

INDUSTRIAL RELATIONS

Unfair dismissal – Dismissal close to retirement – Dismissal challenged – Compensation *in lieu* of reinstatement awarded –

Whether compensation properly awarded to a person who could not be reinstated –
Industrial Relations Act 1967, section 20

Unilever (M) Holdings Sdn Bhd v So Lai & Anor
[2015] 3 CLJ 900, Federal Court

Facts The first respondent had been in the employment of the appellant company for 17 years, when he was dismissed just 14 months away from his mandatory retirement age of 55 years. The first respondent challenged his dismissal, and the Industrial Court awarded him compensation (*in lieu* of reinstatement) in the form of 24 months' backwages. The appellant's application for judicial review to quash the award was dismissed, although the award was reduced to 14 months' backwages, taking into account the respondent's retirement age of 55. The appellant appealed.

Issues The issues before the Federal Court were (i) whether compensation *in lieu* of reinstatement could be awarded to a person who could not be reinstated; and (ii) whether the issue of reinstatement even arose as the respondent had already reached his retirement age at the time of the filing of the claim.

Held In allowing the appeal, the Federal Court held that the reading of the words "compensation *in lieu* of reinstatement" in plain English means that such compensation was meant to be a replacement or a substitute or an alternative to reinstatement. The element of compensation, therefore, will only arise if the employee is in a position or situation to be reinstated. If a workman could not be reinstated because his age was past retirement, the issue of compensation could not arise. Further, since reinstatement is a form of specific performance, it could only be ordered in a situation where the legal basis for such performance exists.