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Voluntary Separation Scheme: Is it an Unjust Dismissal?

It is an employer's managerial prerogative to reorganize its business. If redundancies arise in the course of exercising such prerogative, there will be the need to cease employment of redundant employees who are in excess of the employer's requirements by retrenchment.

In adopting good industrial relations practices, employers often work out a mutually agreed cessation of employment with employees instead of unilaterally exercising their prerogative to terminate their services.

Parties can agree to enter into an employment contract. Likewise, they are free to enter into an agreement to disengage from the said contract.

A voluntary separation scheme (**VSS**) is a scheme where an employer invites the employee to cease employment voluntarily with the payment of a compensation package. A VSS is often used when an employer intends to reduce headcount.

Where parties agree to a VSS and the employee later contends that the exercise amounted to a dismissal, the issue then turns on whether there was a binding agreement between the parties to amicably cease the employment relationship. If there was such an agreement, there would have been a mutual cessation of the employment relationship and would not constitute a dismissal.

Put simply, upon execution of a VSS, an employee's claim for unjust dismissal would not succeed unless there are vitiating factors, such as coercion, inducement or threats. Circumstances where unjust dismissal can be claimed under s 20 of the Industrial Relations Act 1967 (**the Act**) when employees have agreed to a VSS are therefore limited.

The object and policy of the Act is to promote industrial harmony and the prevention and settlement of any differences or disputes. In line with its object and policy, employees should not be

allowed to resile from the terms of the VSS except in very limited and exceptional circumstances where the VSS is either void or voidable. To allow a resolved matter to be perpetuated as a dispute by a finding of dismissal would be inconsistent with the policy and object of the Act.

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