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When is an Insurance Agent an Employee?

Mahder Yusof & Anor v Prudential Assurance Malaysia Berhad [2016] 4 ILR 408

In December 2010, Mahder Yusof and Ong Siew Hong joined Prudential Assurance Malaysia Berhad as insurance agents. Two years later, they were required to show cause why the agency agreement should not be terminated for acts of misconduct relating to false entries in the insurance company's claim forms and receipts and reports which had falsified contents. Mahder replied to the allegations by stating that the claim forms were submitted without his knowledge and that his signature had been falsified by his clerk. Ong replied that the policyholders had filled in the details in the claim forms. The company found that the allegations were proven against Mahder and Ong and decided to terminate their agency agreements.

Mahder and Ong made representations in writing to the Director General of Industrial Relations to be reinstated to their former position pursuant to s 20 of the Industrial Relations Act 1967. The representations not having been settled, the Director General notified the Minister of Human Resources, who, in turn made a decision to refer the representations to the Industrial Court for an award.

At the Industrial Court, the company objected that the agents were not employees/workmen within the ambit of the Act and were independent contractors. The Industrial Court considered the terms of the agency agreement and the relationship between parties, and held that Mahder and Ong were employees.

The Industrial Court took into account the fact that:

- (a) the agents' appointment was full-time;
- (b) the agents could not be involved in other businesses or employment;
- (c) the agents were required to attend training programs;
- (d) the company had full control of the manner the agents worked;
- (e) the agents had to abide by the company's policies;
- (f) the agents were not allowed to work outside the premises stipulated by the company; and
- (g) the agents had to retire at the age of 60.

The Industrial Court held that the dismissal was without just cause or excuse, and awarded RM627,300.44 to Mahder and RM728,533.78 to Ong. The company has since applied to the High Court for judicial review of the Industrial Court's award.

To access the full Award, click [here](#).

Amardeep Singh Toor

This Legal Update is brought to you by the Employment Practice Group. The practice group consists of experienced lawyers who are a single source of reference for comprehensive services relating to labour, employment and industrial relations practices. The team's services include advisory and litigation work pertaining to compliance with employment-related legislation, management of transition and migration of staff, management of issues involving dismissals and terminations, employment rights and duties, employment policies, documentation and issues arising from the exercise of an employer's managerial prerogatives in the employment relationship, and trade unions, trade disputes and collective agreements.

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