Recent Decisions by the Federal Court, Court Of Appeal & High Court on Industrial Law

Amendment to Section 20 IRA1967

Section 20 (1), (2) & (3) IRA1967

- Pursuant to the amendment to IRA1967, the Director General shall directly and automatically refer the representation to the Industrial Court for determination, if the matter cannot be resolved at the conciliation meeting amicably.

Representations on dismissals

20. (1) Where a workman, irrespective of whether he is a member of a trade union of workmen or otherwise, considers that he has been dismissed without just cause or excuse by his employer, he may make representations in writing to the Director General to be reinstated in his former employment; the representations may be filed at the office of the Director General nearest to the place of employment from which the workman was dismissed.

(2) Upon receipt of the representations the Director General shall take such steps as he may consider necessary or expedient so that an expeditious settlement thereof is arrived at; ~~where the Director General is satisfied that there is no likelihood of the representations being settled, he shall notify the Minister accordingly~~.

~~(3) Upon receiving the notification of the Director General under subsection (2), the Minister may, if he thinks fit, refer the representations to the Court for an award.~~

(3) Where the Director General is satisfied that there is no likelihood of the representations being settled under subsection (2), the Director General shall refer the representations to the Court for an award.

New Section 33C IRA1967

- Pursuant to the amendment to IRA1967, an aggrieved party who is unsatisfied with an Industrial Court Award, not only can opt to file a judicial review application to challenge the Industrial Court Award, an appeal can also be filed to the High Court against the Industrial Court decision, within 14 days from the date of receipt of the said Award.

Appeal against an award to the High Court

33C. (1) If any person is dissatisfied with an award of the Court made under section 30 such person may appeal to the High Court within fourteen days from the date of receipt of the award.

(2)The procedure in an appeal to the High Court shall be the procedure in the Rules of Court 2012 [P.U. (A) 205/2012] for an appeal from a Sessions Court with such modifications as the circumstances may require.

(3)In dealing with such appeals, the High Court shall have like powers as if the appeal is from the Sessions Court.".

Determining Fixed Term Contract

Ahmad Zahri Mirza Abdul Hamid v. AIMS Cyberjaya Sdn Bhd [2020] 3 ILR 233

FACTS

- The Claimant was initially invited to join, invest and became a shareholder of AIMS Data Centre 2 Sdn Bhd ("ADC") towards the end of the year 2008.
- In May 2009, he received a letter of appointment as Consultant in ADC.
- Three months later in August 2009, he received a contract from ADC for his consultancy services for a fixed term of 1 year, including a performance bonus scheme.
- The fixed term contract was renewed a total of 6 times while the terms and conditions of the contract remained unchanged. wherein the 4th renewal was for the Claimant to become the Consultant of AIMS Cyberjaya Sdn. Bhd. (the Respondent Company in the matter), instead of ADC. ADC and the Company were consolidated in January 2013.
- In September and October 2013, the Claimant expressed his disagreement twice to the Company's offer of further employment which included a change of the terms of his contract to exclude the performance bonus scheme.
- The Claimant then received a letter from the Company giving him 2 months' notice of expiry of contract, and also giving him an early release effective the next day.
- The Claimant filed a representation under S.20 IRA1967, which was referred to the Industrial Court.

ISSUE

- Whether the Claimant's contract was a fixed term contract or permanent in nature.
- Whether the Industrial Court was right to lift/pierce the corporate veil.

HELD

Industrial Court

- The Industrial Court was in favour of the Claimant after assessing all evidence before the court by lifting the corporate veil, and concluded that:
    - the Claimant was an employee of the Company employed on a permanent contract, instead of a consultant;
    - the Claimant contracts were renewed automatically by the Company, but not on the Claimant's requests;
    - the Claimant's functions and position was for an indefinite amount of time within the reasonable contemplation of both parties, but not for a fixed duration only; and
    - the Claimant's employment with the company was continuous without any break.

High Court

- The High Court affirmed the Industrial Court decision.

Court Of Appeal

- The Court Of Appeal allowed the Company's appeal and held that:
    - The Claimant was employed under a fixed term contract, as the Claimant is a foreign national can never be employed under a permanent contract of employment;
    - ADC and the Company were separate legal entity; and
    - the corporate veil should not be lifted as there was no special circumstances of actual fraud or some inequitable or unconscionable conduct amounting to fraud in equity that warrants the lifting of the corporate veil by either the Industrial Court or the High Court.
- The Claimant appealed to the Federal Court.

Federal Court

- The Federal Court held that the Claimant's employment was not a genuine fixed term contract as it was ongoing and continuous, but not one-off or seasonal/temporary;. The citizenship of the Claimant has no bearing in deciding whether the Claimant was in an employment which is permanent or temporary in nature. The Federal Court also held that the Court Of Appeal erred in finding that the corporate veil should not be lifted.

1. There were 3 points to be considered in determining whether the workman's service was employed under a genuine fixed term contract:
    a. Intention of parties
    b. Employers' subsequent conduct during the course of employment
    c. nature of the employer's business and the nature of work which an employee is engaged to perform

A Gilbert D'Cruz v. Sapuraacergy Sdn. Bhd. & Anor [2021] 6 MLJ 649

FACTS

- The Claimant commenced his employment with the Company in May 2007 on a fixed term contract of 1 year.
- The fixed term contract was renewed a total of 7 time, wherein 4 times were renewed before its expiry or about to expire, and 3 times were renewed after the expiry of the contract and the period of employment was backdated.
- On 26th November 2015, the Claimant received a letter from the Company notifying that his contract would expire on 1st December 2015.
- When the Industrial Court made decisions that the Claimant was employed under a genuine fixed term contract based on the finding of facts, and when and the High Court affirmed the Industrial Court's decision, the judgment of *Ahmad Zahri* was not available yet.
- The Claimant appealed to the Court of Appeal against the High Court decision in dismissing the Claimant's application for a Certiorari Order to quash the Industrial Court Award.

ISSUE

- Whether the Claimant's contract was a fixed term contract or permanent in nature.

HELD

- After considering the three points as mentioned in *Ahmad Zahri*, the Court Of Appeal found that based on the following facts, the Claimant was not employed under a genuine fixed terms contract, instead his employment is permanent in nature:

    1. The Claimant's contract of employment was renewed continuously and consecutively from 2008 to 2015;
    2. All the renewals were done automatically by the Company without the need of the Claimant making application to renew; and
    3. Although the period of the renewal is not uniform, the renewals were backdated and had the successive effect.

