



KEY HIGHLIGHTS INDUSTRIAL RELATIONS (AMENDMENT) ACT 2020

by Premjit Singh
Managing Partner Prem & Associates



AMENDMENTS WHICH CAME INTO FORCE



BRIEF BACKGROUND

The Minister of Human Resource had on 04 December 2020 in the exercise of the powers conferred by subsection 1(2) of the Industrial Relations (Amendment) Act 2020 appointed 01 January 2021 as the date of coming into force for the following relevant amendments.



INDUSTRIAL RELATIONS (AMENDMENT) ACT 2020

APPOINTMENT OF DATE OF COMING INTO OPERATION

IN exercise of the powers conferred by subsection 1(2) of the Industrial Relations (Amendment) Act 2020 [Act A1615], the Minister appoints 1 January 2021 as the date on which the Act comes into operation except section 4, subsections 5(c), (d), (e), (f) and 8(b), section 10, subsections 11(a), (b) and (c), and sections 18, 33 and 34.

Dated 4 December 2020
[KSM.PUU(S)600-1/1/20(10); PN(U2)3124]

DATUK SERI M. SARAVANAN
Minister of Human Resources



Appeal against an Industrial Court Award to the High Court

- ▶ A new Section 33C was introduced to allow parties to appeal to the High Court within 14 days from the date of receipt of the award if they are dissatisfied with an award that has been made by the Industrial Court. Appeals will be dealt with in accordance with the Rules of Court 2012.



DIFFERENCE IN APPELLATE PROCEDURE

- ▶ Current procedure involves the filing of Judicial Review due to Section 33B IRA (now repealed)
- ▶ (1) *Subject to this Act and section 33A, an award, decision or order of the Court under this Act (including the decision of the Court whether to grant or not to grant an application under subsection 33A(1)) **shall be final and conclusive, and shall not be challenged, appealed against, reviewed, quashed or called in question in any court.***
- ▶ *R Rama Chandran v The Industrial Court Of Malaysia & Anor* has held that even when the Act has described an Award is final, the High Court can still intervene to quash an Industrial Court Award in appropriate cases. This can be done by way of a Judicial Review application.



Appeal against an Industrial Court Award to the High Court - Section 33C

- ▶ (1) If any person is dissatisfied with an award of the Court made under section 30 such person may appeal to the High Court within fourteen days from the date of receipt of the award.
- ▶ (2) The procedure in an appeal to the High Court shall be the procedure in the Rules of Court 2012 for an appeal from a Sessions Court with such modifications as the circumstances may require.
- ▶ (3) In dealing with such appeals, the High Court shall have like powers as if the appeal is from the Sessions Court



Appeal against an award to the High Court

Rules of Court Order 55 vs Order 55A

55. Appeals to High Court from Subordinate Courts

55A. Appeals to High Court under written law

56. Appeals from Registrar of the High Court to a Judge in Chambers



Appeal against an award to the High Court

- ▶ **SANTHANALETCHUMY A/P SUBRAMANIAM v. ZAINAL BIN SAAD & ANOR** the court held;
- ▶ *On the question as to whether the appeal Court can interfere with the finding of the trial Magistrate, Lord Shaw in Clarke v. Edinburgh & District Tramways Co. Ltd. [1919] SC(HL) 35 at page 37 had this to say:*
- ▶ *In my opinion, the duty of an appellate Court in those circumstances is for each Judge of it to put to himself, as I now do in this case the question, am I - who sit here without those advantages, sometimes broad and sometimes subtle, which are the privileges of the Judge who heard and tried the case - in a position, not having those privileges, to come to a clear conclusion that the Judge who had them was plainly wrong? If I cannot be satisfied in my own mind that the Judge with those privileges was plainly wrong, then it appears to me to be my duty to defer to his judgment.*



DATE OF DISMISSAL

Section 29(da) IRA

The Industrial Court may, in any proceedings before it, hear and determine the matter notwithstanding the fact that the date of dismissal stated in the DGIR's reference under Section 20(3) IRA is disputed by any party in the proceedings or is incorrect.



ADDITIONAL POWER OF THE COURT- AMENDMENT TO SECTION 29

- ▶ (a) by inserting after paragraph (d) the following paragraph:
- ▶ “(da) hear and determine the matter before it notwithstanding the fact that the date of dismissal stated in the Director General’s reference under subsection 20(3) is—
- ▶ (i) disputed by any party to the proceedings; or
- ▶ (ii) incorrect,
- ▶ wherein the Court shall be vested with the power to determine the date of the dismissal when hearing and determining the matter before it;” and
- ▶ (b) by inserting after paragraph (e) the following paragraph:
- ▶ “(ea) continue to conduct its proceedings notwithstanding the death of the workman who made the representations under subsection 20(1);”.



