
EMPLOYMENT LAW

BANKRUPT EMPLOYEES' RIGHT TO PURSUE INDUSTRIAL COURT CLAIMS WITHOUT DGI SANCTION

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INTRODUCTION

The Federal Court in [*Akira Sales & Services \(M\) Sdn Bhd v Nadiah Zee Abdullah & Another Appeal*](#)¹ provided clarity on whether a bankrupt employee can pursue a claim in the Industrial Court against the employer without the Director General of Insolvency's (DGI) sanction. It ruled that claims originating from the Industrial Court do not require such a sanction. Additionally, the Federal Court confirmed that subsequent proceedings, including judicial reviews and related appeals, are similarly exempted from this requirement. Therefore, a bankrupt employee can proceed with legal action without needing prior approval or authorization.

BRIEF FACTS

In **Akira Sales & Services (M) Sdn Bhd**, the employees, who were directors/minority shareholders of the Company, were dismissed for alleged misconduct related to the unauthorized operation of a bank account. Following their dismissal, they filed a claim in the Industrial Court, arguing that their termination was without just cause or excuse. However, at the time of filing their appeals to the Court of Appeal, the employees were bankrupts. The Company argued that, as bankrupts, the employees required prior sanction from the DGI to proceed with their claim, and such failure to do so rendered the employees' appeal void.

ISSUES

The central issue in this case was whether the employees, being bankrupts, required prior sanction from the DGI to proceed with their legal claim in the Industrial Court. This gave rise to the question of whether bankruptcy status impacts an employee's right to pursue claims against their employer.

DECISION OF THE FEDERAL COURT

The Federal Court held that no sanction from the DGI was required for the employees to pursue their claims in the Industrial Court. The Federal Court emphasized that proceedings under **s.20(3) of the Industrial Relations Act 1967** ("IRA") are personal in nature and do not form part of the bankrupt's estate, and therefore, not subject to the purview of the DGI. Thus, the bankruptcy status of the employees did not prevent them from seeking justice through the Industrial Court.

Additionally, the Federal Court clarified that judicial reviews of an Industrial Court award under **s.20(3) of the IRA** as well as any subsequent appeals, are simply continuations of the original challenge. Therefore, no prior sanction from the DGI is required for these proceedings either. The Federal Court also noted that in employment-related matters, the distinction between a breach that occurred before or after bankruptcy is irrelevant. The employees in this case were fully entitled to file their appeals with the Court of Appeal

¹ [2018] 2 CLJ

SUBSEQUENT CASES APPLYING THE PRINCIPLE IN AKIRA SALES & SERVICES

The principle established in **Akira Sales & Services (M) Sdn Bhd** has been applied in subsequent cases, which can be observed as follows:

(a) [Ethraj Murugan v Techmerit Engineering Sdn Bhd](#)²

In this case, the Complainant (employee), who has been discharged as a bankrupt since 20 December 2017, filed an action in the Industrial Court and asserting that the Company has failed, neglected and/or refused to pay the award sum of RM135,800.00. The court applied the precedent from **Akira Sales & Services (M) Sdn Bhd** and ruled that since the claim was personal, it did not require prior sanction from the DGI. It was further held that the award of backwages for loss of employment and compensation in lieu of reinstatement could be received by the bankrupt, as these remedies are tied to the personal loss of employment. Since reinstatement is a personal remedy, it holds no interest to the DGI and does not benefit creditors, making it irrelevant to bankruptcy proceedings.

(b) [Mohd Hafiz Mokhtar v Widuri Bidari Sdn Bhd](#)³

In this case, the Claimant was placed on a 3-month probation but was never formally confirmed in his position. Albeit being a probationer at the time he was bankrupt, the Court applying the principles in **Akira Sales & Services (M) Sdn Bhd** held that the Claimant was still able to proceed with the action in Court. This decision reaffirms that an employee's bankruptcy status does not eliminate their right to seek legal redress in employment disputes, even if they are a probationer.

KEY TAKEAWAYS

Based on the ruling in **Akira Sales & Services (M) Sdn Bhd and subsequent decisions**, employees should understand that being a bankrupt does not strip them of their rights to challenge unfair dismissals or address other employment-related issues in the Industrial Court. They can pursue their claims without needing prior approval from the DGI, as such claims are considered personal and do not form part of the bankrupt's estate.

Authors:



[Wong Keat Ching](#)



[John Julian Van Huizen](#)



Amanda Sim Wan Ting (Pupil-in-Chambers)

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² [2020] 2 LNS 0190

³ [2019] 2 LNS 2085