# RASAMEWAH ICE-CREAM MANUFACTURER SDN BHD
**v.**
# MADHAVAN MUNIANDY

High Court Malaya, Shah Alam
Shahnaz Sulaiman J
[Civil Appeal No: BA-16-6-01/2023]
18 April 2024

**Case(s) referred to:**
*Said Dharmalingam Abdullah v. Malayan Breweries (Malaya) Sdn Bhd [1996] 2 MLRA 200; [1997] 1 MLJ 352; [1997] 1 CLJ 646; [1997] 1 AMR 1063 (refd)*
*Weltex Knitwear Industries Sdn Bhd v. Law Kar Toy & Anor [1998] 4 MLRH 774; [1998] 7 MLJ 359 (refd)*

**Counsel:**
*For the appellant: Selva Balan Sinnan; M/s Azman Joseph & Associates*
*For the respondent: Kohila; M/s Kohi & Associates*

*[Appeal dismissed with costs.]*

## JUDGMENT

**Shahnaz Sulaiman J:**

### Introduction

**[1]** This is an appeal against the decision of the Labour Court in Bandar Baru Bangi on 2 November 2022 which ordered the appellant to pay the respondent the amount of RM48,036.10 as termination benefits and 8% interest on the judgment debt after 31 days from the date of judgment until full settlement.

### Factual Background

**[2]** The appellant, a company involved in the manufacture and sale of ice-cream products, is the employer of the respondent.

**[3]** The respondent commenced employment with the appellant on 24 March 1998 as a driver. The last position held by the respondent was that of a lorry driver. The last drawn salary of the respondent was RM1,850.00 and an allowance of RM850.00.

**[4]** On 2 August 2022, the respondent was informed by the appellant to come to work only when necessary. Nonetheless, the respondent went to work.

**[5]** On 18 August 2022, the respondent was given a trip to Kangar which was his last trip.

**[6]** On 20 August 2022, a representative of the appellant telephone the respondent requesting the respondent to come to the appellant's office. The balance of the respondent's July salary was given to the respondent. The respondent was orally informed by the representative of the appellant that production at the appellant company was nil and the respondent was asked to look for alternative employment. The respondent sought a letter of recommendation but the appellant did not provide one.

**[7]** On 23 August 2022 the respondent was paid a sum of RM1,640.00 being the salary for the month of July 2022.

**[8]** On 23 August 2022 the respondent called at the Director General of Labour's office at Bangi to lodge a complaint.

**[9]** The respondent alleged that his employment was terminated on 23 August 2022 and sought termination benefits and payment for notice period.

**[10]** On 2 December 2022 the Director General of Labour issued Borang C directing the appellant to pay the sum of RM48,036.10 being payment of termination benefit and for notice period of eight (8) weeks.

## Issues Raised

**[11]** The issue raised by the appellant for this court's consideration is that there was no evidence led by the respondent to identify the person who instructed the respondent to seek alternative employment

## Decision

**[12]** The respondent's services was terminated on 20 August 2022. the respondent was informed orally that the appellant did not have production and therefore the respondent was told to seek other employment.

**[13]** The respondent had on 23 August 2022 sought a letter of dismissal or termination from the appellant. However, the appellant had refused to issue the said letter of termination or dismissal.

**[14]** The respondent then filed a claim at the Labour Court in Bangi for immediate dismissal without notice on 23 August 2022. The respondent had worked with the appellant for 24 years and 5 months.

**[15]** The appellant had argued it was the respondent who had resigned when the respondent did not turn up for work from 20 August 2022, and therefore the respondent was not entitled to termination benefits and salary *in lieu* of notice.

**[16]** The appellant contended that there was no termination of the employment of the respondent. However, the respondent in his case stated that "Dia suruh saya cari kerja tempat. Sini sudah tiada kerja".

**[17]** The said "termination" took place when the respondent was asked to seek employment else-where. This fact is dispute by the appellant.

**[18]** It was argued by the appellant that the respondent did not identify any person who instructed the respondent to find alternative employment. At the beginning of the hearing at the Labour Court, the respondent mentioned one Mohan who gave the instructions to seek employment elsewhere then later changed his testimony by saying that Mohan has nothing to do with this case.