Lifting Corporate Veil In The Context of Employment Law

Ahmad Zahri Mirza Abdul Hamid v. AIMS Cyberjaya Sdn Bhd [2020] 3 ILR 233

FACTS

- The Claimant was initially invited to join, invest and became a shareholder of AIMS Data Centre 2 Sdn Bhd ("ADC") towards the end of the year 2008.
- In May 2009, he received a letter of appointment as Consultant in ADC.
- Three months later in August 2009, he received a contract from ADC for his consultancy services for a fixed term of 1 year, including a performance bonus scheme.
- The fixed term contract was renewed a total of 6 times while the terms and conditions of the contract remained unchanged. wherein the 4th renewal was for the Claimant to become the Consultant of AIMS Cyberjaya Sdn. Bhd. (the Respondent Company in the matter), instead of ADC. ADC and the Company were consolidated in January 2013.
- In September and October 2013, the Claimant expressed his disagreement twice to the Company's offer of further employment which included a change of the terms of his contract to exclude the performance bonus scheme.
- The Claimant then received a letter from the Company giving him 2 months' notice of expiry of contract, and also giving him an early release effective the next day.
- The Claimant filed a representation under S.20 IRA1967, which was referred to the Industrial Court.

ISSUE

- Whether the Claimant's contract was a fixed term contract or permanent in nature.
- Whether the Industrial Court was right to lift/pierce the corporate veil.

HELD

Industrial Court

- The Industrial Court was in favour of the Claimant after assessing all evidence before the court by lifting the corporate veil, and concluded that:
    - the Claimant contracts were renewed automatically by the Company, but not on the Claimant's requests;
    - the Claimant was an employee of the Company, instead of a consultant;
    - the Claimant's functions and position was for an indefinite amount of time within the reasonable contemplation of both parties, but not for a fixed duration only; and
    - the Claimant's employment with the company was continuous without any break.

High Court

- The High Court affirmed the Industrial Court decision.

Court Of Appeal

- The Court Of Appeal allowed the Company's appeal and held that:
    - The Claimant was employed under a fixed term contract, as the Claimant is a foreign national can never be employed under a permanent contract of employment;
    - ADC and the Company were separate legal entity; and
    - the corporate veil should not be lifted as there was no special circumstances of actual fraud or some inequitable or unconscionable conduct amounting to fraud in equity that warrants the lifting of the corporate veil by either the Industrial Court or the High Court.
- The Claimant appealed to the Federal Court.

Federal Court

- The Federal Court held that the Claimant's employment was not a genuine fixed term contract as it was ongoing and continuous, but not one-off or seasonal/temporary;. The citizenship of the Claimant has no bearing in deciding whether the Claimant was in an employment which is permanent or temporary in nature. The Federal Court also held that the Court Of Appeal erred in finding that the corporate veil should not be lifted.

1. There was an essential unity of group enterprise, and ADC and the Respondent Company were part of the same group. It was held that :
    - In employment law perspective, although based on the case laws cited, there are a few circumstances which shall guide the court to find as the most peculiar basis to lift the corporate veil, but these circumstances are not exhaustive
    - The Malaysian courts' willingness to lift the corporate veil is not new, by referring to the Federal Court's decision in *Hotel Jaya Puri.*

Constructive dismissal by re-grading of position

Ng Teck Fay v Mahkamah Perusahaan Malaysia & Anor [2021] 5 MLJ 574

FACTS

- The Claimant commenced his employment with the Company in April 2007 as an Assistant General Manager. Throughout the tenure of his employment, he received salary increments and bonuses.
- During a meeting on 22nd May 2014, the Claimant was handed with two letters which he was told that he can resign, if he did not agree to the contents of the two letters, i.e.:
    - Reducing of the Claimant's scope of duties; and
    - Demoting and downgrading the Claimant from Assistant General Manager to Senior Manager (a position which the Claimant never held before).
- The Claimant did not object to the regrading, and an email was sent thereafter by the Company making announcement of the demotion and downgrading of the Claimant's position.
- 4 days after the effective of the demotion, the Claimant left his employment with a letter claiming constructive dismissal.

ISSUE

- Whether the Claimant resigned or dismissed constructively?

HELD

Industrial Court

- The Industrial Court held that the Claimant was not constructively dismissed, instead he abandoned his job, as the regrading did not involve change of salary and seniority, but only involved change of benefits.

High Court (JR)

- The High Court refused to interfere with the Industrial Court's finding.

Court Of Appeal

- The Court Of Appeal is of the view that the Claimant was constructively dismissed on the following grounds:
    - The regrading of the Claimant to a post which he never held before and reducing of job responsibilities with the benefits enjoyed, amounts to a breach of the Claimant's employment contract by the Company which justifies the Claimant for walking out from employment;

- The reason that the Claimant left the employment (4 days after the effective demotion) was in response to the breach, whereby the reason stated in the Claimant's letter claiming constructive dismissal is because of the regrading and demotion, but not about the embarrassment suffered by Claimant after the humiliation brought by the announcing email from the Company (as relied by the High Court).

Does service charge comprise part of the basic minimum wages?

Crystal Crown Hotel & Resort Sdn Bhd (Crystal Crown Hotel Petaling Jaya) v Kesatuan Kebangsaan Pekerja-Pekerja Hotel, Bar & Restoran Semenanjung Malaysia [2021] 3 MLJ 466

FACTS

- When the Union of the Peninsular Hotel, Bar & Restaurant Workers' Union was granted recognition in 1999 to represent workers fall within the scope of the Union in Crystal Crown Hotel, the Hotel was invited to commence collective bargaining for the terms and conditions to be included in the first collective agreement, but the Hotel was unwilling to do so.
- In February 2012, this dispute was referred to Industrial Court for adjudication, and in the same year the Minimum Wage Order 2012[1] was enacted.
- The Union proposed the retention of the service charge system together with a salary adjustment of 10%. The hotel proposed that if service charge was to be maintained, a 'clean wage system' should be introduced with the implementation of a 'top up structure', whereby the Hotel could utilize service charge to pay the minimum wages of its employees.

HELD

Industrial Court

- The Industrial Court held that salary and service charge were both fundamental terms of the hotel employees' contract of employment and could not be unilaterally varied by the employer. Hence, the Hotel was bound to pay the minimum statutory wage as well as the contracted share of service charge as provided for in the collective agreement.
- The Company filed a Judicial Review application to the High Court.

