



Dear valued clients and friends,

We are pleased to bring you the following update from our [Employment and Administrative Law Practice Group](#).

32 Years' Service does not Provide Immunity from Dismissal for Poor Performance

In the recent decision of **Abdul Malek Bin Mohamed v MISC Bhd** dated 17 June 2020 [Award 840 of 2020], the Industrial Court recognised that the tenure of service of an employee in an organisation does not shield the employee from having to render satisfactory performance at the level required by the Company. The Industrial Court upheld the dismissal of an employee for poor performance after 32 years of service.

The employee, ("the Claimant") commenced his employment with Perbadanan Nasional Shipping Line Berhad as an Accounts Clerk in 1986. In 1998, Perbadanan Nasional Shipping Line Berhad was acquired by MISC, the Company in the present matter. Through his tenure, the Claimant held different positions with his last held position as an Auditor in charge of Quality Assurance. The Claimant's performance for 2017 was rated as a 3 L (L=Low), which indicated that the Claimant was able to meet the Company's performance requirements only partially. As a result of that rating, he was placed on a PIP for a period of 6 months, from 01 April 2018 until 30 September 2018. On his request, the Claimant was given an extension of the PIP to 11 November 2018 as he had been away on medical leave during the course of the PIP.

During the course of the Claimant's PIP, the Company held five performance reviews of the Claimant's work. The final review was held in November 2018 where his assessment remained at a 3L. Although the Claimant alleged that the PIP had been undertaken in bad faith, the person assessing his performance was incompetent to evaluate the complex tasks that he purportedly performed and that the Company had ulterior motives for terminating his employment the Court found that the absence of such complaints, the failure to highlight his dissatisfaction with the PIP process at any point of time during

the review process or after until subsequent to his termination amounted to irreconcilable behaviour for an experienced employee as the Claimant.

Instead the Court found that the Claimant's signature and acknowledgment to the performance reviews reflected that he had acknowledged his performance evaluation and reviews during the PIP without protest which was testament to his awareness of the Company's unhappiness with his performance even though he claimed otherwise. The Court also found that the allegation that he was coerced to accept monetary compensation to leave the company was unproven. Instead what was accepted by the Court was that whilst there were discussions between the Claimant and the Company on the options that were available if the Claimant did not wish to go through with the PIP the conduct of the Claimant did not indicate that he was under any threat or coercion to leave his employment as pleaded by him.

To the contrary the Court found that the Company met the threshold required of an employer prior to effecting the termination in that the Claimant had been given sufficient time to show improvement in the areas where he was found to be lacking and he had also been sent for trainings to raise his level of performance. Despite the Claimant's participation in the PIP however he was unable to achieve the minimum performance level that was demanded by the Company and hence he was found to be unsuitable to continue in his role as an Auditor.

The company was represented in the instant matter by [Suganthi Singam](#), who is a Partner in our [Employment and Administrative Law Practice Group](#), assisted by Nadia Abu Bakar, a Senior Associate.

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