**[19]** In this circumstance the legas burden to prove termination lies with the respondent. In *Weltex Knitwear Industries Sdn Bhd v. Law Kar Toy & Anor* [1998] 4 MLRH 774; [1998] 7 MLJ 359 it was decided by the High Court that:

> "the fact of dismissal is not in dispute, the burden is on the company to satisfy the court that such dismissal was done with just cause or excuse. However, where the fact of dismissal is in dispute, it is for the workman to establish that he was dismissed by his employer. On the facts, it is the first respondent who asserts that she was dismissed and the applicant denies it. So, it is for the first respondent to establish so by evidence, in which she had failed."

**[20]** The facts in dispute is whether there was termination of the respondent by the appellant. According to the appellant, the respondent did not identify who informed him to find another job. The Labour Court had therefore erred when accepting the respondent's statement that he was asked to find another job when this person was not identified.

**[21]** It was further submitted by the appellant that the respondent had mentioned Mohan had informed him to look for another job when this person Mohan does not exist in the appellant's employment.

**[22]** In regard to this issue, the notes of proceedings indicate that the respondent had mentioned Mohan as the person who had told him to look for other job. This was then changed to Ah Leng. The appellant argued that the respondent's testimony contradicted itself.

**[23]** Upon this court's careful scrutiny of the Notes of Proceedings, it is evident to this court that on the said day 27 September 2022, there was no Tamil interpreter present to assist the respondent in giving his evidence. In such a circumstance, it appears to this court that the respondent may not understand the question put forth to him or may be confused by the question, when he answered Mohan.

**[24]** The fact that there is no production and the appellant company has no work for respondent was confirmed through the statement of Ms Chin See Hui, who works as an Executive Accountant for the appellant. In Ms Chin's statement, it was mentioned that due to no orders, there were no deliveries, and consequently, no drivers were hired for deliveries. Ms Chin also stated, the number of employees had decreased from 30 to 40 individuals to 5 to 6 individuals. The workers who still come to work are only involved in machine

maintenance. She also stated that some workers were instructed no to come to work. Furthermore, Ms Chin mentioned that the company is facing financial problems due to high material costs and no profits. This statement clearly indicates that the company is not producing, the workforce has been reduced, and the respondent is one of those who were asked to find new employment.

**[25]** Subsequently, after the respondent filed the case with the Labour Court, the appellant changed their story by stating that the respondent was absent from work, and the appellant did not terminate the respondent. Furthermore, the director of the appellant company stated that when the respondent was absent, he himself would drive the truck and handle the deliveries. This clearly indicates inconsistencies in the appellant's version. This is because it is unusual for a director to drive a truck for deliveries simply because the respondent is absent. Moreover, no warning letters were issued to the respondent for his absence until the trial.

Moreover, the appellant's company was unsure whether the respondent was present or not. This also indicates that the appellant had instructed the respondent not to come to work because the appellant company did not keep track of the respondent presence during working hours.

**[26]** In the view of this court, the respondent worked with the appellant for 25 years and 5 months. At his advance age, why would the respondent quit his employment. It would have been difficult for him to get a new job.

**[27]** In the case of *Said Dharmalingam Abdullah v. Malayan Breweries (Malaya) Sdn Bhd* [1996] 2 MLRA 200; [1997] 1 MLJ 352; [1997] 1 CLJ 646; [1997] 1 AMR 1063 the court held:

> "In examining whether an employee has been dismissed without just cause or excuse, it was correct to examine the decision not just for substance but for process as well."

**[28]** In this case, the appellant's actions on 2 August 2022, instructing the respondent not to come to work until summoned, asking the respondent to come to the office on 23 August 2022, to collect the salary slip and the balance of July 2022 salary, and not taking any action when the respondent did not come to work thereafter, as well as paying the basic salary for August 2022 even though the respondent did not attend work after 23 August 2022, support the respondent's claim that he was terminated is reasonable. Furthermore, the fact that the respondent, who had been working for 24 years and 5 months, suddenly stopped coming to work raises questions. Additionally, the appellant's own staff has stated that the respondent is a good employee and has not engaged in any wrongdoing.

## Conclusion

**[29]** In the upshot, this court is of the view there is no merit to this appeal. This appeal is therefore dismissed with costs of RM3,000.00 subject to allocator fees. The decision of the Labour Court is hereby upheld and affirmed.