

# LHAG Insights

Industrial Relations & Employment



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### Restating the Law on Termination Benefits

AworldTec Engineering Sdn Bhd v Muhamad Idris Arifin  
(Civil Appeal No.: MA-16-11-10/2021)

It is trite industrial relations jurisprudence that when a genuine fixed-term employment contract expires by effluxion of time, it ceases itself and it is not terminated by either the employer or the workman. This is expressly stated under Section 11 (1) of the Employment Act 1955 (“**EA 1955**”) which provides that among others, a fixed-term contract shall terminate when the period of time for which such contract was made has expired. It is well established in a plethora of cases that in line with Section 11 (1) of the EA 1955, a fixed-term contract lapses itself by effluxion of time upon its expiry.

In this case, the Respondent was employed under a continuous fixed-term contract for a period of 24 months. Approximately 2 weeks before the expiry of his contract, the Respondent was notified by the Appellant that his contract would be coming to an end upon its expiry. However, 1 week after his contract had expired, he filed a complaint to the Melaka Labour Department to claim for termination benefits of 2 years pursuant to Regulations 3 and 4 of the Employment (“**Termination and Lay-Off Benefits Regulations 1980**”). This claim was allowed by the learned Assistant Director General (“**ADG**”) of the Melaka Labour Department. In allowing his claim, the learned ADG relied on the Shah Alam High Court’s decision in *SAZ Maritime Services Sdn Bhd v Sapian Bin Baharom & 16 Ors [2014] 1 LNS 1457*.

Dissatisfied with the ADG’s decision, the Appellant appealed to the High Court against the latter’s decision. The crux of the Appellant’s appeal revolved around the issue of whether the

Respondent's contract was 'terminated' within the meaning and purposes of Regulations 3 and 4 of the Employment Termination and Lay-Off Benefits Regulations 1980 by virtue of its expiration. Regulation 3 of the Employment Termination and Lay-Off Benefits Regulations 1980 provides the liability of the employer to pay termination and lay-off benefits, to be calculated in accordance with Regulation 6 subject to 2 preconditions being satisfied:

- (a) The employee must have been employed under a continuous contract for a period of not less than 12 months; and
- (b) The contract of service is terminated or the employee is laid-off.

Further, Regulation 4 (1) of the Termination and Lay-Off Benefits Regulations 1980 provides that an employee is entitled to termination benefits if his service is terminated for any reason whatsoever other than the following 3 reasons:

- (a) By the employer, upon the employee attaining the age of retirement if the contract of service contains a stipulation in that behalf; or
- (b) By the employer, on the grounds of misconduct inconsistent with the fulfilment of the express or implied conditions of his service, after due inquiry; or
- (c) Voluntarily by the employee, other than under section 13 (2) or for the reasons specified in section 14 (3) of the EA 1955.

It was undisputed that the Respondent has been employed under a continuous contract for a period of not less than 12 months and that he was never laid-off. In these circumstances, it was successfully argued that the phrase 'terminated' in Regulations 3 and 4 of the Employment Termination and Lay-Off Benefits Regulations 1980 postulates a positive act to end the employment relationship. Given that fixed-term contracts automatically terminate or come to an end upon expiration and are not terminated by either party, the Respondent cannot be entitled to termination benefits.

It is also clear from the distinction of the use of the phrase 'terminate' in section 11 (1) of the EA 1955 and 'terminated' in Regulations 3 (1) (a) and 4 (1) of the Termination and Lay-Off Benefits Regulations 1980, that the legislature had intended to distinguish between:

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- (a) 'terminate' being the expiry of the agreed period of a fixed-term contract by effluxion of time; and
- (b) 'terminated' being the positive action of bringing an employment contract to an end for any reason whatsoever other than the 3 instances, to compensate the employees for a sudden loss of employment.

Premised on the above arguments, the High Court agreed that the ADG had erred in law and / or in fact when she erroneously relied on the judgment in *SAZ Maritime Services Sdn Bhd v Sapien Bin Baharom & 16 Ors* to support her interpretation that the expiry of the Respondent's fixed-term contract amounts to him being 'terminated for any reason whatsoever' under Regulation 4 (1) of the Termination and Lay-Off Benefits Regulations 1980 and allowed the Appellant's appeal. In this regard, the High Court accepted our submission that expiration of fixed-term contracts should not be injected into the phrase 'terminated for any reason whatsoever' under Regulation 4 (1) to entitle an employee to termination benefits.

The High Court's decision herein affirms the rationale behind termination benefits under the Termination and Lay-Off Benefits Regulations 1980 being compensation for loss of employment to serve as a cushion against the hardships faced by an employee who must contend with the consequential loss of his immediate means to earn an income<sup>1</sup>. Contrary to this rationale, the expiry of a fixed-term contract does not involve any sudden loss of employment as a fixed-term employee is fully aware of the exact date when his employment will come to an end since entering into the contract.

The Appellant was represented by partner Shariffullah Majeed, and associate Arissa Ahrom, of Lee Hishammuddin Allen & Gledhill.

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