



LS Human Capital Sdn Bhd

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Important Industrial and Higher Court Decisions

(2020-2025)

This compilation by LS Human Capital provides a detailed record of **important decisions** from the Industrial and Higher Courts (i.e. High Court, Court of Appeal and Federal Court) between 2020 and 2025 concerning employment law in Malaysia. It is an invaluable reference guide that highlights pivotal rulings shaping employment law. In addition, a total of 21 Leadership/HR updates written by our CEO, Shawn Sher between this period are also shared.



Key Topics Covered - Court Decisions

- Topic 1 : Absenteeism
- Topic 2 : Tardiness
- Topic 3 : Medical/Emergency Leave
- Topic 4 : Prolonged Illness
- Topic 5 : Mental Health Issues
- Topic 6 : Work from Home / Flexible Hours
- Topic 7 : Probation
- Topic 8 : Performance
- Topic 9 : Fixed Term Contracts
- Topic 10 : Code of Conduct Issues/MACC
- Topic 11 : Major Misconducts/Domestic Inquiries
- Topic 12 : VSS/MSS/Retrenchments
- Topic 13 : Constructive Dismissal/Transfer/Forced Resignations
- Topic 14 : Harassment/Workplace Bullying
- Topic 15 : Safety and Health Issues (including Covid-19 pandemic)
- Topic 16 : Sexual Harassment
- Topic 17 : Union/Management Disputes
- Topic 18 : Industrial Court/Jurisdiction Issues
- Topic 19 : Director/Shareholder Disputes
- Topic 20 : Work Hour/OT and Salary Increments Issues
- Topic 21 : Contract of Service/for Service/Manual Worker/Workman (Definition)
- Topic 22 : Retirement
- Topic 23 : Labour Court
- Topic 24 : Frustration of Contract
- Topic 25 : Foreign Workers/Expatriates
- Topic 26 : SOCSO

Sample Court Decision

Abdul Latif Abdul Malik

v

Malaysia Airport Sdn Bhd

[Industrial Court Award No. 1381 of 2022]

Overview

This update addresses the following question:

"Is the medical opinion of one doctor sufficient to justify medically boarding out an employee?"

Case Background

In our feature case, the claimant commenced employment with the Department of Civil Aviation as its firefighter and rescue personnel. Thereafter, the Government had incorporated all national airport services and he had joined the company as an Airport Fire Rescue Assistant (firefighter), in its Airport Fire Rescue Services ('AFRS') unit, before being promoted and upgraded.

Approximately 37 years into his employment, the company, whilst conducting a full-scale rescue emergency drill, had had one of its firefighters collapse and die of a heart attack. The company then decided to have its "high risk" age group AFRS employees, with a history of medical condition, undergo a medical examination to determine whether they were fit for official duties or otherwise, pursuant to the Occupational Health and Safety Act 1994.

The claimant underwent the test and was deemed "unfit to work", based on COW1's sole medical report. Attempts were taken to find him alternative positions in the company to no avail and this culminated in him being terminated on medical grounds. The claimant now claims that his dismissal, based on COW1's sole medical report, had been unfair as he had passed his fitness appraisals for the last three years, prior to being dismissed. The company on the other hand maintained that it was entitled to reply on the medical opinion of a doctor of its own choosing and that it had done its best in trying to find alternative employment for the claimant prior to medically boarding him out.



What the Industrial Court Held

The Industrial Court found in favour of the claimant, holding that he had been unfairly dismissed via the medical board out. In coming to this conclusion, the court assess whether the company was justified in medically boarding out the claimant based on its medical doctor's (COW1's) assessment wherein it said:



Quotation/Citation One

" COW1: Dr. Monesh Pillai a/l Gopi certainly cannot be within the definition of Medical Board compared to the SOCSO Medical Board. The definition of "Lembaga" (Board) consist of a group of people and certainly not based on a singular person i.e., COW1 alone which himself cannot form a "Lembaga" (Board). In addition, COW1 agreed that he is not a specialist and is not certified to recommend the claimant be medically boarded out or be terminated from an employment. The 9th Collective Agreement does not recognise an assessment or certification by an occupational health doctor on the fitness of work. In the premises, the medical report by COW1 cannot substitute a report by medical board (Lembaga Perubatan)."

