

**Dismissal For Disruptive And Disorderly  
Behaviour At The Workplace: A Review Of  
Harianto Effendy Zakaria & Ors v. Mahkamah  
Perusahaan Malaysia & Anor<sup>1</sup>**

*by*

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**Introduction**

Employees are generally expected to treat their superiors, co-workers and their employer's customers with respect and dignity. Disruptive and disorderly behaviour which interferes with the functions and flow of the workplace is prohibited. Some examples of disruptive and disorderly behaviour at the workplace are demeaning conversations and communications, the use of profane or disrespectful language, cursing, yelling, screaming, shouting in anger, belittling or being insulting, throwing objects at others, waving arms or fists, bullying and being intimidating. Being disrespectful to ones superior,<sup>2</sup> defying his authority by persistently talking about religion to colleagues during working hours,<sup>3</sup> exhibiting outbursts of anger and frustration towards the company's management,<sup>4</sup> engaging in sarcastic communications with a hostile tone and sending angry or derogatory emails, amongst other things, may be grounds for discipline, including termination. Such behaviour hinders or prevents the employer from carrying out its responsibilities effectively. Apart from affecting the cordial relationship between the employee, his superiors and co-workers, such behaviour may also result in the quality of products being manufactured going down, a production slow down, the delivery of poor service to clients and in certain instances, could even result in damage to the employer's property, amongst other things. In the banking industry for example, where a high standard of care and conduct is expected of an employee, any disruptive or inappropriate behaviour can have a negative effect on its clients or customers. In light of the above, this article discusses how an employee's disruptive behaviour at the workplace, can be used as a ground to justify his or her dismissal, with specific reference to the Federal Court's decision in *Harianto Effendy Zakaria & Ors v Mahkamah Perusahaan Malaysia & Anor*.<sup>5</sup>

**Employee's duty to obey the employer's legitimate directives or orders**

As the employer-employee relationship is of a fiduciary nature or a 'close personal relationship',<sup>6</sup> there must be complete confidence and trust between the parties to the contract of employment. The common law

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imposes a duty on the employee to obey all the legitimate directives or orders issued by their superiors. Any wilful refusal or disobedience of the employer's lawful and reasonable orders or instructions 'shows a disregard – a complete disregard – of a condition essential to the contract of service, namely the condition that the servant must obey the proper orders of the master, and that unless he does so the relationship is, so to speak, struck at fundamentally'.<sup>7</sup> Such refusal 'will bring a chaotic situation to any organisation in terms of discipline, performance as well as industrial peace.'<sup>8</sup> Challenging the lawful authority of the employer is contrary to the basic character of the employer and employee relationship.<sup>9</sup> It may also arise when an employee disputes or ridicules the superior's authority, uses vulgar or profane language towards the superior or when an employee makes statements or remarks which damages or tends to damage the employer's interest.

An employee's insubordination is clearly not tenable in an employment relationship. In *Ngeow Voon Yean v. Sungei Wang Plaza Sdn Bhd/Landmarks Holdings Bhd*,<sup>10</sup> the Federal Court held *inter alia*, that an essential duty of the employee at common law is to obey all lawful and reasonable orders given by his employer, with respect to the performance of such functions within the scope of his employment. The employer's order must be lawful and reasonable. It cannot be an unlawful or an unreasonable act. If however, the employer's order is manifestly illegal or dangerous, the employee can choose to disobey it.

### **Disruptive Behaviour**

Disruptive behaviour is the inappropriate or unacceptable behaviour of the employee that interferes with the functions and flow of the workplace. Common examples of disruptive behaviour include, but are not limited to, the threatening, intimidating, coercing and provoking of ones superiors, co-workers or the company's customers, being a nuisance or interfering with the work of others, indulging in unnecessary and excessive casual chatting during working hours, spreading rumours and making false, malicious statements about any employee, fighting while on the job, sexual harassment, using profanity, pejorative or abusive language towards others, deliberately interfering with production processes, holding unauthorised meetings on company premises, interrupting meetings or trainings, working under the influence of intoxicating liquor, and inciting, instigating, abetting and participating in an illegal strike.

