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The Industrial Relations (Amendment) Bill 2019

The Industrial Relations (Amendment) Bill 2019 was passed by the Dewan Rakyat on 9 October 2019. This Bill will now be tabled in the Dewan Negara. Once it is passed and brought into force, it will make significant changes to the industrial relations system in Malaysia in relation to unjust dismissal claims as outlined:

(1) Abolition of Minister's referral role

In the statutory mechanism for resolution of dismissal disputes, if an employee considers himself to have been dismissed without just cause or excuse, he can make representations in writing to the Director-General of Industrial Relations to be reinstated. The Director-General will then take such steps as he may consider necessary or expedient for an expeditious settlement. Where the Director-General is satisfied that there is no likelihood of the representations being settled, he will notify the Minister of Human Resources, who may, if he thinks fit, refer the representations to the Industrial Court for an award. The Minister applies the test whether there are serious issues of law or fact which ought to be adjudicated by the Industrial Court.

With the amendments, the ministerial role of sieving out representations which do not pass the qualitative test of fitness is removed. The Director-General is obliged to refer the representations directly to the Industrial Court if he is satisfied that there is no likelihood of the representations being settled. Will there be a sudden jump in the Industrial Court's docket of cases with direct references which are not sieved? It appears not as statistics in 2018 from the Industrial Relations Department show that only 256 cases out of 5,196 were not referred to the Industrial Court by the Minister.

Under the current system, the conciliation meeting conducted by the Director-General has a dual purpose. He engages in a fact-finding exercise for him to put up his report to the Minister for him to determine whether a representation is fit to be adjudicated. He also acts as a conciliator to see if the parties can arrive at a settlement of the dispute. With the amendments where he will no longer be required to furnish a report, will the Director-General continue with his fact-finding role? If he takes on an active facilitative approach in the performance of his conciliatory role, he might do so. Here, he will be more interventionist pointing out the

strengths and weaknesses of the respective parties' case and putting them through reality checks premised on the facts placed before him. However, if his primary concern is to only have the parties state their position whether or not they will agree to a settlement, the approach will take on a passive, non-facilitative role where he might not concern himself too much with inquiring into the facts of the dispute. In the latter situation, fact-finding may be limited.

(2) Right of aggrieved party to appeal to High Court

Under the current system, pursuant to s 33B of the Industrial Relations Act 1967, an aggrieved party does not have the right to appeal an award handed down by the Industrial Court. It was possible, however, for an aggrieved party to apply to the High Court for the judicial review of an award. If the amendments come into force, an aggrieved party will have the right to appeal to the High Court within 14 days from the date of receipt of the award.

The appeal mechanism is likely to be speedier than the two-stage judicial review application, which allows the aggrieved parties three months to file the application.

A judicial review application is concerned with the decision-making process and may scrutinise a decision on its merits only in the most appropriate of cases. With the appeal mechanism, the High Court will be able to scrutinise the merits of the case, including scrutinising evidence upon which findings of facts have been arrived at.

The amendments will also grant additional powers to the Industrial Court. The Industrial Court may now continue with the proceedings of a case, notwithstanding the death of the workman who made the representations. The Industrial Court may also impose interest of up to a maximum of 8% per annum calculated from the 31st day from the date of the making of the award until the day the award is satisfied.

The Bill may be viewed here:

https://www.parlimen.gov.my/files/billindex/pdf/2019/DR/D.R%2031_2019%20-%20eng.pdf

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