High Court (JR)

- The High Court dismissed the judicial review application by the Hotel and upheld the decision by the Industrial Court on following grounds:
    - "Wages" was defined as the basic minimum wage comprising part of the price of labour which must be paid by the employer. With the implementation of MWO2012, the restructured wages could not cause the employees to get anything less favourable than their current wages;
    - Service charge is not part of the employee's basic wage, but was collected to be distributed to all the eligible employees. As such, the service charge could not be

[1] established under section 3 of the National Wages Consultative Council Act 2011 (NWCCA2011).

utilised by the hotel to pay the minimum wage of the employees in order to meet the requirements under MWO2012.

- The Hotel appealed to the Court Of Appeal.

Court Of Appeal

- The Court Of Appeal affirmed and upheld the decisions by the Industrial Court and the High Court, on the following grounds:
    - service charge does not come from the hotel or employer's own funds or resources, but from customers who pay this 10% charge in lieu of 'tipping', and it comprises a part of the hotel employees' contractual terms and conditions of service;
    - the clean wage system would deprive the employees' contractual entitlement of service charge, and would be disadvantageous to the employees; and
    - the Hotel enjoys no exception to the additional financial responsibility to meet their obligation under MWO2012 which affect all industries and all employers.
- The Hotel appealed to the Federal Court.

ISSUES BEFORE THE FEDERAL COURT

1. Whether s.26(2) and s.30(4) IRA1967 could be construed and utilised to alter, modify, vary or supplement the statutory effect and consequences of the NWCCA 2011 and MWO 2012.
2. Whether service charge comprises as part of the employees' basic wages.

THE FEDERAL COURT'S DECISION

1st Issue

- The Federal Court looked into the object & purpose of the introduction of NWCCA2011.

- NWCCA2011 is a social legislation which was implemented to:
    - raise the living standards of all employees across all sectors, especially the working poor;
    - Increase productivity, and quality of goods and service;
    - Curb the issue of exploitation of labour by unduly low wages.

- The Federal Court held that to utilise ss 26(2) and 30(4) IRA1967 to abrogate NMCCA2011 and MWO 2012 would effectively be placing the Industrial Court above Parliament because the Industrial Court would than be displacing the specific provision of law as promulgated by Parliament.

2nd Issue

- The Federal Court held that service charge is not part of the basic minimum wages, as "minimum wages" is interpreted as ***"basic wages"*** as defined under s.23 NWCCA2011, but not *"wages"* as a whole defined under the Employment Act 1955.

- The different interpretations under the legislation were considered:
  1. The definition of "minimum wage" under NWCCA2011 & MWO2012:
     - Under s.2 NWCCA:
       - "wages" bears the same meaning as interpreted under s.2 EA1955;
       - "minimum wages" is interpreted as ***"basic wages"*** as defined under s.23 NWCCA2011.
     - Reading s.23 & s.24 NWCCA2011 together, *"minimum wages comprises the quantum of monies determined by the Government as the minimum sum of money to be paid as a wage under a contract of service or collective agreement."*
     - The rate of "basic wages" under the employees' contract of service is mandatorily required to be increased to the "minimum wage" as stipulated under MWO2012.

  2. The definition of "basic wages" under Employment Act 1955:
     - Under s.2 EA1955, 'wages' is defined as *'basic wages'* ***and*** *all other payments in cash payable to an employee for work done in respect of his contract of service*, excluding certain items set out under EA1955.
     - Therefore, "basic wages" **shall not be interpreted as including** any payments in cash 'payable to an employee for work done in respect of his service', but refers to the **contractual sum negotiated between the employer and employee under a contract of service or a collective agreement**.

- Service charge being monies collected from third parties, does not belong to the hotel and the hotel holds the service charge **on trust** and shall be distributed to the eligible employees.

Does a sovereign state enjoy absolute immunity in dismissal cases under s.20IRA1967?

Subramaniam a/l Letchimanan v The United States of America and another appeal [2021] 5 MLJ 612

FACTS

- The Claimant commenced his employment with the USA Embassy in September 1998 as a security guard. In April 2008, his employment was terminated by the Embassy (the employer) without any reasons given.
- In May 2008, the Claimant filed a representation under s.20(1) of IRA1967.

- There was a delay/silence about the case that lasted for about 10 years, and finally in April 2019, the Minister referred the matter to the Industrial Court.
- The USA made a judicial review application to the High Court against the Minister's decision in referring the Claimant's representation to the Industrial Court, after which the High Court found in favour of the Embassy.
- The Minister and the Claimant appealed to the Court Of Appeal.

ISSUE

- Whether a sovereign state enjoys absolute or restrictive immunity in dismissal cases under s.20 IRA1967?

HELD

Court Of Appeal

- The delay was on the part of the Minister, the Claimant who did not contribute to the delay should not be blamed. In comparison with the State, the dismissed workman suffers more for the time passed whilst for him to secure another job might not be as simple as the State employing another security guard.

- Absolute sovereign immunity does not apply in this case as both parties agreed that this is not a case where servants or agents of the foreign state were involved and claiming sovereign immunity. The law applicable here is the doctrine of restrictive immunity, and therefore the sovereign foreign state does not enjoy full immunity from all legal action. The sovereign state is only immuned to acts of the sovereign state which are governmental or diplomatic in nature, and not a private / commercial matter.

    - **The nature of an act of dismissal of a security guard is of employment, and the applicable law is of private law (i.e. very much contract law).** The State ought to lead evidence as to whether what the workman performed had anything to do with functions related to the exercise of sovereignty of the foreign state, in order to justify the entitlement of immunity. This is a question of facts and law which the proper forum to decide should be the Industrial Court after the evidence adduced being heard.

Misconduct

CIMB Bank Berhad v Norlidah Binti Mhd Shah (Appeal No. W-01(A)-552-10/2020)

FACTS

- The Claimant was dismissed by the Bank after she was found guilty of 2 charges of serious misconduct for soliciting incentive payments from certain Sale Personnels under her supervision, after a formal complaint was lodged by one of the Claimant's Sale Personnel.
- At the hearing of the Industrial Court, the Bank dropped the 2nd Charge.
- The Claimant never denied receiving the money. Instead, the Claimant argued that the money was given to her by her Sale Personnels on free will after she helped them in achieving their target in order to secure their position in the Bank.

Industrial Court

- The Industrial Court found that the Claimant was guilty of serious misconduct for soliciting / demanding incentive payments from her subordinates, which warrants a dismissal.

