

## Importance of Collective Decision Making to Ensure Objectivity

The Court of Appeal considered an appeal<sup>1</sup> by Petroliam Nasional Berhad (“Petronas”) against the decision the High Court<sup>2</sup> which upheld the decision of the Industrial Court<sup>3</sup> wherein it was held that the Respondent’s dismissal was without just cause and excuse. In short, the Industrial Court and High Court had both found in favour of the former employee and Petronas was seeking to challenge both decisions before the Court of Appeal.

The Respondent commenced employment with Petronas in 1993 and last held the position of Manager (Business Services & Malaysianisation). Issues relating to her performance began to surface in the year 2016 and she was given an Overall Final Rating of “4” which was below expectation. In view of this, the Claimant was then placed on a performance improvement plan (“PIP”). At the end of the six months of PIP, the Claimant failed to demonstrate significant improvement in her performance, and she was thereafter dismissed from employment.

The Chairman of the Industrial Court in arriving at its decision made amongst others the following findings:

- a) The PIP was designed as a tool to dismiss the Claimant;
- b) An employee with no past record of poor performance would not suddenly experience a deterioration in performance;
- c) It was not an issue of poor performance but rather she has a personality clash with her superior; and
- d) The person assigned to oversee the PIP lacked experience and independence.

The Industrial Court also went on to award compensation in the sum of RM1.13 million against Petronas.

## Employment & Administrative Law update

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Petronas challenged the Industrial Court award by way of a judicial review application. The High Court dismissed the judicial review application and upheld the decision of the Industrial Court.

At the Court of Appeal, however, *unanimously* held that the High Court and Industrial Court had erred in law and this case necessitated the appellate court's intervention. The arguments were quite complex and the Court of Appeal reserved its judgement, with the same only being delivered on 23 May 2024. In arriving at its decision, the panel of the Court of Appeal made a few important points in its broad grounds of judgment as follows:

- a) The Claimant's superior was not in a position to determine the Claimant's dismissal on her own;
- b) The People Development Committee ("PDC") was a committee consisting of multiple individuals and the Claimant's superior was one of the member;
- c) The PDC as a committee decided on the Claimant's performance rating and also found that the Claimant did not make significant improvement pursuant to the PIP; and
- d) The Respondent/Claimant agreed to participate in the PIP and in fact signed off on the Monthly Performance Record ("MPR").

The Court of Appeal was of the view that the High Court and Industrial Court had failed to take into account these relevant factors above in arriving at its decision.

The appeal by Petronas was consequently allowed. The decision of the Industrial Court was set aside, the decision of the High Court was set aside and the Respondent was further ordered to pay costs to Petronas.

The decision of the Court of Appeal highlights the importance of having a collective decision-making process in an organisation in determining performance ratings and PIP results of employees. Collective decision-making can be used to counter allegations of victimisation and unfair practice as the assessment of performance is less subjective since it cannot be attributed to one single person.

Petronas was represented by Vijayan Venugopal and Wong Kian Jun, who are both Partners in our Industrial Relations Practice, at the Court of Appeal.

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<sup>1</sup> **Petroleum Nasional Berhad v Norain Redzkiah Binti Osman Salleh** (Civil Appeal No: WA-01(A)-110-03/2023).

<sup>2</sup> **Petroleum Nasional Berhad v Norain Redzkiah Binti Osman Salleh** (Judicial Review Application No:- WA-25-46-01/2020).

<sup>3</sup> Industrial Court Award No: 2987 of 2019 — **Norain Redzkiah Binti Osman Salleh v Petroleum Nasional Berhad**.