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Employee's failure to seek reinstatement does not remove Industrial Court's jurisdiction

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Background

Pursuant to section 20(1) of the Industrial Relations Act 1967 (the Act), an employee who thinks that they have been unjustly dismissed may appeal in writing to the director general for industrial relations (DG) to be reinstated to their former employment.

In the event the employer and employee are not able to reach a settlement, the DG will refer the representations to the Industrial Court.

At the Industrial Court, the employee is required to file a statement of case setting out the facts and arguments as to why they consider their dismissal unjust. Generally, the statement of case will also state the employee's desired remedies (ie, reinstatement or compensation in lieu of reinstatement and back wages).

In *ACE Holdings Bhd v Norahayu Rahmad & Anor*,(1) the Court of Appeal decided on the issue of whether the Industrial Court has the jurisdiction to hear an employee's claim for unjust dismissal if they did not plead for a reinstatement remedy in the statement of case.

Decision

Industrial Court
At the Industrial Court, ACE Holdings Bhd (the company) raised the preliminary objection that the Industrial Court had no jurisdiction to hear the employee's claim because she had only pled for monetary relief in the statement of case. The Industrial Court allowed the preliminary objection and dismissed the employee's claim for want of jurisdiction.

The employee then applied to the High Court for a judicial review.

High Court
The High Court allowed the judicial review application and quashed the Industrial Court's award on the following grounds:

- The employee's failure to apply for a reinstatement remedy in the statement of case was not critical because the Industrial Court had the discretion to grant it or otherwise.
- It was the Industrial Court's duty to hear the employee's claim which was referred to under the Act. The Industrial Court should have determined the employee's claim on the merits and not dismissed it by way of a preliminary objection.

Court of Appeal
The Court of Appeal upheld the High Court's decision and held the following:

- Employees are entitled to proceed with their claims against their employers even if they only seek monetary relief and not reinstatement to their former employment.
    - At the appeal, the company argued that the Court of Appeal was bound by the Federal Court's decision in *Unilever (M) Holdings Sdn Bhd v So Lai & Anor*.(2) The Court of Appeal found that the rationale for the decision in *Unilever* was not binding on this appeal, which involved a different issue. The rationale for the decision in *Unilever* was that the Industrial Court cannot award compensation in lieu of reinstatement to an employee who cannot be reinstated as the employee had reached retirement age at the time the claim was filed in the Industrial Court. However, the issue in this appeal was different (ie, whether an employee's claim may be sustained and heard by the Industrial Court when they did not pursue reinstatement).
- As a matter of stare decisis, the Court of Appeal held that it was bound by its own previous decision in *Sanbos (Malaysia) Sdn Bhd v Gan Soon Huat*(3) and that there was no reason to depart from this rationale. It had been decided in *Sanbos* that if the minister of human resources (the minister) had referred the representations to the Industrial Court, the Industrial Court could not dismiss the employee's claim without hearing it on the sole ground that the Industrial Court ceased to have jurisdiction because the employee's statement of case had not applied for a reinstatement remedy.
- The Court of Appeal disagreed with the company's argument that the Industrial Court may be flooded by pure monetary claims of employees if it must hear claims of employees who have abandoned a reinstatement remedy. The Industrial Court is a specialised tribunal established to decide on the employees' claims for unjust dismissal. Thus, the employees should still be allowed to proceed with their claims in the Industrial Court even if they are only seeking monetary relief.
- Accordingly, the Court of Appeal further stated that any previous High Court decision or Industrial Court award contrary to *Sanbos*, be overruled.
- Where a preliminary objection is raised before the Industrial Court, the Industrial Court should hear and decide, in one award, the merits of both the preliminary objection and claim:

- The Court of Appeal held that a staggered hearing approach (ie, deciding the merits of the preliminary objection before the merits of the claim) will cause inordinate delay to the proceedings. Such a delay would oppose the social objective of the Act and the employee's constitutional right to livelihood and limited proprietary right regarding to their employment.
- On the contrary, a joint hearing of the preliminary objection and claim would save employers' time, effort and legal expense. It would also help to prevent irreparable prejudice to employees in circumstances where the employers become insolvent before the final disposal of the claim, or where the employees must discontinue the claim due to financial constraint or litigation fatigue.

Comment

The Court of Appeal's decision referred to the outdated section 20(3) of the Act, which provided the minister with the discretion to refer an employee's representations to the Industrial Court.

However, following the amendment to the Act effective 1 January 2021, it is now mandatory for the DG to refer the representations to the Industrial Court where they are satisfied that there is no likelihood of the representations being settled.

As such, the Court of Appeal's decision arguably also applies to circumstances where the reference is made by the DG and not the minister. Otherwise, if the Court ceases to have jurisdiction to hear the claim solely because the employee has abandoned a reinstatement remedy in the statement of case, it would defeat the purpose of amending the Act to make it mandatory to refer the employee's claim to the Industrial Court.

For further information on this topic please contact Lee Sze Ching (Ashley) at Gan Partnership by telephone (+603 7931 7060) or email (szeching@ganlaw.my). The Gan Partnership website can be accessed at www.ganlaw.my.

Endnotes

(1) [2023] 6 CLJ 159.

(2) [2015] 3 CLJ 900.

(3) [2021] 6 CLJ 700.