

Legal Update

Termination Simpliciter: No Reasons Given, But Can the Dismissal Still Be Justified?

1. Termination simpliciter

In legal terms, *termination simpliciter* is the practice of ending an employment contract simply by giving the contractual notice period (or pay in lieu of notice) without providing any specific reason or cause for the employee's dismissal from their employment.

The common law principle of *termination simpliciter* is not recognised under Malaysian law. Accordingly, employers in Malaysia generally cannot terminate an employee's employment contract solely by relying on a contractual termination clause, even where the requisite notice is given. Instead, any such termination must be supported by just cause or excuse. This non-applicability of *termination simpliciter* has been demonstrated in various cases in Malaysia.

Under employment law in Malaysia, an employer must demonstrate just cause or excuse for dismissal, even where the employment contract expressly permits termination by giving notice or payment in lieu of notice. Accordingly, an employer cannot rely solely on a contractual termination clause to justify dismissal without a legitimate and substantiated reason. Failure to establish just cause or excuse could potentially expose the employer to a claim for unfair dismissal under section 20 of the *Industrial Relations Act 1967*, potentially resulting in reinstatement of employment or an award of compensation in lieu of reinstatement and back wages.

2. Lim Poh Lin v Appxplore (iCandy) Sdn Bhd

The High Court's decision in *Lim Poh Lin v Appxplore (iCandy) Sdn Bhd* (Case No. WA-16A-129-10/2024) provides useful guidance on the concept of *termination simpliciter* in Malaysian law, particularly where an employer terminates an employee pursuant to a contractual notice clause but does not state any reason in the termination letter.

The Appellant in the case argued that her dismissal was effectively a *termination simpliciter* because the termination letter merely invoked the contractual right to terminate on two weeks' notice. She contended that the Industrial Court of Malaysia had wrongly upheld the dismissal despite no reason being stated in the termination letter.

The High Court of Malaysia rejected that argument. It held that the Industrial Court had not upheld the dismissal merely because the contract allowed termination on notice. Instead, the Industrial Court had made specific findings concerning the Appellant's poor performance, poor working attitude and difficulties in her working relationships, and concluded that the Respondent had established just cause and excuse for the dismissal.

3. No reason in the termination letter does not mean no reason existed

A significant feature of the case was that the termination letter itself did not state any reason for the Appellant's dismissal from her role. This raised the question whether the dismissal should therefore be treated as a *termination simpliciter*.

In addressing this issue, the High Court relied on the Federal Court of Malaysia's decision in *Maritime Intelligence Sdn Bhd v Tan Ah Gek* [2021] 3 MLJ 78. The Federal Court held that the absence of reasons at the time of dismissal does not, by itself, mean that the dismissal was without just cause or excuse. Where no reason for a dismissal is provided, the Industrial Court may inquire into the reasons that were in fact operating in the employer's mind at the material time and determine whether those reasons justified the termination of their employment and subsequent dismissal.

However, an employer cannot rely on reasons manufactured after the dismissal has taken place. The evidence must show that the reasons relied upon were evident and operative in the employer's mind immediately prior to, or at the time of, the dismissal, rather than matters subsequently relied upon to justify the dismissal after the event.

On the facts, the Respondent produced evidence that regarding the Appellant's attitude, conduct and performance pre-dated her dismissal from her role. The evidence included complaints concerning her dealings with other team members, difficulties in her working relationships and evidence of poor performance. The High Court was satisfied that these matters existed before the termination and upheld the Industrial Court's finding that the dismissal was with just cause and excuse.

4. Practical takeaways

The decision is a useful reminder that termination pursuant to a contractual notice provision does not, by itself, establish just cause or excuse for dismissal. However, the absence of reasons in the termination letter does not necessarily mean that the dismissal amounts to *termination simpliciter*.

The key question is whether the employer can establish that there was a genuine reason for the dismissal which was already operating in its mind at the material time.

For employers, the case highlights the importance of maintaining contemporaneous records of performance or conduct concerns. Such records may include performance evaluations, written warnings, complaints from colleagues or clients, email correspondence documenting performance or behavioural issues, and minutes of meetings where such concerns were discussed with the employee. Employers should also maintain proper records of any steps taken to address these concerns, such as counselling sessions, performance improvement plans or opportunities given to the employee to improve.

For employees, it demonstrates that the Industrial Court may look beyond the wording of the termination letter and examine the actual reason which operated in the employer's mind at the time of dismissal.

Further information

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