

Industrial Court Upholds the Employer's Policy in Relation to Covid-19 Vaccination

In the recent case of **Mazuna Begum binti Kadir Mira v Malaysia Airlines Berhad** [Award No. 196 of 2024], which was handed down on 5 February 2024, the Industrial Court evaluated the validity of Malaysia Airline's Berhad policy relating to Covid-19 vaccination for its employees.

The Claimant was employed as a Cabin Crew with the company and her dismissal was based on the charge of insubordination due to her refusal to comply with the company's policy (the "MAG Vaccination Policy"), which mandated all employees based in Malaysia to be vaccinated unless there were valid medical reasons for exemption.

The company argued the dismissal was with just cause or excuse as it had a duty to ensure a safe working environment for all its employees and customers, while the Claimant alleged that she had concerns about being vaccinated and had a right to refuse the vaccine, as well as alleging discrimination and victimization. The Claimant also relied on the fact that the Government of Malaysia did not mandate citizens to take the Covid-19 vaccine.

The Industrial Court found in favour of Malaysia Airlines Berhad and emphasised that the company's policy aligns with the national COVID-19 Immunisation Programme which is aimed at safeguarding the welfare of all citizens. Therefore, both the national programme and the company's policy should not be undermined by the refusal of individuals, including the Claimant, to participate in the vaccination drive. In this regard, the Industrial Court emphasised that private or sectional interests which are inconsistent with the larger and greater interest of the nation or public must give way to the latter. The Industrial Court accordingly found that the Company had proved on the balance of probabilities that the Claimant was dismissed from her employment with just cause or excuse and dismissed the Claimant's claim.

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The instant decision is pivotal as represents the Industrial Court's attempt to balance the obligation of an employer to provide a safe working environment for its employees and the individual rights of employees to refuse to accept the Covid-19 vaccine. The decision also sets a precedent for other factually similar cases relating to the Covid-19 vaccination that are currently pending before the courts.

Malaysia Airlines Berhad was represented by Vijayan Venugopal during the court proceedings.

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