Apart from his recommendation upon reviewing the claimant to be referred for medical board out with SOCSO scheme, COW1 also recommended that the claimant be placed on office duties, which the company had ignored it. The company had never referred the claimant to a medical board (Lembaga Perubatan) as mandated by the 9th Collective Agreement which governed the employment of the claimant. The SOCSO application is in relation to disability pension and in order to qualify for a disability pension from SOCSO, the claimant must be a disabled person medically. As such, the SOCSO relied on a medical evidence to verify whether a person is disable from performing his work or otherwise. There is no reason why the medical assessment by SOCSO should be ignored as there was no law neither any provisions which prohibited any of SOCSO's medical findings to support the claimant's claim.

COW1 is an occupational health doctor but not a qualified or registered specialist to certify the claimant is at health risk by evaluating a recommendation that the claimant is at risk of suffering from health illness without performing a complete diagnostic tests i.e., ECG, heart scan or stress scan which COW1 had failed to perform upon reviewing the claimant. COW1 also failed to consult a cardiologist before he prepared his medical report to the company as he is not a qualified orthopaedic or cardio or diabetic area of specialists. His assessment is not accurate, doubted and based on his speculation in view of his failure to conduct a complete diagnosis tests on the claimant. COW1 is not a qualified specialist to give an opinion."

Quotation/Citation Two

"If in any event that the claimant is incapacitated by ill-health and is no longer able to perform the job he was employed to do, the company should consider whether or the man could be kept in employment in another capacity. If there is an existing job, even if it is the lower paid, the company should offer alternative employment to the claimant. If the claimant refuses any such offers, then it seems to be reasonable for the company to dismiss the claimant. It should be noted that the company is only required to consider the claimant's ability to perform his existing job. There is no duty on the company to create a new job or to modify an existing one, in order to continue the employment."

Quotation/Citation Three

"COW2 (the claimant's superior) also confirmed that although he is one of the decision makers in the company, but the company had failed to consult and ask his view neither to discuss and consult with the claimant himself with regards to the claimant's ability and work performance before the company decided to dismiss the claimant."

The need for discussion and consultation has been emphasised again and again in various decisions of the Employment Appeal Tribunal. In Spencer v. Paragon Wallpapers Ltd [1977] ICR 301, the Employment Appeal Tribunal noted as follows:

'There should be a discussion so that the situation can be weighed up, bearing in mind the employer's need for the work to be done and the employee's need for time in which to recover his health.'

In East Lindsey District Council v. Daubney [1977] IRLR 181; [1977] ICR 566, the Employment Appeal Tribunal observed at p. 571: ... 'before an employee is dismissed on the ground of ill health it is necessary that he should be consulted and the matter discussed with him... And at p. 572: ... Only one thing is certain, and that is that if the employee is not consulted, and given an opportunity to state his case, an injustice may be done.'

How Your Organisation Can Benefit From This Case

The Willingness of the Industrial Court to Scrutinise the Qualifications of a Doctor

This case is important as it highlights the willingness of our Industrial Court to study the qualifications of a doctor and assess whether he/she is qualified to render a verdict that an employee can be medically boarded out. The court here found that the company was wrong to rely on the medical opinion of COW1 as he was only an occupational health doctor and the company ought to have also at least obtained the opinion of a cardiologist, orthopaedic and/or diabetic specialist before making its assessment that the claimant be medically boarded out.

Further, the court here also found that the company had contravened its own collective agreement terms which called for a 'medical board' to be convened in deciding whether an employee ought to be medically boarded out.

Key Takeaway

Considering Alternative Roles and Prior Consultation with the Employee Are Prerequisites Before a Medical Board Out

The Industrial Court here clarified that a company cannot simply medically board out an employee upon him/her exhausting his/her prolonged illness entitlement and must also:

1. Consider whether there are other suitable roles for the employee within the organisation (which may include roles that involve lesser work hours and/or a lesser pay),
2. Consult with the employee and ask him/her what he/she wants or hopes with respect to his medical situation vis-à-vis his work, and
3. Consult with the employee's superior in determining to what extent the employee is able to work before making a decision on whether to medically board out the employee.