In *Vasuthevan A/L Sivagurunathan v. Taiyo Resort (Kl) Berhad & Anor*,<sup>11</sup> the appellant, the Head of Field Maintenance Department of the first respondent, was found guilty of wilfully and/or intentionally interrupting, disturbing and/or preventing the process of investigation conducted by the management against him. In this case, the appellant had forced his way

into the room where the investigation was being conducted and it was held that such behaviour had not been becoming of that of a senior member of the company and that he had shown disrespect to his superiors. Such behaviour may also affect the cordial relationship between superiors and co-workers, slow down production, result in a deterioration of product quality, poor service to clients and damage to property. Any disregard of the standard of behaviour which an employer has the right to expect of his employees, can result in the employees' dismissal from employment.

Whether the misconduct justifies dismissal will depend on: (i) the nature and degree of the alleged misbehaviour; (ii) its significance in relation to the employer and to the position held by the employee; (iii) its effect on the confidential relationship between them as against the severe consequences of dismissal; and (iv) the misbehaviour must be such that it goes to the heart or root of the contract between the parties.<sup>12</sup> Further, the punishment meted out against the claimant has to be proportionate with the nature and gravity of the misconduct committed.<sup>13</sup> When deciding whether or not to impose the penalty of dismissal, the employer should, in addition to the gravity of the misconduct, consider the mitigating factors, namely, the employee's length of service, his or her previous disciplinary record and the nature of the job, amongst other things.

The specific conduct of an employee which is deemed *disruptive* or inappropriate and one that interferes with the functioning and flow of the workplace is further discussed below, with reference to the Industrial Court awards.

(a) *Committing Nuisance*

The term 'nuisance' is derived from the French word *nuire* which means annoyance. According to the Shorter Oxford Dictionary, it means 'anything injurious or obnoxious to the community or to the individual as a member of it, for which some legal remedy may be found'. Workplace nuisance may come in many forms and this includes, sexual annoyance,<sup>14</sup> displaying or storing pornographic materials on the table or office computer,<sup>15</sup> disturbing other workers who are working,<sup>16</sup> going on an unlawful strike and creating industrial unrest and disturbance of the peace,<sup>17</sup> turning up for work drunk and behaving in an improper manner on company premises,<sup>18</sup> and fighting with other employees at the workplace,<sup>19</sup> to name but a few. In *Muhibbah Engineering (M) Sdn Bhd / Ann Bee (M) Sdn Bhd v. See Hong Seng*,<sup>20</sup> the claimant was alleged to have incited and instigated other employees to commit nuisance within the company. For example, picketing which is sanctioned by s. 40 of the Industrial Relations Act 1967 ('IRA') is not by itself a nuisance, but when it involves the obstruction and disruption of the smooth and orderly flow of the workplace, then it becomes a nuisance.

In *Hariato Effendy Zakaria & Ors v. Mahkamah Perusahaan Malaysia & Anor*,<sup>21</sup> in the process of picketing, the applicants, employees of the second respondent, had stood by the main entrance of the premises and created a nuisance by their unruly behaviour. They had not only obstructed the free passage of the customers into the premises but had also blown whistles and air horns. It was held that the applicants had conducted themselves in a manner that had led to the disruption of the company's business and operations and that it had caused disrepute to the second respondent's image as a premier financial institution in the country. Again, in *Asrul Ismail & Ors v. Sinora Sdn Bhd*,<sup>22</sup> the claimants had commenced picketing which had been unlawful and the people who had picketed had behaved in an unruly manner thereby causing disruptions within the company.

*(b) Using Derogatory, Insolent And Impertinent Language Towards Ones Superior*

Using derogatory, insolent and impertinent language towards ones superior<sup>23</sup> is offensively contumacious and tends to lower the dignity and position of the superior.<sup>24</sup> Challenging ones superior's authority and using insulting and abusive language towards them, is an indication of insubordination and is therefore, contrary to the basic character of the employer-employee relationship.<sup>25</sup> In *Bakti Comintel Manufacturing Sdn Bhd v. Ibrahim Abdullah*,<sup>26</sup> the Industrial Court held *inter alia*, that the use of abusive and threatening words was clearly an act subversive of discipline which had warranted nothing less than the punishment of dismissal.

