

EMPLOYMENT LAW:

COURT OF APPEAL UPHELD DISMISSAL OF EMPLOYEE DUE TO INSUBORDINATION WHEN EXITING THE COMPANY'S WHATSAPP GROUP IN DEFIANCE OF SUPERVISOR'S INSTRUCTIONS



INTRODUCTION

Our IR team, [Wong Keat Ching](#), [Teoh Alvare](#) and [Wong Yen Ni](#) succeeded at the Court of Appeal in representing the Appellant, Maxis Mobile Services Sdn Bhd ("the Company") in relation to an unfair dismissal claim originating from the Industrial Court. In this appeal, the Company sought to set aside the High Court's Decision which overturned the Industrial Court's findings that the former employee's dismissal was fair.

BACKGROUND FACTS

In essence, this case concerns the dismissal of the Respondent who was a Sales & Services Executive at the Company's Maxis outlet at E-Curve. At the time of her dismissal, the Respondent had been in service for 2 years and 8 months.

The 2 allegations levelled against the Respondent which led to her dismissal were: (1) her act of exiting the WhatsApp Groups at work without her superior's approval; and (2) her failure to submit the Daily Sales Reports to her supervisor on 7 occasions.

INDUSTRIAL COURT DECISION

The Industrial Court found that the dismissal was with just cause or excuse on the following grounds:

- (1) The Respondent had **deliberately exited the Maxis Centre E-Curve WhatsApp Groups** in December 2014 and for the second time in February 2015. The Company had also adduced sufficient evidence to show that the Respondent knew that she required the approval of her supervisor prior to exiting the WhatsApp Groups, and had failed to obtain the necessary approval before exiting the Groups.
- (2) **By deliberately exiting the WhatsApp Group for the second time**, the Respondent had breached her terms of employment with the Company when she **failed to follow the reasonable oral and written instructions of her supervisor**.
- (3) The Respondent had a **duty to send out the Day End Sales and Service Report** to her supervisor, and had failed to do so on several occasions.
- (4) The Respondent's conduct in totality showed **wilful defiance to the lawful orders** of her superior. The Respondent's persistent refusal to obey instructions or to cooperate with her supervisor amounted to an act of indiscipline and insubordination which marred the trust and confidence of the Company towards the Respondent.

In coming to its ultimate decision, the Industrial Court had also carefully reviewed the **evidence of the Respondent's past misconducts** leading up to the dismissal, where there was a series of abrasive WhatsApp messages including personal attacks to her supervisor, as well as postings on her Facebook account where she was openly abusive and disrespectful towards her supervisor.

HIGH COURT ALLOWED JUDICIAL REVIEW APPLICATION

Dissatisfied with the Industrial Court Award, the Respondent filed an application for judicial review to quash the Industrial Court Award.

In the High Court, the Industrial Court's decision was overturned for the following reasons: (1) the Respondent was **not aware that she needed approval** prior to exiting the WhatsApp Groups as there was no clear written SOP; (2) exiting WhatsApp Groups **did not amount to a breach of any company policy**; (3) the **Respondent should have been added back** into the WhatsApp Groups in order for her to submit the daily reports; and (4) the Respondent was **on annual leave** when she left the WhatsApp Groups temporarily.

The High Court allowed the Respondent's judicial review application, and ordered the case to be remitted to the Industrial Court to be heard afresh by another Chairman of the Industrial Court.

DECISION OF THE COURT OF APPEAL

In mounting its appeal against the High Court's decision, the Company raised 4 main errors committed by the High Court:

1. The High Court had **erroneously re-examined the evidence and held that there were no clear instructions** given to the Respondent that she required approval from her supervisor before exiting the WhatsApp Groups at work. The Respondent was clearly aware that she required approval prior to exiting the WhatsApp Groups.
2. The High Court **erroneously held that the Respondent's dismissal was a result of the Respondent being the target of fault-finding** by her supervisor. On this point, the High Court had unfortunately failed to consider that the Respondent had persistently refused to obey her supervisor's instructions or co-operate with him.
3. The High Court **considered the irrelevant fact** that the Respondent was on annual leave when she left the WhatsApp Groups.
4. The High Court failed to appreciate the **severity of insubordination** by substituting its own views on the fact that the Respondent had submitted the Reports to Finance Department, when there was no documentary evidence on this.

It was also highlighted to the Court that the Respondent's past misconduct had been correctly considered in the Industrial Court's Award. The Respondent had received 3 Show Cause Letters, 1 Suspension Letter and 2 Warning Letters during her short time of employment with the Company between 13.8.2012 and 1.4.2015. The Respondent did not have a clean disciplinary record, and this case was one which concerned an employee who was *"continuously argumentative, disrespectful, abrasive and uncooperative"* towards her supervisor.

CONCLUSION

The Court of Appeal panel (Yang Arif Datuk Abdul Karim bin Abdul Jalil, Yang Arif Dato' Gunalan a/l Muniandy and Yang Arif Dato' Ahmad Zaidi bin Ibrahim) unanimously decided that the Industrial Court's findings were not plainly wrong, and that there were no valid grounds for the High Court to interfere with those findings. As such, the Industrial Court Award was reinstated and the Respondent was deemed to have been dismissed with just cause and excuse.

In summary, the lessons which we are able to glean from this matter is that firstly, exiting a company WhatsApp Group could be considered insubordination if one has been continuously warned by supervisors not to do so. Secondly, the principle of considering an employee's past misconducts when deciding whether dismissal is fair still rings true.

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28 October 2021