High Court (JR)

- The High Court interfere with the Industrial Court findings and held that:
    - there was procedural impropriety;
    - the charge against the Claimant was too general, and therefore was defective;
    - Since the Sale Personnels were not forced to make the incentive payments to the Claimant, there is no misconduct on the part of the Claimant.
- The Claimant appealed to the Court Of Appeal.

ISSUE

- Whether the High Court in interfering with the Industrial Court's finding had exceeded its supervisory jurisdiction?

HELD

Court Of Appeal

- The Court Of Appeal found no basis in the High Court's interference with the Industrial Court's finding. The Court of Appeal held that:
    - A conduct by the employee which destroys the mutual trust and confidence between the employer and the employee is a misconduct.
    - A superior who solicits monies from her subordinates, regardless of any purported "profit-sharing" method, is itself a misconduct that cannot be tolerated.

- It is inherently improbable for the Claimant who was Branch Manager, who was placed at a higher expectation for her compliance with the Bank's policies, to not know the nature of her actions.
- As a senior bank officer, the Claimant was expected to discharge her duties without any compromise on her strict standards of trust, honesty and integrity as a bank staff, when the Bank is a custodian of public funds.
- Even if the incentive payments were made willingly by her subordinates, it is still a misconduct as the Claimant being a superior officer should not set a precedent to form an unhealthy expectation on both sides, which will undermine the employer's interest (i.e. leading to favouritism and abuse of authority).
- Taking into consideration that this case happened in the context of the banking industry, such conduct by the Claimant who was a senior staff holding a high position, constitutes serious misconduct justifying her dismissal.

Maritime Intelligence Sdn. Bhd. v Tan Ah Gek [2021] 10 CLJ 663

FACTS

- The Claimant was dismissed after she was found guilty of four misconducts by the DI panel alleging that she had abused her power and conducted herself in an unethical and unprofessional way, after a petition (which was signed by more than half of the employees of the Company) was submitted by the director and shareholder of the Company.
- The Claimant filed a representation under S.20 IRA1967, which was referred to the Industrial Court.

ISSUE

- Whether the Industrial Court has the right to enquire into reasons which were not put forward at the time of the workman's dismissal, but only raised in the pleadings before the Industrial Court.

HELD

Industrial Court

- The Industrial Court held that the dismissal was without just cause and excuse, on the grounds that the DI panel was not neutral and the Industrial Court after hearing the matter afresh found that the Company had failed to substantiate the four allegations of misconduct against the Claimant, as material witnesses were not called and did not prove any obvious damage of the Claimant's conduct to the Company.
- It is important to note that the Company raised for the first time the allegation that the Claimant was never qualified for her position, i.e. the Claimant's claim that she had obtained the Master's degree was false, in its pleadings before the Industrial Court.
- The Company filed a Judicial Review application to the High Court.

High Court (JR)

- The High Court held that there was no procedural impropriety, irrationality or illegality in the decision-making process of the Industrial Court which warrants the High Court to disturb the Industrial Court's findings. The High Court relied on *Goon Kwee Phoy* and gave reasons for its finding that the Industrial Court does not have to consider the Company's fresh evidence in substantiating the allegation of the Claimant's lack of qualifications as this was not the reason for her dismissal.
- The Company appealed to the Court Of Appeal.

Court Of Appeal

- The Court Of Appeal departed with the law laid down in *Goon Kwee Phoy* with a new and definitive position on post-dismissal allegations in dismissal cases under s. 20, and held that the Industrial Court has the right to inquire into grounds that differed from the reasons

for the dismissal, which were subsequently raised by the company in its pleadings, to justify the workman's dismissal.

- The Court Of Appeal went on and considered the merits of the new allegation, but concluded that it was not meritorious and therefore dismissed the appeal.
- The Company appealed to the Federal Court.

Federal Court

- The Federal Court held that based on both the literal and purposive interpretation of S.20 IRA1967, which is a social legislation to protect the workman's fundamental right to livelihood and to promote industrial harmony, it shows that the reason of dismissing the workman must be the reason operated on the employer's mind, prior and/or during the time when the employer was deciding to terminate the workman's service, but not at anytime after the dismissal. These reasons comprise the basis for the dismissal, which caused the workman to file his representation of dismissal "without just cause or excuse" S.20(1).
- A distinction must be made between the basis for the dismissal and the appropriate remedy to be afforded to a workman. When there are compelling new facts discovered after a dismissal, the employer may adduce such evidence to counter the remedy to be afforded to the workman, i.e. for the Court to conclude the non possibility of reinstatement or no compensation in lieu of reinstatement ought to be allowed either.

Lini Feinita bt Muhammad Feisol v Indah Water Konsortium Sdn Bhd [2021] 4 MLJ 769 (COA)

FACTS

- The Claimant (Manager of Training & Development) was dismissed after she was found guilty of two out of seven charges of misconduct, taking into consideration her past records.
- A Show Cause letter was issued to the Claimant with the 7 charges of misconduct and the Claimant had attended a Domestic Inquiry on 27th March 2017.
- The Domestic Inquiry panel found the Claimant guilty of the 2nd and 3rd Charges, while the Claimant only admitted to the 3rd charge.
- After taking into account the decision of the Domestic Inquiry Panel, the degree of the charges, and the Claimant's past record of service, the Company terminated the Claimant's service on 13th May 2017..
- The Claimant filed a representation under S.20 IRA1967, which was referred to the Industrial Court.

Industrial Court

- The Industrial Court found in favour of the Claimant and held that the Company had failed to prove that the Claimant was dismissed with just cause or excuse. Reasons being that:
    1. The Company had departed from the findings of the Domestic Inquiry panel and proceeded to terminate the Claimant based on not only the seriousness of all seven charges, but also her past record (although she was only found guilty for 2 out of 7 charges, and the other charges were not proven).
    2. The Industrial Court only considered the two charges which the Domestic Inquiry panel had found the Appellant guilty of, and did not consider the remaining charges, because the Company did not present any evidence on the reason(s) why it did not wish to be bound by the findings of the Domestic Inquiry panel; and
    3. The two charges did not amount to serious misconduct and the Claimant's record had been largely unblemished.

- The Company filed a Judicial Review application for certiorari order to quash the Industrial Court Award.

High Court

- The learned High COurt judge held that the findings of a DI are not binding upon the Industrial Court which rehears the matter afresh but the IC can take into consideration the fact that a DI have been held whether the Claimant was lawfully dismissed.