In *Roslan Yussof v. Toyochem Sdn Bhd*,<sup>27</sup> the claimant was dismissed for uttering slanderous remarks of "babi" and "anjing" to his immediate superior COW2, when the latter had attempted to serve a letter of caution on him over his bad record of attendance. The utterance of such words according to the Industrial Court, had been conduct that had been unbecoming, rude, derogatory and plainly abusive by an employee to his superior. In *Florence Chang Mee Kheng v. Kelab Taman Perdana Diraja Kuala Lumpur*,<sup>28</sup> the Industrial Court stated *inter alia*, that rude, sarcastic and abusive language towards superiors if allowed, would make it impossible for the company to maintain discipline amongst its employees and thus, peace and harmony in the workplace would be compromised.

Again, in *Perumal Govindasamy v. Enkei (Malaysia) Sdn Bhd*,<sup>29</sup> the claimant, in his position as a supervisor, had exceeded his limits when he had labelled the Management "lemah dan kolot" as well as when he had uttered several other derogatory and insolent remarks. In *S Haren C Seganathirajah v. Minconsult Sdn Bhd*,<sup>30</sup> the claimant was alleged to have persistently challenged the company's authority *vis-a-vis* by refusing to carry out instructions assigned to him. Further, he had also been guilty of insolence

and disrespect towards his superior by uttering such things as 'I am not answering your bloody letters.' He had been rude to his superior and had accused the panel of inquiry of being dyslexic. The evidence had revealed that the claimant had used derogatory language towards his superior officer. The Industrial Court concluded that the claimant had been guilty of wilful insubordination for failing to obey the company's lawful instructions and that the nature of the misconduct had been so serious that it had clearly warranted the extreme punishment of dismissal.

Again, in *CGPC Fabrication (M) Sdn Bhd v. Muniandy Subramaniam*,<sup>31</sup> the company alleged that the claimant had been rude to COW2 when he had raised his voice to him for not approving his half day's leave. The claimant's witness told the panel members that the claimant had been angry and had answered back in a high pitch. The claimant was alleged to have also told COW2 that if he did not give him his leave, he knew what to do. The Industrial Court held *inter alia*, that 'getting angry and replying back on a high pitch and further saying that he knew what to do if leave was not granted are disrespectful acts towards his superior. It is also insolent, impertinent and derogatory in nature, as it is offensively contumacious and tends to lower the dignity and position of his superior.'

In *Top-A Plastic Sdn Bhd v. Lynda Cheong Nguik Ken*,<sup>32</sup> the company alleged *inter alia*, that the claimant had the habit of pointing her fingers at her superior officer during conversations besides not following instructions or guidance from her superior. The Industrial Court held that pointing fingers at a superior officer amounted to gross misconduct as it denoted insolence and impertinence. The claimant, by doing so, had shown an attitude of being equal to her superior officer.

In *Aoba Technology (M) Sdn Bhd v. Tan Kian Wooi*,<sup>33</sup> the claimant, a Production Engineering Manager, was issued a warning letter for disobeying the directive of the Deputy General Manager (DGM) not to go to the production area. The company also alleged that the claimant had, after picking up a dustbin, walked up to the DGM, slammed the dustbin in front of him and shouted at him. The Industrial Court held *inter alia*, that the claimant had acted disrespectfully towards the DGM, who was his immediate superior, when he had placed the dustbin in front of him. Again, in *Jong Siew Fah v. Crystal Realty Sdn Bhd*,<sup>34</sup> the claimant was alleged to have been rude towards COW1, her immediate supervisor by banging the table and slamming the door to demonstrate her rudeness to COW1. The Industrial Court held that 'rudeness in a workplace is the highest form of disrespectful behaviour and disobedience which should not be tolerated by any employer. The claimant's rudeness has gone beyond tolerance as it is manifested by her banging the table and slamming the door to demonstrate her rudeness. By her misconduct she has deemed herself to be a liability to her employer than being an asset, which is always an employer's wish.'

Again, in *Sunmugam Subramaniam v. JG Containers (M) Sdn Bhd & Anor*,<sup>35</sup> the applicant had used derogatory language on the managing director of the company, an expatriate, at a social lunch. The appellant was alleged to have called the Managing Director 'pondai mavan', 'chiunni payal'. The Industrial Court held *inter alia*, that the applicant's dismissal was with just cause or excuse. Against the said decision, the applicant applied to quash the said award on the ground that the Industrial Court had erred in law when it decided that the applicant had committed misconduct when in fact he had merely voiced his opinion over the benefits given to expatriate workers. In allowing the application, the High Court held *inter alia*, that there was simply no misconduct in raising grievances, let alone misconduct grave enough to warrant dismissal. The High Court stated that the Industrial Court had failed to take into account and give due weight to the following material facts: (i) that the lunch at which the alleged misconduct had taken place was informal; (ii) that the managing director upon whom the foul language was allegedly used had not been present at the said lunch; and (iii) that the applicant had served 21 years with the company without any record of prior misconduct.