(BORANG INI DIBERI PERCUMA)

Lampiran P1

Sila isi borang ini dengan HURUF BESAR

Nama dan Alamat Surat-Menyurat Perayu

Tarikh : _____

Nama dan Alamat JPP Negeri

SILA SERAHKAN KE JABATAN INI :
3 salinan Borang Representasi
3 salinan Kad Pengenalan /
Paspot (bagi pekerja asing)

Tel : _____
Faks : _____
Emel : _____

Tuan,

Representasi Di Bawah Sek. 20(1) Akta Perhubungan Perusahaan 1967

Saya ingin melaporkan kepada pihak tuan bahawa saya telah dibuang kerja oleh majikan saya tanpa sebab dan alasan yang munasabah.

Maklumat mengenai diri saya dan majikan adalah seperti berikut:

- 1) Nama : _____
(Seperti di dalam kad pengenalan / paspot)
- 2) No. Kad Pengenalan/Paspot : _____
- 3) Negara Asal : _____ Keturunan : _____
- 4) No. Telefon : (H/P) _____ (R) _____
- 5) Alamat Emel : _____
- 6) Jawatan terakhir disandang : _____
- 7) Klasifikasi : *Eksekutif / Bukan Eksekutif (*potong yang tidak berkenaan)
- 8) Gaji Pokok (RM) : _____ Pendapatan Purata : _____
- 9) Tarikh Mula Kerja : _____
- 10) Tarikh Dibuang Kerja : _____
- 11) Sebab Pembuangan : _____
- 12) Nama Majikan (ikut SSM) : _____
- 13) Alamat Majikan : _____



DATE OF DISMISSAL

- ▶ DREAMLAND CORP (M) SDN BHD v. CHOONG CHIN SOOI & INDUSTRIAL COURT OF MALAYSIA SUPREME COURT, KUALA LUMPUR [1988] 1 CLJ Rep 39
- ▶ However, neither that Court nor the High Court were correct in amending the date of dismissal and in awarding compensation as a consequence of such amended date, both matters outside their jurisdiction in an enquiry under s. 20(3) of the Act.



SECTION 30 IRA - AWARD

- ▶ (1A) An award made under subsection (1) for the payment of money shall carry interest at the rate of eight per centum per annum, or such lesser rate as the Court may direct, the interest to be calculated commencing on the thirty-first day from the date of the making of the award until the day the award is satisfied;

Provided that the Court, on an application made by the aggrieved party within thirty days from the date of the making of the award, is satisfied that special circumstances exist, **may determine any other date from which the interest is to be calculated.**



AWARDS- AMENDMENT TO SECTION 30

- ▶ (6B) Notwithstanding subsection (6), the Court, in making an award in relation to a reference under subsection 20(3) in respect of a deceased workman, shall have the power to award backwages or compensation in lieu of reinstatement or both to the next-of-kin of the deceased workman.



REPRESENTATION TO CONTINUE UPON DEATH OF WORKMAN

- ▶ **THEIN THAM SANG v. THE UNITED STATES ARMY MEDICAL RESEARCH UNIT[1983] CLJ Rep 417 FEDERAL COURT held**
- ▶ [1] There is no provision in the Industrial Relations Act 1967 or in the Industrial Court Rules, 1967 to allow the legal representative or administrator of the estate of the deceased workman to appear at the Industrial Court proceedings under s. 20(3) of the Act.
- ▶ [2] Having regard to the abovementioned facts, the Federal Court agreed with the learned Judge that proceedings under s. 20(3) of the Act **are a claim personal to the non-union workman and that it abated on his death.**



SECTION 33A -REFERENCE TO HIGH COURT ON POINT OF LAW - DELETED

33A Reference to the High Court on a question of law

- ▶ (1) Where the Court has made an award under subsection 30(1) it may, in its discretion, on the application of any party to the proceedings in which the award was made, refer to the High Court a question of law-
- ▶ (a) which arose in the course of the proceedings;
- ▶ (b) the determination of which by the Court has affected the award;
- ▶ (c) which, in the opinion of the Court, is of sufficient importance to merit such reference; and
- ▶ (d) the determination of which by the Court raises, in the opinion of the Court, sufficient doubt to merit such reference.

