LHAG INSIGHTS

EMPLOYMENT & INDUSTRIAL RELATIONS

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DEFENDING DISMISSALS WITH THE RELEVANT EVIDENCE

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TENG KEAT HUI v CEMENT INDUSTRIES OF MALAYSIA BERHAD
(Interim Award No.: 843 of 2026)

In a direct dismissal claim, the employer bears the burden of proving that the dismissal was with just cause or excuse. It is therefore the employer's duty to place cogent and convincing evidence before the Industrial Court to substantiate the misconduct relied upon. Apart from the employer's evidential burden, the Industrial Court is also vested with the power under Section **29 (g)** of the Industrial Relations Act 1967 to compel a party to disclose and / or produce documents where such an order is necessary for the expeditious determination of the dispute.

Pursuant to this power, parties may apply for discovery to obtain documents in the other party's possession that are relevant to the dispute. The purpose of discovery is to

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ensure that both parties have access to relevant documentary evidence and to prevent trial by ambush. The High Court in **YEKAMBARAN MARIMUTHU v MALAYAWATA STEEL BERHAD [1994] 2 CLJ 581** held that an application for discovery must satisfy 3 requirements, namely that the documents sought exist, are relevant to the issues in dispute, and are or have been within the possession, custody, or control of the other party. However, the process of discovery cannot be used as a fishing expedition to search either party's records in the hope that something useful may emerge.

Recently, the Industrial Court considered a discovery application in **TENG KEAT HUI v CEMENT INDUSTRIES OF MALAYSIA BERHAD**, where the Claimant applied for the Company to produce certain categories of documents without specifying the details of such documents, before the trial of his unfair dismissal claim. In this case, the Claimant was dismissed for failing to declare his involvement with a 3rd party organisation, using the Company's resources to recruit industry professionals for his personal business and creating the false impression that his personal business venture was connected to the Company. In his application, the Claimant sought documents relating to earlier tenders, quotations, competitor pricing, market intelligence, and merger and acquisition discussions. He argued that these documents would demonstrate that the Company had previously benefited from information obtained through his networking activities and would support his position that such activities were undertaken in the course of his duties and with the Company's knowledge.

Ultimately, the Industrial Court dismissed the Claimant's application because he failed to show a sufficient connection between the requested documents and the misconducts of which he was found guilty and which resulted in his dismissal. Although the Claimant argued that the Company had historically obtained and benefited from competitor information through his professional network, the misconducts in question did not relate to the Company's practice of obtaining market intelligence, but rather to his undisclosed involvement in a personal business venture and the misuse of the Company's resources. The Claimant also failed to explain how documents created years before the misconducts would establish that the Company knew of or approved his particular activities at the material time. The Industrial Court therefore considered the request to resemble a fishing expedition rather than a genuine attempt to obtain relevant evidence.

The Industrial Court further held that it was not for the Claimant to compel the Company to produce documents which the Company did not intend to rely upon in the proceedings, which in this case, all relevant documents pertaining to the Claimant's dismissal have been filed accordingly in the Company's Bundle of Documents. The Company was entitled to determine the documents and witnesses it wished to rely on in proving its case. This case demonstrates that while an employer is not required to produce every document in its possession, the employer must ensure that the evidence relied upon is sufficient to establish the misconduct and justify the dismissal.

Practically, employers should ensure that the necessary documentary evidence is properly identified and preserved before taking disciplinary action against an employee, such as among others:

(1) Sufficient evidence demonstrating the employee's conduct or omission that constitutes a breach of his / her express / implied terms and conditions of employment. This may include e-mails, correspondence, recordings, screenshots, statement records, investigation findings, or other contemporaneous documents;

(2) Employment contracts, company handbook, policies, code of conduct, or internal procedures which have been acknowledged by the employee to show that the employee was aware of the relevant obligations and standards expected of him / her;

(3) Clear connection between the employee's actions and his / her violations of the implied terms and conditions of employment, rather than assumptions or speculation;

(4) Proper records of the investigation process, including show cause letters, the employee's explanation, investigation reports, domestic inquiry records (where applicable), and the reasons for arriving at the decision to dismiss; and

(5) Records of past disciplinary actions imposed in similar circumstances to show that the disciplinary action taken is proportionate.

Importantly, employers must place sufficient evidence before the Court to justify an employee's dismissal, but they need not disclose their entire documentary record to an employee who has not established relevance or necessity.

The Company was represented in the Industrial Court by Partner, Shariffullah Majeed of Lee Hishammuddin Allen & Gledhill.

The Industrial Court Interim Award may be found here.

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