- The High Court found that the Industrial Court has erred in law and in fact in reaching its findings, and held that:

    1. Whether the Company had conducted the Domestic Inquiry is entirely irrelevant to the issue of whether the Claimant had been dismissed without just cause or excuse as the findings of a Domestic Inquiry is not binding upon the Industrial Court which re-hears the matter afresh. The only thing the Industrial Court can take into account is the fact that the Domestic Inquiry had been held when determining whether the Claimant was lawfully dismissed.
    2. Several warning letters and lighter punishment imposed on the Claimant earlier and their cumulative effect were overlooked by the Industrial Court and failed to consider these factors. Based on the prior disciplinary actions taken against the Claimant, the Industrial Court came to the wrong conclusion that the Claimant's work record had been largely unblemished.
    3. The Industrial Court also failed to consider that the law entitles the Company to take into account cumulative effect of all the charges and also the past records of service in deciding the Claimant's punishment of dismissal.

- The Claimant filed an appeal against the High Court's decision.

ISSUE

- Whether the High Court was right in law in the Judicial Review application to disturb the Industrial Court's finding of facts.
- Whether the Industrial Court is duty bound to take into account the findings made by the Domestic Inquiry Panel when deciding on whether the employee's dismissal was with just cause or excuse.

HELD

Court of Appeal

- The High Court had exceeded its jurisdiction in a judicial review application to overturn the finding of facts by the Industrial Court, and committed a fundamental error of law.
- Of the view that the Learned High Court Judge had committed a fundamental error of law in holding that the finding of the Domestic Inquiry's panel decision should have been completely disregarded by the IC.
- In this case the Court of Appeal relied on the trite law principle that in dismissal or termination cases the burden lies with the employer to prove on a balance of probabilities and failure to do so conclude dismissal was without just cause or excuse.
- The legal position to be taken in relation to domestic inquiry are as follows:

    1. If there is no DI conducted by the Company prior to the Claimant's dismissal, the Industrial Court is entitled to take the position that such absence of DI is not fatal

to the Company's case, since the Industrial Court is entitled to hear the matter afresh.

2. However, if DI is conducted, then the **Industrial Court is bound to take into consideration the findings of the DI when deciding whether or not the Claimant's dismissal was with just cause or excuse**, even though the Industrial Court is entitled to make its own finding without being bound by the DI Panel's findings.

- The Court Of Appeal held that:
    - To allow the Company to justify the Claimant's dismissal on all 7 charges at the Judicial Review stage, when the Claimant was only found guilty of 2 charges, is highly unconscionable.
    - The Industrial Court had stated the law correctly that the Company ought to take into account their own findings in the DI, although the Industrial Court has the discretion to rehear the case regardless if DI was conducted. (*Wong Yuen Hock*)
    - The Industrial Court is correct in holding that the Company was not entitled to reassess all the charges alleged against the Claimant, by taking into consideration the Company's failure to present any evidence before the Industrial Court as to why the findings of its own DI panel should be disregarded to the detriment of the Claimant.
    - Agreed that the decision of the DI panel is indeed a material factor and ought to be considered by the IC notwithstanding that the IC hears matter afresh and is not bound by the decision or findings of the DI panel and is entitled to make its own finding.

Akira Sales & Services (M) Sdn Bhd v Nadiah Zee binti Abdullah and another appeal [2018] 2 MLJ 537

FACTS

- The Company terminated both the Claimants (Nadiah and Yong), based on the allegations of misconduct for Criminal Breach of Trust (CBT), for opening and operating the Perwira account without the authority of the Board of Directors.
- The Claimants made a representation on 20 April 2002 to be reinstated and then the representation referred to IC for award.
- On 1st December 2004, the Company wound up.
- The Industrial Court found in favour of the Claimants and held that the dismissal of Claimants by the Company was without just cause or excuse.

HELD

High Court

- Quashed the IC award for four reasons:
    - IC erred in law in invoking adverse inference against the Company for not calling the Chairman cum the Executive Director of the Company (Theu) to testify.
    - It was not proven that the written explanation of the Claimants was forwarded to Theu.
    - The Industrial Court failed to consider the admission by the Claimants that they did not protest when the letter of dismissal was issued to them.
    - The Industrial Court failed to take into consideration that it was the previous practice of the Company that the signatories of the bank accounts of the company must include one director from Malaysia and one director from singapore

Court of Appeal

- The Court Of Appeal reversed the decision of the High Court and restored the award in Industrial Court based on 2 reasons:

1. The Industrial Court accepted the Claimants' version and the law did not permit the IC in a judicial review application to substitute that finding.
2. The Industrial Court had not invoked any adverse inference against the Company.

Federal Court

- The appeal was allowed. The Court Of Appeal's decision to set aside the HC decision was restored.
- The Federal Court laid down the role of High Court in exercising its supervisory jurisdiction, and stated that:
    - the Industrial Court had asked the wrong questions and applied the wrong law and also acted without any jurisdiction; and
    - The Industrial Court failed to rule on the alleged misconduct and explanation.

Retrenchment Guiding principles to follow & Necessary measurements by employers

Ng Chang Seng v. Technip Geoproduction (M) Sdn Bhd & Anor [2021] 1 CLJ 365

FACTS

- The Claimant had worked with the Company for 13 years of service and the Claimant was selected by the Company to be retrenched.
- The Claimant contends that this dismissal was unfair on grounds that the Company did not follow the principle of last-in first -out, i.e. the foreign workers were not retrenched first before him. The Claimant also contends that the retrenchment was not done bona fide as there is a true reason behind his dismissal which the Company is actually dissatisfied with his performance.

ISSUE

- whether the Company had proven that the claimant had become redundant in the Company in the retrenchment
- whether the Company had followed the "Last-In First-Out" principle ('LIFO') or had valid reasons to depart from it in the retrenchment
- whether the Company had preferred to retain foreign workmen in preference to local workmen in the retrenchment
- whether the Company had preferred to retain contract workmen in preference to permanent workmen in the retrenchment
- whether the Company's retrenchment exercise where the claimant was selected for retrenchment was done in bad faith.

HELD

Industrial Court

The Industrial Court found in favour of the Claimant.

- The termination of the employee had been done without just cause or excuse, i.e. not bona fide.
- The Industrial Court ruled that the company had not establish any reasons why should the Company not follow the “Last-In First-Out” (LIFO) (industrial law principle) or that there were special skills in the foreign and contract workers in preference to the claimant (Ng)

High Court

The High Court quashed the Industrial Court decision and found in favour of the Company.