Key Topics Covered - Leadership Updates

- Topic 1 : Corona Virus
- Topic 2 : I Heard My Neighbour Cough
- Topic 3 : Staying Emotionally Strong
- Topic 4 : Rethinking How We Incentivise Our Employees
- Topic 5 : Learning to 'Want' What You Have
- Topic 6 : Lockdown Blues - (The Battle In Our Minds)
- Topic 7 : Lockdown Blues - (Part Two) - Control Our Emotions
- Topic 8 : Lockdown Blues - (Part Three) -Alter Your Perspective
- Topic 9 : Leadership Insight (Focus on the Process)
- Topic 10 : Can We Become More Resilient?
- Topic 11 : Staying Strong During This Pandemic (Going Back To Our Values)
- Topic 12 : Managing A-holes at Work
- Topic 13 : Preventing a Midlife Crisis
- Topic 14 : Why Everything We Think We Know About Setting Goals May Be Wrong
- Topic 15 : Hybrid Work Is Making Middle Level Managers Miserable
- Topic 16 : AI's Real Impact
- Topic 17 : Managing Mental Health
- Topic 18 : Managing Mental Health
- Topic 19 : Managing Mental Health
- Topic 20 : Managing Mental Health (Practice Gratitude and Know Your Strengths)
- Topic 21 : Managing Mental Health (Could the Criteria For Diagnosing Depression Be The Reason for the Shocking Rise In Depression Diagnosis Worldwide)



Sample Leadership Update

Learning to 'Want' What You Have

1. Let's analyse the term 'want'.
2. We all want things in life. We 'want' better health, better relationships with the people we love, more wealth, better sense of self-satisfaction, more happiness, etc.
3. Therefore, by its very nature, the term 'want' connotes to something we don't yet have and wish to receive or benefit from. Perhaps the story below might shed a new perspective on our 'wants'.

The Story of Willy

1. The Incident and Initial Discovery

A thief named Willy is making an escape from a high-rise penthouse he has just robbed. With his loot on his back, he steadily climbs down the fire escape but loses his balance and falls forty-five floors toward his certain death.

Moments later, it seems, he finds himself in a fancy golf club, in perfect physical shape. Willy looks around, sees nobody he recognizes and concludes he must have died and gone to heaven – because golf is his all-time favorite hobby.

With a sense of relief and joy, he tees up and discovers somehow that he has become a master at the game. His only regret is that there is no one else that can see his prodigious skill and triumph as he sinks a 'hole in one' in almost every of the 18 holes of the course.

2. Unprecedented Success

Later that day as he explores his new environment, Willy visits a swimming pool and finds himself performing Olympic-caliber dives from the three-meter board, then cutting through the water in what must be record time.

He walks across the swimming pool hall and sees a casino. Tempted, he walks in and sees taciturn croupiers and silent dealers. He tries his hand at blackjack with the few dollars he has in his pocket and soon discovers he is on a winning streak. Crowds gather around him as he wins hand after hand.

He emerges that night a millionaire.

3. Personal Fulfillment

As he cashes in his chips and collects his winnings, his eye catches a sight of the most exquisite, beautiful woman he has ever set his sights on. Imbued with courage, he approaches her and they strike up a conversation.

Willy discovers that this woman is enthralled with everything he is saying. She looks at him as no woman has ever looked at him; with a deep, longing gaze and absolute admiration. He summons the courage to ask her to spend the night with him, and she says 'yes'.

Willy then finds a hotel and pays in advance for a month in the executive suite. He is now a millionaire after all...

4. The Pattern of Achievement and Growing Dissatisfaction

The next day is a blissful repeat of the day before. He aces his golf game, wins another fortune at the casino, and each night ends up with gorgeous women. Willy also discovers that he has developed a profound new virility.

This pattern repeats every day for a week, and then for the whole month.

Willy soon begins to tire of his constant winning and his mastery of everything and everyone. Within six months, he feels like he is going mad.

5. The Final Revelation

He undertakes to find out who is in charge of this 'heaven', so he can express his dissatisfaction. After an exhausting search, he finally reaches the main administration hall. An efficient secretary waves him into a grand office where he finds a well-dressed man sitting behind a massive mahogany desk. "May I help you?" asks the official.

With that, Willy begins his litany of complaints: the terrible boredom, the effortless success and victory at every turn, ending with, "I never thought that heaven would be anything like this."

The official stands slowly, and his eyes reflect a reddish glow. "What," he asks, "makes you think this is heaven?"



Message Behind This Story

"Our minds can get so absorbed with imagining a better future and indulging in our dreams. We long to escape into something better when our imagined paradise may not be what we thought it to be. Perhaps instead of wanting what we don't have, we could instead learn to 'want' what we already have."

Comprehensive Legal Reference

Stay up-to-date with the latest most relevant court decisions impacting employment practices. All you have to do is select the applicable topic and the most relevant court decisions pertaining to your issue are shown; making it easier for your legal/HR research. You will be able to update your senior management when asked for your views concerning your HR issue with supporting case law - current to 2025.



Easy Navigation

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