Lastly, in *Scicom Sdn Bhd v. Laila Raman*<sup>36</sup> the claimant, a personal assistant to the sales and marketing director, had been asked by the tele-marketing and services manager to prepare refreshments for the company's clients on one occasion. She refused and the said manager testified that the claimant's reply was rude, loud and made in a non-supportive manner. Further, the claimant was told to improve her work performance and co-operation with other staff. It was alleged that the claimant refused the advice to improve and went on to bang the table in highlighting her refusal. The evidence showed that the claimant had not only refused to make drinks but she had also refused to comply with the request of her immediate supervisor to improve her performance and to co-operate with other staff. Such actions denoted her unwillingness to accept the authority of her superior. The Industrial Court stated: 'By speaking loudly to her immediate supervisor, challenging the management, banging the table, folding her arms and shrugging her shoulder, showed that the claimant was exhibiting sheer defiance of authority. Such acts and behaviour were inconsistent with the employer-employee relationship and tantamounts to an act of insubordination.'

(c) *Violent or abusive conduct*

Violent or abusive conduct include, but is not limited to unwelcome physical contact, slapping, punching, striking, pushing, or otherwise physically attacking a person, throwing, punching, or otherwise handling objects in an aggressive manner. Assaulting or attempting to assault a fellow employee or supervisor, uttering vulgar words and throwing objects at the supervisor,<sup>37</sup> and fighting at the factory premises during working

hours,<sup>38</sup> amongst other things, are regarded as behaviour which should not be tolerated by any employer. In *Jasvender Singh Seran Singh v. Malaysian Airlines System Berhad*,<sup>39</sup> the claimant was dismissed for throwing a cup of hot Nescafe at a company's cafeteria worker.

In *Nishitetsu-Global Cargo Services (M) Sdn Bhd v. Azizudin Mohamed Noordin*,<sup>40</sup> the claimant was dismissed for causing bodily injury to a colleague. Again, in *Malaysia Smelting Corporation Bhd v. Abu Bakar Muhamad*,<sup>41</sup> the claimant was dismissed for assaulting COW1, the engineering/maintenance manager. In *Key Asset Sdn Bhd v. Sangaran Ragavan*,<sup>42</sup> the claimant was dismissed as he had uttered threats against COW1, the superior officer, namely, that he was going to cause harm to him and create chaos in the factory. In *Lion Steelworks Sdn Bhd v. Mohd Kamal Hassim*,<sup>43</sup> the claimant, besides uttering abusive or threatening words towards COW1, had pulled COW1's hand and pushed him backwards causing him to jerk forward although he did not fall. In *Yamate (M) Sdn Bhd v. Ng Siew Lan*,<sup>44</sup> the claimant was alleged to have thrown a plastic tumbler at COW1, his boss.

In *Torita Rubber Works Sdn Bhd v. Maniarsm Kandasamy*,<sup>45</sup> the claimant was alleged to have threatened and intimidated COW2, in the presence of three other staff, in the canteen. Lastly, in *Mascom (M) Sdn Bhd v. Dominic Din Hatt*,<sup>46</sup> the claimant was demoted after he was found guilty of quarrelling with some people at the company's project sites, including scolding and insulting COW7, a senior staff of the company, in which threats were issued by the claimant to those people. The bad publicity over the said incident had caused much embarrassment to the company. The Industrial Court held that the disciplinary measure meted out by the company in changing the claimant's position, instead of dismissing him, had been made with just cause or excuse.