- The retrenchment exercise was genuine and part of the company's prerogative to strategize in the wake of the slowdown in business oil gas sector
- The High Court was satisfied that the Claimant had unreasonably rejected the offer to work for another project of the company on account of having to report to a subordinate and that in any event the foreign workers and contract staff retained over the claimant had special skills sets that is not possessed by the Claimant.

Court of Appeal

Tbe Court Of Appeal set aside the High Court decision, and affirming the Industrial Court fin
Here, the Company had failed to satisfy the Courtand unable to prove so because the Company still continued to reengage with the employees who the Company had terminated on contract basis and also the Company had terminated the employees who are mainly local permanent workers in favour of fix-term contract foreign workers. The Company also failed to prove clear evidence for not following the LIFO principle and also the Company could not provide clear evidence that the foreign workers had the skills which Claimant did not have. Therefore the retrenchment was not genuine.

The COA laid down few principles regarding retrenchment of employees:

1. The employer must be able to prove that the employee was redundant and could not be reassigned to other projects or work.
2. The company cannot use retrenchment as a shortcut to get rid of employees that the Company does not want because of a perceived insubordination or poor performance.
3. The test should be whether the employee that was retrenched ought to have been selected compared to other employees in the same department that remained in the employment.
4. If the Company does not want to follow LIFO principle , the Company must satisfy the Court clear evidence that the employee does not provide the necessary skills for the job.

Can the Industrial Court amend Claimant dismissal date other than the date in the Minister's reference?

Mat Saat bin Ahmad & Ors v Linfox Transport Sdn Bhd & Anor [2021] 4 MLJ 312

FACTS

- The Claimants (drivers transporting gas from Malaysian Oxygen to different places in Semenanjung Malaysia) were paid based on a "Manual System", where allowances were calculated and paid to them per trip in accordance with the distance they travel outstation.
- However, a dispute arose between the Claimants and the Company when this "Manual System" was changed to a computerized system "'LINDIZ" in November 2006.
- The Claimants together with other employees refusing to report back to work after a gathering on 4 January 2007, despite several requests by the Company, led to a deadlock.
- The Company then on 8 January 2007 issued termination letters to these employees, alleging them for involving in an illegal strike.
- The Claimants filed their representations under s.20 IRA1967 in the Industrial Court, but the Claimants' claims were dismissed by the Industrial Court.
- The Claimant filed a judicial review application to quash the Industrial Court award by contending that the Industrial Court has acted beyond its jurisdiction when the Industrial Court found that the Claimants' dismissal date is 8 January 2007 and not the date as referred by the Minister, i.e. 4 January 2007.
- The Claimant relied on *Dreamland Corp (M) Sdn Bhd v Choong Chin Sooi & Anor [1988] 1 MLJ 111*), and argued that the Industrial Court has no jurisdiction to adjudicate on the complaint which is not the subject matter of the Minister's reference.

HELD

High Court

- The High Court dismissed the Claimants' application by taking into account the ratio as stated below, and the undisputed fact that the Claimants were involved in a strike, when they refused to report for work.
- The High Court distinguished the case of *Dreamland Corp (supra)*, and held that the issue before the Industrial Court is whether the Claimants were dismissed by the

Company with just cause and excuse and not on the actual date of the Claimants' dismissal. Reasons given by the High Court are as follows:

- The issue being dealt with in *Dreamland Corp (supra)* is concerning s 33A IRA1967, and it was held that the actual date of dismissal cannot be amended by the Industrial Court to any other date in order to grant the employee back wages.

- It is for the Industrial Court to ascertain the date of the dismissal after hearing all the evidence. Once the Industrial Court finds that the Claimants have been dismissed on a different date, other than the date in the Minister's reference, it does not mean that the Industrial Court no longer has the jurisdiction, because the Industrial Court is already seized with the jurisdiction from the Minister's reference itself.

Court Of Appeal

- The Court Of Appeal dismissed the appeal and affirmed the High Court's decision.
- The Court Of Appeal held that the issue of the date of the dismissal does not go to the issue of jurisdiction, based on the reasons below:
  - It is not the role of the Minister to ascertain the 'correct' or 'actual' date of dismissal.
  - After the Minister's reference to the Industrial Court, i.e. on the issue of whether the Claimants were dismissed by the company with just cause and excuse, it is for the Industrial Court to ascertain the date of the dismissal of the applicants after hearing all the evidence.
  - The Industrial Court acquired jurisdiction from the Minister's reference itself, but not on the date of dismissal.

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Dismissal during probationary period?

Bennett Subash Peter v Bon Ton Sdn Bhd (Bon Ton Resort Langkawi) [2019] 1 MLJ 326

FACTS

- The Claimant was employed as a manager and while he was still under 3 months probation period.
- The Company dismissed the Claimant while he was still under his probation period.
- The Claimant argued that there was no prior warning given to him for any alleged misconduct or poor work performance.

ISSUE

Whether it is with just cause and excuse for the Company to dismiss the Claimant during his probation period?

HELD

Industrial Court

1. The Claimant's dismissal was without just cause and excuse and that the Claimant was contractually terminated during the duration of his probation.

2. The Company did not give any written warnings to Claimant that he was about to be terminated nor was there any allegation of non-performance or poor performance.

3. The Industrial Court also held that the allegations of misconduct put forward were unsubstantiated and there was no convincing evidence and Claimant's dismissal was arbitrary and capricious and actuated by bad labour practice.

The Industrial Court has held that the employment of a person on probation does not give the employer a right to terminate the contract at his absolute discretion.

High Court:

- The High Court on a judicial review application had quashed the Industrial Court's award
- The Company appellant argued that the High Court erred in its decision and set aside the High Court's decision.

Court of Appeal :

- The decision of the High Court judge is set aside. The decision of the Industrial Court is sustained

- Stated that it was not a fit and proper case for the High Court to have intervened when the Industrial Court had fairly and properly taken into consideration the evidence and all the material facts and the law before arriving at a conscionable decision which any reasonable tribunal similarly appraised of the facts would have come to

  The concept of reasonableness flows through in all cases of judicial review. The test to succeed on reasonableness is high. …the applicant must demonstrate the decision of the inferior tribunal was so outrageous and it was also in defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question would have arrived at that conclusion …Thus, the test to intervene in the decision of a tribunal is extremely high when it is contrasted to the decision of a trial court in civil cases

- It is also well established in cases of dishonesty of an employee at senior management level, the **threshold of proving the employee's guilt is low**. In the case of dishonesty, it is quite straightforward when it comes to dismissal.

