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Maximum 24 Months in Backwages for Dismissed Employees

Novartis Corporation (Malaysia) Sdn Bhd v Lee Lily & Ors
(High Court Judicial Review Application No WA-25-189-04/2019)

On 3 October 2019, the High Court confirmed that dismissed employees are only entitled to a maximum of 24 months' backwages.

Earlier this year, it was [reported](#) that the Industrial Court, in finding two sacked employees to have been unfairly dismissed in January 2014, had held they should be reinstated to their former employment and awarded backwages for the full period from dismissal till reinstatement (i.e. 56 months), with a deduction of 50%.

In making this finding, the chairman of the Industrial Court had reasoned that the Second Schedule of the Industrial Relations Act 1967 (**the Act**), which limits backwages to a maximum of 24 months, was not applicable when reinstatement is ordered, citing Practice Note No 1 of 1987 (**Practice Note No 1**) as the basis for his conclusion.

In challenging the Industrial Court's decision at the High Court, it was argued on behalf of Novartis that the Second Schedule of the Act is unambiguous in capping backwages to 24 months, and makes no distinction as to whether a concurrent order for reinstatement is made or not.

The High Court agreed, and held that the quantum of backwages must be governed within the four walls of the Act, i.e. that backwages are limited to 24 months, irrespective of whether the employee is reinstated or not. The judge further observed that Practice Note No 1 was only to be used as a guideline for harmonisation of the calculation of backwages and that the courts were ultimately bound by the limits stipulated in the Act.

Bearing the above in mind, the High Court was of the view that the initial finding of the Industrial Court granting full backwages of 56 months must be reduced to the statutory limit of 24 months. Further, it observed that there was no basis to interfere with the 50% deduction, which would therefore be maintained, thereby reducing the total backwages to 12 months.

The company was represented by partner Dato' Thavalingam C Thavarajah, and associates, David Tan Seng Keat and Shivani

Sothirachagan, of [Lee Hishammuddin Allen & Gledhill](#).

The case has been reported on in [Free Malaysia Today](#) and [HR News](#).

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

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