
EMPLOYMENT LAW

OUT OF BOUNDS: EMPLOYEE DISMISSED FOR ATTENDING GOLF TRIP

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INTRODUCTION

Our Partner, [Wong Keat Ching](#) and Associate, [Wong Yen Ni](#), from our [Employment & Industrial Relations](#) practice group have successfully acted for PETRONAS (“**the Company**”) in an unfair dismissal claim by a former employee at the Industrial Court.

BRIEF FACTS

In *Hasmadi bin Hamzah v Petroliam Nasional Berhad*,¹ the Claimant was employed with the Company since 2009 in the Wells Engineering Department of a subsidiary of the Company. The Claimant was alleged to have been involved in a conflict of interest situation when he went to Jakarta for a golf trip which was paid for by a registered contractor of the Company (“**the Contractor**”).

After conducting a Domestic Inquiry (DI), the Company found the Claimant guilty of charges related to the Claimant’s actions of putting himself in a conflict of interest situation and his failure to comply with the Company’s policies, especially in relation to declaring his conflict of interest concerning the Jakarta golf trip.

The subject-matter of the 5 charges of misconduct that the Claimant was found guilty of can be categorized into: (i) The Jakarta golf trip itself (charge 1); and (ii) the gifts/entertainment received on the Jakarta golf trip (charges 2, 3, 4 and 6).

DECISION OF THE INDUSTRIAL COURT

Charge 1: The Jakarta golf trip

The first charge was in relation to the misconduct of the Claimant placing himself in a potential conflict of interest situation when he went to the Jakarta golf trip without prior approval from the Company.

The Claimant contended that there was no conflict of interest situation for the following reasons:

- (a) The Jakarta golf trip was a personal holiday with his friend, Encik Badrul, whom he had known for almost 9 years;
- (b) He did not have to obtain approval from the Company or his superior because he was on annual leave during the Jakarta golf trip;

¹ [Award No. 2574 of 2022](#).

- (c) Encik Badrul was neither an employee nor a director of the Contractor and the Claimant was never made aware that the expenses for the trip was paid by the Contractor through the expense claims submitted by Encik Badrul;
- (d) The Claimant contended that he had paid Encik Badrul 6 million Rupiah in cash for his portion of the expenses for the Jakarta golf trip and Encik Badrul signed a statutory declaration to confirm this fact.

The Court rejected the Claimant's defences and held that the Claimant knew that the purpose of the Jakarta golf trip was for networking purposes and not for a personal holiday based on the following:

- (a) Encik Badrul's undisputed testimony at the DI and in Court that the purpose of the trip was for business networking or business development purpose because the Claimant had knowledge regarding the nature of business of the Contractor in the oil and gas industry;
- (b) There were no spouses, children nor family members on the trip;
- (c) Encik Badrul handled all the arrangements and payments of the Claimant's expenses first;
- (d) The Claimant had known Encik Badrul for several years and would have known of Encik Badrul's position as Consultant/Business Development Director of the Contractor and that Encik Badrul was responsible for assisting the Contractor in business development by obtaining information and contracts relating to the Contractor's business;
- (e) In 2017, the Claimant had previously declined participation in a golf tournament because he was aware that as the tournament was organized by Encik Badrul, it could lead to a potential conflict of interest situation. Similarly, as the Jakarta golf trip was also organized by Encik Badrul, the Claimant should have declined the invitation as well.

As such, the Court was satisfied that the Claimant had known that the trip was a business networking trip with the Company's registered contractor, thereby giving rise to a conflict of interest situation. As such, by attending the Jakarta golf trip, the Claimant had abused his position for personal gain and compromised his integrity as an employee of the Company.

Charges 2, 3, 4 & 6: Gifts/Entertainment paid for by the Contractor

Charges 2, 3, 4 and 6 were in relation to the (i) **flight tickets**, (ii) **meals**, (iii) **golf fees** and (iv) **spa massages and refreshments** that were paid for by Encik Badrul and later reimbursed by the Contractor.

The Claimant contended that these expenses were not gifts or entertainment from the Contractor as he had made payment to Encik Badrul amounting to 6 million Rupiah cash as repayment for all these expenses spent by Encik Badrul during the Jakarta golf trip.

The Court rejected the Claimant's contention as a mere afterthought as there was no record of such payment of 6 million Rupiah to Encik Badrul and the said amount was not an accurate account of the total expenses spent by the Claimant on the Jakarta golf trip.

DISMISSAL WAS WITH JUST CAUSE AND EXCUSE

The Court ultimately found that the 5 charges were sufficiently proven and the Claimant's actions tantamount to a breach of the Company's policies, especially in relation to conflict of interest.

The Court also held that the Claimant's dismissal was with just cause and excuse as the Claimant had knowingly placed himself in a position where his personal interest conflicted with the interest of the Company and his conduct destroyed the very basis of the employment relationship between the employer and employee. The Claimant's disregard

to comply with lawful policies of the Company constituted a serious misconduct. Therefore, the Court held that the Company had exercised its managerial prerogative to dismiss him correctly and the punishment meted against the Claimant was proportionate.

The Claimant's claim was dismissed.

KEY TAKEAWAYS

The Industrial Court takes a firm position that the employee's non-compliance of the company's code of ethics or code of conduct constitutes a serious misconduct. The Court asserted that such misconduct could not be condoned by a punishment lesser than dismissal as it would set a dangerous precedent to other employees of the company.

Employees should avoid putting themselves in a position where they could be seen to be taking advantage of their position in the Company, and where their personal interests could conflict with the Company's interests. This is especially so where the line between friendship and business relationship are blurred.

The Court also aptly points out that an employee who has full knowledge of all the integral parts of the company's code of ethics or code of conduct and is well aware that the Company places a strong emphasis on such code, has the duty to take necessary steps to inform or check with the company if he/she faces a conflict of interest situation. As suggested by the Court, if in doubt as to whether a certain interaction could lead to a possible conflict of interest, it is best to refer to his/her superior or a representative from Human Resources (HR) first before proceeding to accept any invitations and/or gifts. This vigilant action on the part of the employee could avoid any doubts on any potential conflict of interest situations.

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