- In case of poor performance, it may become very technical and many issues may have to be considered and generally may also relate to market force and economic situation, etc; in cases of poor performance by employee, holding senior management level, the **threshold of proving the employee's guilt is hybrid** in nature and depends on the facts and circumstances of the case and falls within the realm of the Industrial Court itself to decide, taking into consideration just and equitable consideration as envisaged in the Act; and

- When the finding falls into the realm of the Industrial Court and the Industrial Court had taken into consideration all the facts related to the dismissal, the High Court should be slow to intervene and quash the decision. The facts in this appeal amply meet that threshold and the High Court fell into error in intervening on quashing the decision of the Industrial Court.

Reinstatement not pleaded

Sanbos (Malaysia) Sdn Bhd v. Gan Soon Huat [2021] 3 ILR 11

FACTS

- The Claimant claimed that the sales commission scheme was unilaterally lowered, but his monthly sales target was increased.
- The Claimant wrote a letter to express his dissatisfaction and objected to the revised sales commission scheme, which he claimed the reduction of commission was not in accordance with his employment agreement.
- The Claimant did not resign upon him being notified of the revision of the sales commission rate and the increase of sales target, and he only resigned 9 months later on 10 March 2017.
- The Claimant then filed a representation to the Industrial Court claiming that he was constructively dismissed.

ISSUE

- Whether the Industrial Court has jurisdiction to make an award when reinstatement was not pleaded?

HELD

Industrial Court

- The Industrial Court dismissed the Claimant's claim and held that:
    - Since reinstatement was not pleaded, the Industrial Court has no jurisdiction to make an award.
    - Constructive Dismissal was not proven by the Claimant.

High Court (JR)

- The High Court disagreed with the Industrial Court's decision.

Court Of Appeal

- The Court Of Appeal agrees with the High Court's finding on the Industrial Court's jurisdiction:
    - The Industrial Court was seized with threshold jurisdiction to hear the dispute between the employer and employee once the Minister had made a reference under s. 20(3) IRA1967.
    - The employee is no longer required to plead the remedy of reinstatement once the representation is referred, as the requirement to plead reinstatement as a remedy is only material at the stage of making a representation to the Director General.

Poor performance

Nor Awallizan bin Dollah v Zurich General Insurance Malaysia Bhd & Anor [2021] MLJU 2297

FACTS

- The Claimant was placed under PIP in 2017, and it is the Claimant case's that:
    1. During his performance review, his supervisor had repeatedly told him to tender his resignation to avoid being terminated, but this was not agreed to by the Applicant.
    2. The Company did not conduct any specific programme or training for him to achieve during the PIP period.

- In 2018, the Claimant agreed to be demoted as he could not achieve the target,but he was thereafter terminated by the Company, of which the Claimant alleged the Company to have breached his new agreement (under which he agreed to the demotion).

- The Company's case was that the company terminated the Claimant's service, because:
    1. The Claimant was performing poorly and he was not meeting the targets that were set for him.
    2. After the Claimant was placed under a PIP commencing on 28th September 2017 which was extended for another 3 months, he still failed to sufficiently improve his performance.

ISSUE

- Whether the Claimant was dismissed with just cause and excuse.

HELD

Industrial Court

The Industrial Court found that the Claimant's dismissal was with just cause and excuse. As such, the Claimant's claim was dismissed.

High Court

The High Court set aside the applicant's application for judicial review and held that the Industrial Court decision is full or errors of law, irrationality and unreasonableness

In order to establish poor performance, the Company has to prove that it had followed the fair procedure as follows:

(i) the employer should make a proper and full investigation into the reasons as to why the employee is not performing;

(ii) the employer should bring to the employee's attention of the areas in which he is failing to do his job adequately and if need be, show him how it should be done;

(iii) the employer should then give an opportunity to the employee to improve his performance; and

(iv) after all the above are done, the employee nonetheless continues to perform unsatisfactorily.

Andrew Chuah Khim Peik v HLG Capital Bhd (currently known as Hong Leong Capital Bhd) [2019] 5 MLJ 77

FACTS

- The Claimant is a high ranking employee, i.e. the Group Financial Controller of the Company.
- The Company claimed that the Claimant's performance deteriorated over the subsequent years, due to the Claimant's poor leadership skills and lack of competency and integrity.
- In 2009, the Company terminated the Claimant via letter dated 17 June 2009 with immediate effect, on the reason that the Company no longer repose the necessary trust to the Claimant.
- The Claimant then filed an action against the Company in the Industrial Court for unfair dismissal on the reasons that:
    - No warning was given to the Claimant;
    - No opportunity was given for the Claimant to improve;
    - No formal assessment was conducted;
    - Since the Claimant was employed by the Company, the Claimant had not been subjected to any appraisal except those carried out for the purpose of the Claimant's confirmation.
- This is an appeal against the decision of the High Court judge which quashed the decision of the industrial court which had ruled that the Claimant was dismissed without just cause and excuse.

ISSUE

- Whether decision made by the HC judge to quash the IC decision is justifiable?
- Whether the IC had erred in law by acting outside its jurisdiction in applying the wrong test or legal principles?

HELD

High Court

- Quashed the IC decision
- The HC found that the Industrial Court had applied the wrong test for poor performance.

Court of Appeal

The decision of the Industrial Court is sustained and the Learned High Court Judge's decision is set aside.

- The Court Of Appeal held that it is well established that the industrial jurisprudence leans towards the employee & the **threshold** to be satisfied by the employer to resist a claim for dismissal without just cause and excuse is **high.**

Trade Union - Whether the membership in the union immunised the employee from dismissal?

Muhamad Sukeri Mahudin v.Hicom Automotive Manufacturers (Malaysia) Bhd & Anor And Other Appeals [2021] 1 ILR 323

FACTS

- All 5 appellants (employees) were members of the National Union of Transport Equipment and Allied Industrial Workers ("the Union").
- While the Union and the Company were still in the midst of negotiating the proposed new collective agreement, after the previous collective agreement was about to expire in April 2014, the Company's management reminded the employees not to attend an assembly which was to be held on 4 Dec 2015 between the Union officials and its members, otherwise disciplinary action would be taken against them who attended the assembly.
- All 5 appellants attended the assembly and accordingly the Company issued a show cause letter to all of them.
- All 5 appellants were dismissed, as they were found guilty after a Domestic Inquiry carried out by the Company.
- Appellants filed representations to the Industrial Court.

