



Dato' Thavalingam Thavarajah
Partner
T: +603 6208 5857
E: tt@lh-ag.com

24 SEPTEMBER 2019

Reasonable Belief of Criminal Conduct Justifies Termination

Mohd Azrizal bin Mydin Pitchay v Northport (Malaysia) Berhad
(Industrial Court Award No 2479 of 2019)

Last Thursday, the Industrial Court dismissed an employee's claim for unfair dismissal and held that the dismissal was done with just cause and excuse as the company had reasonable grounds to believe that the employee had committed an act of misconduct that was criminal in nature.

The employee was dismissed when he was found positive for drugs in a random urine test conducted by the company. In his defence, the employee argued that the urine test was not reliable or conclusive as it was a "false positive" (due to the medications that he alleged were prescribed to him) and that the company had failed to follow the proper procedure as set out in the Inspector-General Standing Order F103 ("IGSO F103"), issued by the Inspector-General of Police, as well as the guidelines by the Ministry of Health on urine tests.

The company contended that the employee offered no evidence to support his allegation of "false positive" and that its own investigation had revealed that the medications prescribed to him by the company's panel clinics did not contain the drugs that he tested positive for. The company further argued that it had complied with its internal procedure on urine tests which was sufficient for an investigation on misconduct and that the IGSO F103 as well as the guidelines by the Ministry of Health which may be applicable in criminal investigations were not binding upon the company as they had no force of law.

The Industrial Court chairman agreed with the company and held that the test for misconduct bordering on a criminal offence in industrial jurisprudence is not whether the employee had committed the offence, but rather whether the employer had acted reasonably in thinking that the employee had committed such offence and whether the employer had acted reasonably in subsequently dismissing him. In other words, the company did not bear any burden to prove that the employee had committed the offence, but to merely prove that it had cogent and rational grounds to infer that the employee had committed such offence, which it did in the instant case.

The Industrial Court award may be viewed [here](#).

The company was represented by partner Dato' Thavalingam Thavarajah and associate Aida Yasmin Cheree Mohamad of [Lee Hishammuddin Allen & Gledhill](#).

Aida Yasmin Cheree Mohamad (ayc@lh-ag.com)

If you have any queries, please contact the author or team partner [Dato' Thavalingam Thavarajah](#) (tt@lh-ag.com).

Lee Hishammuddin Allen & Gledhill

Level 6, Menara 1 Dutamas
Solaris Dutamas
No. 1, Jalan Dutamas 1
50480 Kuala Lumpur
Malaysia

T +603 6208 5888
F +603 6201 0122/0136
E enquiry@lh-ag.com
W www.lh-ag.com

Published by the Employment Practice

© Lee Hishammuddin Allen & Gledhill. All rights reserved. The views and opinions attributable to the authors or editor of this publication are not to be imputed to the firm, Lee Hishammuddin Allen & Gledhill. The contents of this publication are intended for purposes of general information and academic discussion only. It should not be construed as legal advice or legal opinion on any fact or circumstance.

[Feedback](#)

[Unsubscribe](#)