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Employer's Right To Offer The Option To Resign

Pannirselvam Vadivelu Pathar v Exxonmobil Exploration and Production Malaysia Inc.
(Court of Appeal Civil Appeal No.: W-01(A)-370-07/2023)

Forced resignation arises where an employee is threatened that they would be terminated unless they resign. In such a situation, the employee has no other option but to resign; otherwise, they would be terminated. However, when a poor performing employee is given the option to resign as an alternative to being placed under a Performance Improvement Plan (“**PIP**”), they can choose to either:

- (a) proceed with the PIP, shape up, and continue employment; or
- (b) resign should they not wish to undergo the PIP.

Recently, the Court of Appeal reaffirmed the trite industrial relations jurisprudence that employers

have the liberty to offer poor performing employees the option to resign as an alternative to being placed under a PIP. The Court of Appeal further held that such options cannot be construed as an ultimatum to either resign or be terminated, as neither of the options leads to an inevitable conclusion of termination.

In the instant case, the poor performing employee was offered the option to resign as an alternative to being placed under a PIP via an Option Letter. The option to resign in lieu of PIP also included the following:

- (a) The employee would continue to receive his basic salary and contractual benefits for a period of 6 months from the date he elects this option;
- (b) The employee would be given outplacement services for up to 3 months from the date he elects this option; and
- (c) The employee would be paid resignation benefits.

After selecting the option to resign in lieu of PIP and enjoying the benefits attached to the option for approximately 6 months, the employee suddenly lodged a complaint with the Industrial Relations Department, alleging that he had been “*forced to resign*”. The learned Chairman of the Industrial Court dismissed the employee’s claim for unfair dismissal via [Award No.: 855 of 2022](#), dated 10.5.2022.

Dissatisfied with the Industrial Court’s decision, the employee filed an application for judicial review to the High Court to quash the said Award. The High Court found no merit in the employee’s application and dismissed the same. Hence, the present appeal. The Court of Appeal in dismissing the employee’s appeal,

held that the Industrial Court did not err in law or in fact when it made among others, the following findings:

- (a)** The employee admitted that he was given a period of **14** days to make a selection of the options given to him;
- (b)** There was nothing in the Option Letter that could be understood as giving the employee an ultimatum that he would be terminated unless he resigned;
- (c)** In fact, the **14**-day period given to the employee to consider his options is corroborative evidence that he was never under any force or pressure to resign and was never placed in a situation where he was forced to make a selection;
- (d)** The employee was aware that choosing not to be placed under the PIP did not necessarily mean that he would be terminated, as the PIP did not inevitably lead to termination; and
- (e)** No one can speculate on the outcome of the PIP which can only be determined at the end unless the employee himself brings about unfavourable results by not improving his performance.

The Court of Appeal's decision confirms that employers and employees may well enter into a negotiation for a severance of the employment contract on mutually agreed terms. Once an employee resigns on the agreed terms in the absence of any threat of termination, it has to be said that the employee had resigned voluntarily because it was beneficial to him to do so.

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The employer was represented in the Court of Appeal by Partner Shariffullah Majeed, and Senior Associate Arissa Ahrom of Lee Hishammuddin Allen & Gledhill.

The grounds of judgment of the High Court may be viewed [here](#).

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