

# LHAG Insights

Industrial Relations & Employment



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### Zero Tolerance for Drug Abuse

Muhammad Nurfikri Ong Abdullah v Small Medium Enterprise Development Bank Malaysia Berhad (Industrial Court Award No.: 1237 of 2022)

The Industrial Court recently upheld the dismissal of a Bank executive who had tested positive for dangerous drugs, Methamphetamines and Amphetamines while at work. On the day in question, it was reported to the Bank's management that the employee had attempted to ram his car into his colleague at the basement carpark of the Bank. Concerned over the employee's state of mind, the Bank immediately sent him for a health screening at a panel hospital. Upon testing positive for the dangerous drugs, the Bank proceeded to dismiss the employee on this ground alone.

The employee, who interestingly never denied the validity of the drug test, argued instead that his former superior had treated him unfairly in the past and complained about being placed on the Performance Improvement Plan (**PIP**).

The Bank argued that as an employer, it is obligated to ensure the safety of the workplace for its employees as expressly stipulated under *section 15 of the Occupational Safety & Health Act 1994* ("**OSHA**"). This obligation would also include taking actions to secure a drug-free work environment. Furthermore, as an officer of the Bank, the employee had committed a serious misconduct inconsistent with the trust and confidence reposed in him by the Bank. This was also a breach and was grounds for dismissal according to the Bank's policy.

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The Industrial Court held that it was justifiable for the Bank to dismiss the employee to maintain, uphold and preserve its reputation and the safety of its employees. The Industrial Court also disregarded the irrelevant issues raised by the employee, such as the alleged mistreatment by his former superiors and the issue of being placed on the PIP, as they had no bearing on the Bank's decision to dismiss him.

The need to ensure that workplaces are free of drug abuse is obvious. The courts have consistently viewed drug abuse at the workplace as a serious misconduct warranting immediate dismissal, as it has been found to contribute to accidents, lower productivity, absenteeism and criminal involvement. Thus, employers have a duty to implement effective policies in response to substance abuse at the workplace in an effort to make workplaces safer and to the attainment of the national goal of eradicating misuse of dangerous drugs.

The Bank was represented by partner Shariffullah Abdul Majeed and senior associate, Nurul Aisyah Hassan of Lee Hishammuddin Allen & Gledhill. The Industrial Court award can be found [here](#).

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