
EMPLOYMENT LAW

BEST PRACTICES FOR NAVIGATING CHANGE WITH A NEW INDUSTRIAL COURT CHAIRMAN

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BRIEF FACTS

In a recent decision of the High Court of Penang¹, an issue arose regarding the applicable law and the best practices for a new Industrial Court Chairman to take over a case and hand down an Award thereafter. In this case, the Applicant/Claimant was an employee of a local Bank. He was dismissed from service after being found guilty of misconduct of fraudulent behaviour in the course of employment, falsifying and/or changing records or documents for his own personal gain and failure to adhere to the Bank's Code of Business Conduct & Ethics.

THE INDUSTRIAL COURT PROCEEDINGS

A trial proceeded over several days in 2022 and 2023 before the learned Industrial Court Chairman, Yang Arif Puan Suraiya Binti Mustafa Kamal. However, Puan Suraiya thereafter left the Industrial Court Bench and was transferred to another agency.

A new Chairman, namely Yang Arif Puan Rusita Binti Md Lazim, relying on s. 23(6) of the *Industrial Relations Act (IRA) 1967*² handed down the Award wherein she dismissed the Applicant/Employee's claim upon evaluation of facts and evidence of the matter and concluded that the Applicant/Employee's dismissal was with just cause and excuse.

ISSUES BEFORE THE HIGH COURT

Dissatisfied with the Award, the Applicant filed a Judicial Review Application in the High Court of Penang for an Order for Certiorari to quash the Award.

One of the issues that was raised was whether the new learned Chairman had the jurisdiction to decide the matter under S. 23(6) IRA 1967?

On this issue, the Applicant argued that the new learned Chairman had erred by merely determining the dispute without hearing both parties. However, Learned High Court Judge, Yang Arif Dato' Anand Ponnudurai did not agree with the Applicant's contention. In

¹ [Ahmad Khushairi Bin Mohamed Nasser v. Mahkamah Perusahaan Malaysia & Anor.](#)

² s. 23(6) of the Industrial Relations Act (IRA) 1967 - During the absence of or inability to act from illness or any other cause by the Chairman, the Yang di-Pertuan Agong may appoint another person to exercise the powers or perform the functions of the Chairman and, notwithstanding that the Chairman may have resumed the duties of his office, the person so appointed may continue to exercise the powers or perform the functions for the purpose of completing the hearing of and determining any trade dispute or matter commenced before him.

adopting a purposive interpretation and with a view of speedy resolution, his Lordship held that a new Chairman appointed may continue to exercise the powers of the former Chairman or perform the functions for the purpose of completing the hearing and determining any trade dispute or matter commenced before her.

The learned High Court Judge further held that in a situation where a new Chairman takes over a matter, it may indeed be prudent for the new learned Chairman to invite learned Counsel for their views as to whether they wish to highlight their submissions before him or her. The High Court noted that there was nothing in the IRA 1967 that mandated this, but that it would be prudent or best practice to do so.

In the current case, Parties were informed and aware that the new learned Chairman would be handing down the Award. The High Court Judge held that it would thus be incumbent on the Applicant at that stage to inform the Industrial Court/new learned Chairman that they wished to present oral submissions and highlight the nuances of the case to the new learned Chairman.

The High Court went on further to determine whether the internal investigation as well as the Domestic Inquiry was flawed and whether the alleged misconduct had been proven. The learned High Court Judge held that the conclusions and findings made therein were not without basis and that the new learned Chairman had made conclusions that could reasonably be reached by another learned Chairman similarly circumstanced. As such, the Award of the Industrial Court was not erroneous in law. Hence, the Judicial Review application was dismissed by the High Court.

KEY TAKEAWAY

This decision of the Penang High Court addressed the issue of the jurisdiction of a new Industrial Court Chairman in deciding matters under S. 23(6) IRA 1967 and the continuation of their powers to resolve trade disputes and/or hand down Awards. The High Court Judge ruled that a new Chairman can indeed exercise these powers for the purpose of completing hearings and achieving a speedy resolution, adopting a purposive interpretation. Additionally, while not mandatory, the High Court held that it was prudent for a new Chairman to seek counsel's views upon taking over a matter. In this regard, parties involved ought to proactively inform the Industrial Court or the new Chairman of their intention to present oral submissions or highlight specific facts or nuances of the case.

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