***Hariato Effendy Zakaria & Ors v. Mahkamah Perusahaan Malaysia & Anor: A Review***

The employees' disruptive or inappropriate behaviour in the workplace, which had affected not only the employer's business but also their reputation, and the proportionality of the punishment for the wrongful conduct is now discussed with reference to the Federal Court decision in *Hariato Effendy Zakaria & Ors v. Mahkamah Perusahaan Malaysia & Anor*.<sup>47</sup> In *Hariato Effendy Zakaria's* case, the appellants, prior to their dismissals by the second respondent, had been active members of the National Union of Bank Employees (NUBE). They, together with some other members of NUBE had commenced a lawful trade union picket outside the second respondent's premises over several work-related matters and certain terms and conditions of employment. The second respondent alleged that the picketers holding placards and balloons had barged into the lobby and

banking hall through the side entrance during banking hours, despite attempts by security personnel to prevent them from doing so. Their conduct had been captured on the second respondent's security closed circuit television. The second respondent alleged that the conduct of the appellants in trespassing into the lobby and banking hall, had not only disrupted their business and operations but also tarnished their image as a premier financial institution in the country.

The domestic inquiry panel found the appellants guilty as charged and they were terminated from employment. The Industrial Court upheld the dismissals of all the appellants as the alleged misconduct, although a minor misconduct, had nevertheless affected the second respondent's goodwill. The High Court dismissed the appellants' application for judicial review to quash the award on the basis that the Industrial Court had committed no error of law. The Court of Appeal unanimously dismissed the appellants' appeal against the decision of the High Court and held *inter alia*, that the charge proven against the appellants had constituted a very grave misconduct that had involved the core of the second respondent's business and that the appellants must have been aware that their dismissals would have been the inevitable result.

Before the Federal Court, the main issue argued was whether the proven misconduct had warranted the punishment of dismissal. It was contended for the appellants *inter alia*, that the punishment of dismissal had been wholly disproportionate to the offence committed by them. Further, they argued that the court below, had not taken into consideration the fact that they had all been long standing employees of the bank with no past record of disciplinary problems. Their appeal to the Federal Court was dismissed by the court.

In holding the appellants dismissals to be fair and proportionate to the misconduct committed by them, Hasan Lah FCJ, delivering the judgment of the Federal Court, stated:

In the instant case the appellants participated in an unlawful picket in the lobby and the banking hall of BCB Building. They barged through the side entrance door despite attempts by security personnel to prevent them from doing so. They entered the second respondent's business premises with picket materials. They carried placards and balloons, noisily distracting customers and colleagues. The balloons were released in the banking hall. This was clearly a wilful disobedience on the part of the appellants. Their action brought the bank into disrepute among customers and other employees. The Industrial Court did take into consideration the misconduct and the fact that the second respondent was in the banking industry. In a number of cases, the Industrial Court had held that the banking industry belonged to a special kind of business and services rendered to the public. Therefore a high standard of care and conduct was expected of an employee in the banking industry. On the facts of the case we agree with the

observation made by the Court of Appeal that the charge against the appellants was a very grave misconduct involving the core of the second respondent's business and the appellants must have been aware that dismissal would have been the inevitable punishment.

It must be noted from the above observation that any industrial action by the trade union such as a strike action or picketing, to pressurise an employer to do or refrain from doing something, must be lawful and in accordance with the provisions of the Trade Unions Act 1959 and IRA. Picketing, is the action by workers carried out peacefully, at or near the workplace with an attempt to dissuade others from going in or to draw public attention to a cause. The circumstances where picketing is allowed is governed by s. 40 of the IRA. The essence of that provision is that the picket must be peaceful and there must be no disruption of the employer's business.<sup>48</sup> In *Kuantan Beach Hotel Sdn Bhd v. Kesatuan Kebangsaan Pekerja-Pekerja Hotel, Bar & Restoran Semenanjung Malaysia*<sup>49</sup> the Industrial Court stated that picketing which is sanctioned by s. 40 of the IRA would be lawful for as long as it is carried out 'in furtherance of a trade dispute.' There is an express prohibition for any action which is calculated to intimidate any person to join picketing.

A picket will be deemed unlawful if it involves trespass, obstruction or interference, coercion or harassment, violence or damage to property. In *Asrul Ismail and Others v. Sinora Sdn Bhd*,<sup>50</sup> the Industrial Court held that the dismissal of two workmen was with just cause and excuse as they had *inter alia* participated in an unlawful picket contrary to s. 40 of the IRA. The workmen had failed to show that they had picketed in furtherance of a trade dispute and that they had commenced negotiations with the employer on their grievances. In *Harianto Effendy Zakaria's* case, the picketing was not only unlawful but it had also not been peaceful. The appellants had entered the second respondent's business premises by force despite attempts by security personnel to prevent them from doing so. Besides distracting the customers and colleagues with their noise levels, they had released the balloons in the banking hall. Their actions had brought the bank into disrepute amongst its customers and other employees.