ISSUE

- Whether the Claimant was dismissed with just cause or excuse, i.e. the constructive dismissal is proven?

HELD

Industrial Court

- The Industrial Court held that the Company had established the charges and that the dismissal of all the appellants were with just cause and excuse.
- Appellants brought a Judicial Review application to the High Court.

High Court (JR)

- The High Court refused to issue an order of certiorari to quash the Industrial Court's awards, and dismissed the appellants' applications.

Court Of Appeal

- The Court Of Appeal dismissed all appeals unanimously after it was found that:
    - the Chairman of the Industrial Court had after considering the charges levelled against the appellants and the evidence produced, made a finding of facts that the negotiation with regard to the proposed collective agreement by the Union had not come to a deadlock, and that the Company had not received any notification of a deadlock from the Union.
    - Since there was no deadlock, then there was no basis for the Union to resort to holding and attending the assembly on 4 December 2015, which shall therefore amount to illegal picketing.

Malaysian Airline System Bhd v. Ismail Nasaruddin Abdul Wahab [2021] 3 ILR 172

FACTS

- The Claimant was dismissed after he, as the President and a member of the Executive Committee of the National Union of Flight Attendants Malaysia ("NUFAM") made a press statement in The Sun newspaper on 8 Nov 2013, to voice concerns over the plight of 3,500 cabin crew of MASB, and to call for the resignation of the Company's CEO.
- The Company dismissed the Claimant by alleging that the Claimant being the employee of the Company had committed serious misconduct by:
  1. disclosing the Company's internal and confidential matters, and damaging the Company publicly;
  2. Breaching the implied term of employment / fiduciary duty to serve the Company with good faith and fidelity, and breach the express terms of employment as stated in the Book of Discipline and Collective Agreement governing the grievance procedures.
- The Claimant argued that:
  - The statement was made in his capacity as the President of NUFAM, but not as an employee of the Company;
  - his dismissal was contrary to ss. 4 and 5(1) of the IRA 1967.
- The Claimant filed a representation to the Industrial Court under s. 20(1) IRA1967.

ISSUE

- Whether the Claimant's dismissal was contrary to ss. 4 and 5(1) of the IRA 1967?

HELD

Industrial Court

- The Industrial Court held that ss. 4(1) and 5(1) of the IRA 1967 are inapplicable in this case as the respondent was found guilty of the allegations of misconduct levelled against him.
- Even if there was any breach of s. 4(1) or s. 5(1) of the IRA 1967, the avenue to redress such breaches was by way of s. 8 of the IRA 1967, but not under s. 20(1) of the IRA 1967 to consider ss. 4 and 5(1) of the IRA 1967.
- Appellants brought a Judicial Review application to the High Court.

High Court (JR)

- The High Court ruled in favour of the Claimant and quashed the decision of the Industrial

- Court and remitted the matter for assessment of compensation.
- The High Court held that the Claimant was unfairly dismissed by the Company for participating in trade union activities, based on the reasons that:
    - Sections 4, 5 and 59 IRA1967, as well as s. 8 Employment Act 1955 provide wide protection for members of a trade union for participating in trade union activities.
    - Being a trade union member per se does not mean one is shielded from any misconduct. This must be viewed based on the facts of each peculiar case.
- Here, the Claimant's press statement was about the trade union activities to ensure the good working conditions of its members.
- No cogent evidence showing that the Claimant's press statements have caused reputation damage to the Company.

Court Of Appeal

- The Court Of Appeal Judges set aside the High Court order, and held that:
    - The Claimant was the servant of his employer, and he bears an implied duty towards the employer, that he would not, without proper and reasonable cause, conduct itself in a manner likely to destroy or seriously damage the relationship of confidence and trust between the parties.
    - The Claimant should not issue any press statement, if the procedure to ensure industrial relations had not been exhausted.
    - The misconduct by the Claimant has warranted an instant dismissal with just cause or excuse. A misconduct need not be one that is in connection with the performance of the employee's duties. It is sufficient if it is conduct prejudicial to the interests or to the reputation of his employer. It must be something so serious which breached the root of the contract of employment (i.e. mutual trust and confidence).

Burden of Proof, Standard of Proof and Remedies for bringing civil suit for wrongful dismissal

Malayan Banking Bhd v. Prabanah Manogaran Sultan [2021] 6 CLJ 370 - Civil Appeal

FACTS

- The Plaintiff (a bank teller) was summarily dismissed after she was found responsible for the RM7,000.00 shortage from the bank counters.
- The Plaintiff was charged with CBT but was acquitted.
- The Plaintiff brought a representation under section 20 IRA1967, and a civil claim for wrongful dismissal in common law (this matter).
- The Plaintiff's representation under Section 20 IRA1967 was not referred to the Industrial Court.

ISSUE

- Whether the Claimant was wrongfully dismissed and entitled her to claim for specific damages?

HELD

- The High Court allowed the company's (defendant) appeal, and held that:
    - In a wrongful dismissal suit at common law, the only question to be determined is whether the employee was terminated according to the terms of the employment contract.
    - In civil suit brought by the employee, the burden of proof rests with the Plaintiff to prove that she was wrongfully dismissed (i.e. she is innocent), as per Section 101 to 103 and 106 Evidence Act 1950.
    - Standard of proof in civil suits is to prove **on a balance of probabilities.**

Cases concerning Employment Act 1955

Ascertaining the Labour Court's jurisdiction to make an inquiry under s. 69 EA1955, reading together with s. 2 EA1955

Fice Fransina Nenobais v. Lee Hee Chooi [2020] 3 ILR 440

FACTS

- Labour Court dismissed the Claimant's claim for unpaid wages based on preliminary issue, i.e. the Labour Court held it did not have the jurisdiction to hear a complaint by a claimant who has no work permit.

ISSUE

- Whether the Labour Court has jurisdiction to hear the matter involving a complaint by an employee who does not possess a valid work permit?

HELD

- The High Court allowed the appeal and revert the matter back to be heard by the Labour Court on merits, and held that:
    - It is premature for the Labour Court to only consider the preliminary issue on whether there is a valid work permit without ascertaining whether or not the relationship between the parties are an employer-employee relationship.
    - The jurisdiction of the Labour Court to make an inquiry into the appellant's complaint is provided by s. 69 Employment Act 1955 which enables the Labour Court to make such inquiry.