

Labour Law / Administrative Law
Dismissal of employees – Unlawful picketing – Whether appellants' misconduct constituted punishment of dismissal – Whether punishment of dismissal too harsh – Whether high standard of conduct expected from employees in banking industry

Harianto Effendy Zakaria & Ors v Mahkamah Perusahaan Malaysia & Anor

[2014] 6 MLRA 85, Federal Court

Facts The appellants, who were employees of the second respondent (Bumiputra Commerce Bank Berhad), were dismissed for unlawful picketing. In upholding the second respondent's decision to terminate the appellants' services, the first respondent (Mahkamah Perusahaan Malaysia) held that although the misconduct was minor, the punishment of dismissal was necessary as such misconduct affected the second respondent's goodwill in the banking industry. The appellants filed an application for judicial review to quash the award, and contended that the first respondent had failed to consider relevant matters and erred in arriving at a totally perverse decision. The High Court ruled in favour of the first respondent and concluded that no error of law was committed in respect of the findings of facts relating to the appellants' misconduct. An appeal was then filed to the Court of Appeal on the basis that the dismissal was too harsh and was actuated by discriminative practice. The Court of Appeal unanimously dismissed the appellants' appeal and ruled that since there was grave misconduct involving the core of the second respondent's existence, dismissal would have been the inevitable punishment. The appellants appealed to the Federal Court.

Issues The issues before the Federal Court were (1) whether the appellants' misconduct constituted just cause or excuse for dismissal; (2) whether the punishment of dismissal was too harsh; and (3) whether high standard of conduct is expected from employees in the banking industry.

Held The Federal Court dismissed the appellants' appeal and held that there was no fixed rule of law to suggest that employees with unblemished records of service cannot be dismissed for a single instance of insolvency. It is important to consider the nature of the misconduct, whether they showed any remorse, and the nature of the employer's business. As the appellants' misconduct was clearly an act of wilful disobedience to which they showed no remorse, the dismissal was justified. More importantly, the banking industry belonged to a special kind of business which renders services to the public, and therefore a high standard of conduct was expected of its employees.