The appellants' actions and conduct above had clearly been a wilful disobedience to the employer's directive and order. In *Yodoshi Malleable (M) Sdn Bhd v. Rajamohan SP Palanivel*,<sup>51</sup> the Industrial Court stated: 'it is pertinent to note that the claimant was a union official. Being an employee who holds office he must not lose sight of the fact that he is an employee first and a union official second. He must realise that he is first and foremost an employee and owes a duty to his employer to comply with any lawful direction and to remain subjected to the system of conduct governing employer/ employee relationship that must be observed in order to promote orderly conduct within the undertaking.'

It is noteworthy that in any business organisation, there must be complete confidence and trust between the parties to the contract of employment. Besides discharging duties faithfully, an employee must protect and further the interests of the employer.<sup>52</sup> This means that an employee has the duty to obey all the legitimate directives or orders issued by their supervisor or manager. Any “wilful disobedience of a lawful and reasonable order shows a disregard – a complete disregard – of a condition essential to the contract of service, namely the condition that the servant must obey the proper orders of the master, and that unless he does so the relationship is, so to speak, struck at fundamentally”.<sup>53</sup> An employee who disputes or ridicules the superior’s authority or creates a nuisance at the workplace, amongst other things, is deemed to have committed a gross misconduct which could lead to disciplinary sanctions *up to and including dismissal*.<sup>54</sup> In *Kesatuan Pekerja-Pekerja Perusahaan Alat-Alat Pengangkutan & Sekutu and Kilang Pembinaan Kereta-Kereta Sdn Bhd*,<sup>55</sup> the Industrial Court stated:

Insubordination on the part of an employee undermines the orderly system of conduct and discipline within an undertaking, and amounts to a breach of the implied obligation of the employee to be subject to the system of conduct governing the employer-employee relationship, and also the accepted norms of the relationship between an employee and his superior. Where this implied obligation is breached, the supervisory position of the superior is undermined, and this could lead to indiscipline, thereby jeopardising the projected result of the undertaking. In such circumstances, the employer is justified in taking remedial action, even to the extent of dismissing the undisciplined employee.

In *Hariato Effendy Zakaria’s* case, the appellants’ wilful, *deliberate* or flagrant disregard of the standards of behaviour required at the workplace was a gross misconduct. Their wrongdoing had been detrimental to the employer’s reputation, besides affecting its business operations. Apart from holding illegal pickets and strikes outside the company’s office,<sup>56</sup> damage to an employer’s reputation is also reasonably likely to arise when an employee commits sexual harassment against the company’s clients,<sup>57</sup> uses foul language on a client,<sup>58</sup> is rude and ill-mannered with company’s trainers and colleagues,<sup>59</sup> sends e-mails to customers disclosing the company’s internal problems<sup>60</sup> and publishes anonymous derogatory statements online against the employer, amongst other things. A single act of misconduct may justify dismissal when the misconduct is such that ‘it goes to the root of the contractual relationship of master and servant so as to indicate unwillingness on the part of the servant to be bound upon his original terms of contract.’<sup>61</sup>

As the misconduct of the appellants’ in *Hariato Effendy Zakaria’s* case had been serious enough to warrant their dismissals, their length of service and previous record of clean service could not assist them. Lastly, whether a

dismissal is warranted or not in the given circumstances, has to be determined with reference to what a fair and reasonable employer would have done in the circumstances of the case. In *Taylor v. Parsons Peebles Nei Bruce Peebles Ltd*,<sup>62</sup> the UK Employment Appeals Tribunal stated:

In determining the reasonableness of an employer's decision to dismiss, the proper test is not what the policy of the employer was but what the reaction of a reasonable employer would be in the circumstances. That the employer's code of disciplinary conduct may or may not contain a provision to the effect that any one striking a blow would be instantly dismissed, therefore, is not to the point. The provision must always be considered in the light of the law that would be applied by a reasonable employer having regard to equity and the substantial merits of the case. That includes taking account of the employee's length of service and previous record.

