



Shearn Delamore & co.

**Employment and  
Administrative Law update**

**ABSENCE OF CORROBORATION  
DOES NOT DEFEAT COMPLAINT  
OF HARASSMENT**

**JANUARY 2021**

---

**Shearn Delamore & Co**  
**7<sup>th</sup> Floor**  
**Wisma Hamzah Kwong-Hing,**  
**No 1, Leboh Ampang**  
**50100, Kuala Lumpur, Malaysia**  
**T: 603 2027 2727**  
**F: 603 2078 5625**  
**E: [info@shearndelamore.com](mailto:info@shearndelamore.com)**  
**W: [www.shearndelamore.com](http://www.shearndelamore.com)**

## Introduction

In the recent Industrial Court Award of **Harry Wong Wei Chen v Petroliam Nasional Berhad** [Award No.11 of 2021] dated 4 January 2021, the Industrial Court upheld the dismissal of an employee (“the Claimant”) on account of several allegations of sexual and workplace harassment. An interesting point in the instant case was the absence of corroborative witnesses in respect of several of the complaints against the Claimant.

## Material Facts

The Claimant and the Complainant were both colleagues working overseas. As part of their duties, both the Claimant and the Complainant were sent to Tehran, Iran for a particular project. Upon her return to Malaysia, the Complainant raised several allegations of sexual and workplace harassment against the Claimant. In this regard, the Company levelled 13 charges of harassment. A domestic inquiry was convened, and the Claimant was subsequently dismissed. Aggrieved by the Company’s decision, the Claimant filed a representation of unfair dismissal against the Company.

## Industrial Court Award

Several charges against the Claimant were made in the absence of eyewitnesses. For instance, one of the complaints against the Claimant was that he had uttered several remarks towards the Complainant whilst she was on her way to the restroom. As there were no witnesses to the incident, much reliance was placed on the evidence of the Complainant and the Claimant.

Notwithstanding, the Industrial Court accepted the Complainant’s version of events and further cited the Federal Court’s decision that in **Ridzwan Abdul Razak v. Asmah Hj Mohd Nor** [2016] 6 CLJ 346 where it was held that the mere absence of corroboration does not automatically defeat the complaint. The Industrial further took into account of contemporaneous conduct of the Complainant where she notified her friend of the Complainant’s actions not long after the events transpired. The Industrial Court accepted the evidence and ruled the complaints were proven.

The Industrial Court eventually ruled that the Company had successfully proven all but two of the charges against the Claimant. The Claimant’s unfair dismissal claim was accordingly dismissed.

## Conclusion

This case is an illustration of the principle that a mere absence of corroboration in respect of a claim of sexual or workplace harassment does not automatically defeat such complaint. The Industrial Court will assess the entire evidence adduced holistically to determine whether there are any merits to a complaint of harassment.

Furthermore, this case reiterates that it is not necessary to prove all the charges that were the grounds of dismissal. Even if the employer can prove most, or some of the charges, that would be sufficient to justify the dismissal, having regard to the severity of the charges which have been proved.

The Company in the present matter was represented by Mr. [Vijayan Venugopal](#) (Partner) and Mr. [Benedict Ngoh Ti Yang](#) (Associate) of our firm’s [Employment and Administrative Law Practice Group](#). You may access the full decision [here](#).

This article is co-written by:



**Vijayan Venugopal**

Partner

Employment and Administrative Law

[vijayan@shearndelamore.com](mailto:vijayan@shearndelamore.com)

Tel: +603 2027 2874



**Benedict Ngoh Ti Yang**

Associate

Employment and Administrative Law

[benedict.ngoh@shearndelamore.com](mailto:benedict.ngoh@shearndelamore.com)

Tel: +603 2027 2715

Follow us on:



[www.shearndelamore.com](http://www.shearndelamore.com)



[www.linkedin.com/company/94702](http://www.linkedin.com/company/94702)

To subscribe to our legal update, email us at:



[km@shearndelamore.com](mailto:km@shearndelamore.com)

