



# CLIMBING INTO TROUBLE: A CAUTIONARY TALE ON THE MISUSE OF SICK LEAVE

## Introduction

Medical leave is a statutory and contractual entitlement intended to enable employees to recover from illness or injury. However, when such leave is misused, particularly in ways that contradict the claimed incapacity, it may amount to misconduct justifying dismissal. The Industrial Court's decision in *Che Zamberi Che Ani v MAB Kargo Sdn Bhd*<sup>1</sup> provides a timely reminder of the fiduciary obligations employees owe to their employers, even while on sick leave.

## Factual Matrix and Grounds for Dismissal

The claimant was employed by MAB Kargo Sdn Bhd as an Officer in the Cargo Handling – Export Acceptance Department. In May 2021, he was involved in a serious motor vehicle accident that resulted in multiple injuries, including a left clavicle fracture, a fibular head fracture, and a wrist injury. Following his discharge from Nilai Medical Centre, he was placed on prolonged medical leave with full pay to allow for recovery.

The company's panel orthopaedic surgeon diagnosed that the healing process would take approximately three months. It was also reported by the company's panel orthopaedic surgeon that the claimant had complained of wrist and shoulder pain sometime in July 2021 and was treated with steroid injections on his left wrist and left shoulder in September 2021.

While the company had no dispute regarding the authenticity of his medical certificates, it subsequently discovered that the claimant had engaged in physically strenuous activities inconsistent with his medical condition and prescribed rest. Specifically, photographic and video evidence showed him climbing a tree, hanging from

a branch with his injured arm, sawing off a tree stump with a chainsaw in July 2021—despite having been placed in a cast only two days earlier.

Upon this discovery, the company issued a show cause letter citing misconduct for misusing medical leave, misleading the company, and breaching its trust. The claimant responded in writing, admitting to the activities but characterising them as light tasks and merely social activities in his neighbourhood. He claimed that these actions were consistent with his rehabilitation process and that he had been allowed to perform “light exercises”.



[1] [2025] 2 MELR 430

The company viewed his misconduct as being particularly serious given the operational strain it was facing during the COVID-19 pandemic. The aviation and logistics sectors were under immense pressure, and the claimant's department was operating with limited staffing due to pandemic-related restrictions. His extended absence forced colleagues to work overtime to cover his duties, resulting in additional costs and disruptions to cargo handling operations.

## Sick Leave Abuse as Serious Misconduct

It is a settled principle of industrial relations that malingering—feigning or exaggerating illness to avoid work—constitutes misconduct. In *The Regent Kuala Lumpur v Gerard Anthony*<sup>2</sup>, the Industrial Court upheld a dismissal when an employee attended a company event while on medical leave. Similarly, in *Kumpulan Guthrie Bhd v Sugumaran Kittu*<sup>3</sup>, the Court found that conducting taekwondo classes while on medical leave undermined the employer's trust.

In the present case, the Court found that the claimant had unequivocally admitted to the activities in both his reply to show cause and under cross-examination. Importantly, his medical consultant, an orthopaedic surgeon, confirmed that the claimant's actions were inconsistent with medical advice and risked further aggravating his injuries. Whilst the claimant contended that he felt well enough to engage in "light exercises" and "neighbourhood activities", the Court held that it was not for the claimant to determine his fitness, particularly when such activities were contrary to medical advice.

The claimant's argument that his years of service and clean disciplinary record should mitigate the punishment was rejected. As noted in *Hariato Effendy Zakaria v Mahkamah Perusahaan Malaysia & Anor*<sup>4</sup>, a single act of serious misconduct may justify dismissal, regardless of an employee's prior record. The Court held that the claimant had misused his medical leave and acted inconsistently with the trust and confidence reposed in him. His actions were found to be incompatible with the discharge of his contractual obligations, thereby justifying his dismissal.



[2] [1996] 1 ILR 658

[3] [1997] 1 ILR 409

[4] [2014] 4 ILJ 399



## Conclusion

This case underscores that medical leave must be used for its intended purpose—recovery. Activities that undermine this purpose are inconsistent with the employer’s expectations and may justify summary dismissal, based on the circumstances of the case. Abuse of medical leave not only defeats the purpose for which such leave is granted but also erodes the fundamental trust that underpins an employer-employee relationship. The claimant in this case had risked reinjury through such strenuous activities instead of recuperating to return to work in the best state of health. The decision reaffirms the Industrial Court’s stance that dismissal in such circumstances—particularly when supported by documentary evidence and expert medical testimony, would be warranted.

The decision, which drew media attention, was reported in [Free Malaysia Today \(FMT\)](#). There has been no appeal against the decision of the Industrial Court. The Company was represented by Partner, Nurul Aisyah Hassan.

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