the author or his team partner [Lim Heng Seng](#) (lhs@lh-ag.com).

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