THIS PROVISION IS NOW DELETED BY THE AMENDMENT



Section 52(3) Representations for dismissals against statutory bodies

- ▶ Employees of the statutory body in question may file representations for dismissals against the said statutory body.
- ▶ List of statutory bodies subject are to be determined by the Minister and published in the Gazette



Section 52(3) Representations for dismissals against statutory bodies

- ▶ (3) Notwithstanding subsection (1), Part VI shall apply to any service of or to any workman employed by, a statutory authority in which the Minister, after consultation with such statutory authority, by order published in the Gazette prescribe the name of the statutory authority.”.
- ▶ A new subsection 52(3) empowered the Industrial Court to hear unfair dismissal claims brought by an employee of statutory bodies which will be prescribed by the Minister in the Gazette



Representations for dismissals against statutory bodies

- ▶ MUHAMMAD GHAZALI ABDUL AZIZ v. PEMBANGUNAN SUMBER MANUSIA BERHAD [2020] 3 ILR 358
- ▶ (1) On whether the respondent company had been a statutory authority within the definition of the IRA, notwithstanding the fact that it had been incorporated under the Companies Act 1965 ('Companies Act'), it had been established by the Pembangunan Sumber Manusia Berhad Act 2001 ('PSMB Act') to carry out the specific purpose stipulated in it. There had not been any other purpose or function for the incorporation of the respondent company other than that provided under the PSMB Act. The term "statutory authority" is a generic term which can include any authority or body established, appointed or constituted by any written law. It is not limited to a body expressly established or incorporated under a particular statute or Act of Parliament and it can include body corporates such the respondent company which had been established and/or appointed by a written law, *ie*, the PSMB Act.



Representations for dismissals against statutory bodies

- ▶ The mere fact that it had been established under the Companies Act had not precluded it from being a statutory authority. The Companies Act had merely brought the respondent company into existence by giving it life in the form of a legal entity in law. It is the PSMB Act that had clothed it with the relevant powers and authority and made it a statutory authority within the definition of s. 2 of the IRA. The conduct and affairs of the respondent company had also been regulated and governed by the PSMB Act and s. 4 thereof had expressly provided that any exercise in contravention of the said provision would be *ultra vires* the PSMB Act and could be nullified. The evidence had shown that the respondent company has been entrusted to perform statutory duties under the PSMB Act.
- ▶ **The term "statutory authority" is defined in s. 2 of the IRA as follows:**
- ▶ **"statutory authority" means an authority or body established, appointed or constituted by any written law, and includes any local authority.**



NEW PROVISION -SECTION 44A

A new section 44A confers the Minister additional powers to restrain strikes or lock-outs where they exceed a certain period of time or where they endanger the life, personal safety or health of the whole or part of the population.



44A. Power to restrain strikes or lock-outs

The Minister may order a strike or lock-out to stop in the event if the strike or lock-out lasts beyond a certain time or extends beyond a certain scope, thus endangering the life, personal safety or health of the whole or part of the population.



PART A - COLLECTIVE AGREEMENT - Not in Force

- ▶ Current Provision
- ▶ (2) The invitation under subsection (1) shall be in writing and shall set out the proposals for a collective agreement.
- ▶ New Provision
- ▶ (2) The invitation under subsection (1) shall be in writing and shall set out the proposals for a collective agreement.
- ▶ “Provided that where there is an existing collective agreement between an employer and a trade union of workmen which represents the same workmen or any class of workmen or between a trade union of employers and a trade union of workmen which represents the same workmen or any class of workmen which is still in force, an invitation to commence collective bargaining shall only be made ninety days or less before the expiry of such collective agreement.”



INDUSTRIAL COURT CHAIRMAN - QUALIFICATION

- ▶ (1) A person is qualified for appointment as President under paragraph 21(1)(a) and as Chairman under subsection 23(2) if, for the seven years preceding his appointment, he has been-
- ▶ (a) an advocate and solicitor within the meaning of the Legal Profession Act 1976 [Act 166];
- ▶ (b) an advocate within the meaning of the Advocates Ordinance of Sabah [Sabah Cap. 2];
- ▶ (c) an advocate within the meaning of the Advocates Ordinance of Sarawak [Sarawak Cap. 110]; or
- ▶ (d) a member of the judicial and legal service of the Federation or of the legal service of a State, or sometimes one and sometimes another.

(2) Notwithstanding subsection (1), a qualified person as defined in the Legal Profession Act 1976 [Act 166] or any laws replacing it, with at least fifteen years of experience in labour and industrial relations in the ministry charged with the responsibility for human resources may be considered for appointment as a Chairman under subsection 23(2).



