

Framing The Charge Matters: Recent Court Of Appeal Ruling On Theft And Misconduct By Employee

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The recent decision of the Court of Appeal in *LEC v Kansai Paint Asia Pacific Sdn Bhd* (Appeal No. W-04(A)-423-09/2024) offers a pointed reminder of a principle often overlooked in workplace disputes: how an allegation is framed can determine the outcome as much as the facts themselves.

In restoring the Industrial Court's award, the appellate court reaffirmed that the Industrial Court's role is anchored not in rigid legal formalism, but in equity, good conscience and the practical realities of the employment relationship. At the same time, it underscored that where an employer chooses to cast an employee's conduct in terms suggestive of theft, it assumes the burden of proving dishonesty.

A Long-Serving Employee And A Moment Of Misjudgement

The case concerned a senior employee with nearly four decades of service. During the company's relocation from its Port Tech Tower office in Klang, employees had been instructed to leave all items behind for handover to the landlord. CCTV footage later showed the employee entering the vacated premises and removing two chairs and two projectors. When questioned, he admitted to taking the items without prior approval but returned them shortly thereafter.

The employer nevertheless proceeded with disciplinary action, framing the conduct as theft or unauthorised removal of company property. Following a domestic inquiry, the employee was dismissed.

Industrial Court: Misconduct, But Not Dishonesty

The Industrial Court took a more nuanced view. While critical of the employee's lapse in judgment particularly given his seniority, it found that the employer had not established the essential element of dishonesty. This distinction proved decisive as theft, even in an employment context, carries an implication of moral culpability. On the facts, the court was not persuaded that the employee's conduct crossed that threshold.

The Industrial Court ordered reinstatement with back wages reduced by 25% to reflect contributory misconduct, which can be viewed as an outcome that balanced censure with proportionality.

High Court: A Stricter Contractual Lens

The company appealed to the High Court, which held that the Industrial Court had strayed into criminal law territory by invoking concepts drawn from the Penal Code. The High Court ruled that the inquiry should have been simpler: whether the employee had taken company property without permission. On that basis, the High Court found a clear breach of the employer's handbook and concluded that dismissal was justified.

Court Of Appeal: Restores The Industrial Court Award

The Court of Appeal unanimously reversed the decision of the High Court with reasoning which can be described as both restrained and significant.

The Court of Appeal held that the Industrial Court had not imported criminal standards into employment law. Rather, it had engaged in a legitimate exercise of characterising the allegation as framed by the employer. If an employer alleges theft or conduct tantamount to it, then the element of dishonesty cannot be sidestepped. It becomes central to the inquiry.

The appellate court also reiterated a familiar but often diluted principle: findings of fact by the Industrial Court, particularly those involving credibility and intent, are not to be lightly disturbed. As a specialist tribunal, it is uniquely placed to assess the subtleties of workplace conduct.

This decision also reflects a continued judicial emphasis on proportionality. Even where misconduct is established, dismissal does not follow as a matter of course. Here, the Industrial Court had taken into account the employee's long and otherwise unblemished service, the isolated nature of the incident, and the absence of proven dishonesty. Its conclusion that dismissal was excessive was described by the Court of Appeal as a classic exercise of arbitral discretion.

Commentary

For employers, the message from this recent ruling is clear. Disciplinary charges are not merely procedural formalities; they define the legal and evidential terrain.

An allegation framed in the language of dishonesty carries a heavier burden. It is not open to an employer or a reviewing court to recalibrate that allegation after the fact in order to justify dismissal on a lesser standard.

More broadly, the decision is a reminder that employment law in Malaysia continues to resist a purely contractual or formalist approach. The Industrial Court's mandate to decide according to equity, good conscience and the substantial merits of the case remains central.

In this regard, precision in drafting, discipline in process and restraint in sanction are not optional. They are determinative and as such, employers should consider obtaining professional advice from their industrial relations lawyers.

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