### Conclusion

Disruptive and disorderly behaviour which interferes with the functions and flow of the workplace are prohibited. An employee who disputes or ridicules his or her superior's authority, by using vulgar or profane language towards the superior or by making statements or remarks which damage or tend to damage the employer's interest, amongst other things, is deemed to have committed a gross misconduct. In *Harianto Effendy Zakaria's* case, the appellants' disruptive and inappropriate behaviour in the workplace had not only been detrimental to the functioning of the employer's business but it had also affected their reputation. In such circumstances, the employer had been justified in taking remedial action, even to the extent of dismissing the undisciplined employees. In the above case, the appellants' past records had not helped them as the misconduct had been serious enough to warrant their dismissals. The question of whether a dismissal is justified is determined with reference to what a fair and reasonable employer would have done in the circumstances of the case.

### Endnotes:

- 1 [2014] 6 MLJ 305; [2014] 4 ILJ 399; [2014] 4 ILR 241 (FC).
- 2 *Hamdan Ahmad v. U Mobile Sdn Bhd* [2014] 2 LNS 0471 (Award No. 471 of 2014).
- 3 *Kwan Yin Ping v. Syarikat Tekala Sdn Bhd* [2010] 1 ILR 562 (Award No. 167 of 2010).
- 4 *Mohd Hatta Mohd Noor v. NSK Micro Precision (M) Sdn Bhd* [2012] 2 LNS 0636 (Award No. 636 of 2012).

- 5 [2014] 6 MLJ 305; [2014] 4 ILJ 399; [2014] 4 ILR 241 (FC).
- 6 *Vorvis v. Insurance Corporation of British Columbia* (1989) 58 DLR (4th) 193, 224 (SCC).
- 7 Per Lord Evershed MR in *Laws v. London Chronicle (Indicator Newspapers) Ltd* [1959] 2 All ER 285
- 8 Per Richard Malanjun JCA in *Ngeow Voon Yean's v. Sungei Wang Plaza Sdn Bhd & Anor* [2004] 1 CLJ 8, 17.
- 9 [2010] 2 LNS 1151 (Award No. 1151 of 2010).
- 10 [2006] 3 CLJ 837, FC.
- 11 [2000] MLJU 538.
- 12 See *Cyril Leonard & Co v. Simo Securities Trust Ltd and Others* [1971] 3 All ER of 1313.
- 13 See *Malaysian Airlines v. Teo Chui Ping* [2005] 2 ILR 15 (Award No. 540 of 2005).
- 14 See *Wong Chai @ Wong Chen Peng v. Muhibbah Mok Sdn Bhd* [2012] 2 LNS 0221 (Award No. 221 of 2012); *Yahya Mat Wazir v. Petroliam Nasional Berhad (Petronas)* [2015] 2 ILR 201 (Award No. 203 of 2015).
- 15 See *Rajakumar Somasundaram v. Bursa Malaysia Berhad* [2015] 3 ILR 162 (Award No. 529 of 2015).
- 16 See *Hualon Corporation (M) Sdn Bhd v. Rohani Ali* [2006] 2 LNS 1640 (Award No. 1640 of 2006).
- 17 See *Sama Subur Sdn Bhd, Tawau v. Sabah Plantation Industry Employee's Union* [1991] 1 ILR 161 (Award No. 521 of 1991).
- 18 See *Mohana Sundaram Mariappan v. Joint Management Body of Vista Lavender Apartment* [2014] 2 LNS 1223 (Award No. 223 of 2014); *Sime Darby Security Services Sdn Bhd v. Zizan Bin Mohd Arshad* [1992] 1 ILR 126B (Award No. 46 of 1992).
- 19 In *Nikko Electronics Sdn Bhd v. Puspavally Retnam* [1997] 3 ILR 620 (Award No. 514 of 1997) the Industrial Court stated *inter alia*, that assault in factory premises always creates disturbances which tends to undermine discipline.
- 20 [2006] 2 LNS 0396 (Award No. 396 of 2006).
- 21 [2011] 3 ILR 241.
- 22 [2009] 4 ILR 203 (Award No. 1124 of 2009).
- 23 See *Guna Ratnam S Subramaniam v. Shin-Etsu Polymer (Malaysia) Sdn Bhd* [2011] 3 ILR 578 (Award No. 992 of 2011).
- 24 See *Barney Production BC Sdn Bhd v. Philomina FF Silvari* [1994] 2 ILR 60 (Award No. 232 of 1994).
- 25 See *Bahari Hamzah v. Island & Peninsular Bhd* [2008] 1 ILR 500 (Award No. 172 of 2008).