SECTION 33B - AMENDMENT TO PROVISION ON STAY OF PROCEEDING

- ▶ (2) No award of the Court for the reinstatement or reemployment of a workman shall be subject to any stay of proceedings by any court.



AMENDMENTS TO PENALTY

46 Penalty for illegal strikes and lock-outs

Any workman who commences, continues or otherwise acts in furtherance of a strike which is illegal under this Act shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit, and a further fine of fifty ringgit for every day during which such offence may continue.

CHANGES

Removal of Prison Terms of not exceeding 1 Year

Increasing the Penalty from RM 1,000 to 5,000.00 as Maximum Fine



AMENDMENTS TO PENALTY

► 47 Penalty for instigation

Any person who instigates or incites others to take part in, or otherwise acts in furtherance of, a strike or lock-out which is illegal under this Act, or who instigates or incites others to withhold their labour or services knowing or having reason to believe that the probable consequences of such action will be to endanger human life or the efficient operation of any public health service or cause serious bodily injury or expose valuable property whether real or personal to destruction or serious damage, shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding one year or to a fine not exceeding five thousand ringgit, or to both.

CHANGES

Increasing the Penalty from RM 1,000 to 5,000.00 as Maximum Fine



AMENDMENTS TO PENALTY

► 48 Penalty for giving financial aid to illegal strikes and lock-outs

Any person who knowingly expends or applied any money in direct furtherance or support of any illegal strike or lock-out shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding six months, or to a fine not exceeding **five thousand** ringgit, or to both.

CHANGES

Increasing the Penalty from RM 500.00 to 5,000.00 as Maximum Fine



AMENDMENTS TO PENALTY

- ▶ 60 General penalties
- ▶ (1) Any person who contravenes-
- ▶ (a) any provision of this Act and any regulations made under this Act;
- ▶ (b) any summons, order or direction given or made under this Act,
- ▶ shall be guilty of an offence and shall, on conviction, where no express penalty is provided, be liable to imprisonment for a term not exceeding two years or to a fine not exceeding fifty thousand ringgit or to both:

CHANGES

Increasing the Penalty from RM 5,000 to 50,000.00 as Maximum Fine



TRANSITIONAL PROVISION

- ▶ SECTION 35 - Saving and transitional provisions IRA (AMENDMENT) ACT 2020
- ▶ All complaints made under section 8, claims for recognition made under section 9, representation for reinstatement made under section 20 of the principal Act, and all proceedings commenced or awards made before the Industrial Court in relation to a reference under subsection 20(3) before the coming into operation of this Act shall proceed and have effect as if the principal Act had not been amended by this Act

EFFECT OF THE AMENDMENT



- ▶ Implementation of a new appellate procedure
- ▶ Avoid the complexities of the Judicial Review process
- ▶ Simplifying the appellate process instead of the Judicial Review Process as it can be significantly more tedious in preparing judicial review application
- ▶ Provides greater latitude to courts in exercising its appellate Powers
- ▶ The Federal Court no longer will make determination in Industrial Court matters and the Court of Appeal will be the final forum for Industrial Court matters
- ▶ The amendments on ministers reference is in tandem with the spirit of the industrial relation act to allow speedy administration of justice for industrial relation matters as the huge influx of volume of cases in particular since the Co-Vid pandemic



EFFECT OF THE AMENDMENT

- ▶ The Removal of the challenges on the date of dismissal on the representation lodged by employees can no longer be utilized to defeat claimant's representation
- ▶ Greater avenue to seek representation for conciliation session which no longer is confined organization of employers registered in Malaysia or organization of employee registered in Malaysia
- ▶ The Minister no longer possess such discretionary power and the DGIR shall refer a representation on wrongful dismissal to the Industrial Court for an award once the DGIR is satisfied that there is no likelihood of the representations being settled
- ▶ Scope of Representation are now open to employees of statutory bodies upon the Minister's gazette and upon death of claimant's, the representation can be continued by the next-of-kin or estate "continue to conduct its proceedings notwithstanding the death of the workman who made the representations"
- ▶ Imposition of Interest on Awards of the Industrial Court which would significantly impact applicants that are successful in the Industrial Court but could be subjected to the appeal process and act as an incentive to speedily resolve successful claim by claimant's



THANK YOU
Stay Safe!

www.premlaw.com

HP : 0125236755

Email: prem@premlaw.com