- 26 [1997] 3 ILR 358 (Award No. 1162 of 1997). See also *Syarikat Ghalee Khidmat Sdn Bhd v Ramachandra Naidu a/l Suppiah* [1985] 1 ILR 146a.
- 27 [2012] 2 ILR 497 (Award No. 502 of 2012).
- 28 [2013] 2 LNS 1895 (Award No. 1895 of 2013).
- 29 [2013] 3 ILR 408 (Award No. 1124 of 2013).
- 30 [2007] 2 LNS 1142 (Award No. 1142 of 2007).
- 31 [1998] 3 ILR 273 (Award No. 452 of 1998).
- 32 [1998] 3 ILR 185 (Award No. 459 of 1998).
- 33 [2007] 3 ILR 225 (Award No. 1185 of 2007).
- 34 [2006] 2 LNS 1115 (Award No. 1115 of 2006).
- 35 [2000] 6 CLJ 521.
- 36 [2001] 3 ILR 146 (Award No. 618 of 2001).
- 37 See *Yamate (M) Sdn Bhd v. Ng Siew Lan* [2006] 4 ILR 2588 (Award No. 1769 of 2006).
- 38 See *Kesatuan Pekerja-Pekerja Perusahaan Membuat Tekstil & Pakaian, Pulau Pinang & Seberang Perai and Allied Malayan Development Bhd* [1980] 1 ILR 70 (Award No. 30 of 1980).
- 39 See *Jasvender Singh Seran Singh v. Malaysian Airlines System Berhad* [2012] 4 ILR 57 (Award No. 1092 of 2012).
- 40 [2009] 2 LNS 0490 (Award No. 490 of 2009).
- 41 [2000] 2 ILR 128 (Award No. 334 of 2000).
- 42 [1999] 2 ILR 124 (Award No. 358 of 1999).
- 43 [2005] 2 LNS 2238 (Award No. 2238 of 2005).
- 44 [2006] 4 ILR 2588 (Award No. 1769 of 2006).
- 45 [1999] 2 ILR 293 (Award No. 419 of 1999).
- 46 [2005] 3 ILR 347 (Award No. 1409 of 2005).
- 47 See footnote 1 above.
- 48 See *Syarikat Perjalanan Terus (SPT) Butterwoth – Kuala Lumpur Sdn Bhd and Transport Workers’ Union* [1988] 2 ILR 447 (Award No. 279 of 1988).
- 49 [2004] 6 CLJ 18.
- 50 [2009] 4 ILR 203 (Award No. 1124 of 2009).
- 51 [1997] 2 ILR 449 (Award No. 302 of 1997).
- 52 In *Kvaerner Petrominco Engineering Sdn Bhd v. Virginia Jaqueline Chan* [2007] 1 ILR 494 (Award No. 206 of 2007), the Industrial Court stated: ‘the relationship between an employer and an employee is of a fiduciary character.’

- The employee is required at all times to act in a faithful manner and not to place himself in a position where his interest conflicts with his duties. If the employee does an act which is inconsistent with the fiduciary relationship, then it will be an act of bad faith for which his services can be terminated.
- 53 Per Lord Evershed MR in *Laws v. London Chronicle (Indicator Newspapers) Ltd* [1959] 2 All ER 285.
- 54 See *Menon v. The Brooklands (Selangor) Rubber Co Ltd* [1967] 1 LNS 100.
- 55 [1980] 1 ILR 139 (Award No. 54 of 1980).
- 56 See *Cableview Services Sdn Bhd lwn. Mazlan Salim & Yang Lain* [2004] 1 ILR 1262 (Award No. 268 of 2004).
- 57 See *Colgate-Palmolive (M) Sdn Bhd v. Yap Shyan Meng* [2007] 2 ILR 313 (Award No. 660 of 2007).
- 58 See *Perabut Van Hin Sdn Bhd v. Lee Lay Lay* [2002] 3 ILR 824 (Award No. 913 of 2004).
- 59 See *Lim Chiew Seng v. Jobstreet.Com Sdn Bhd* [2013] 3 ILR 664 (Award No. 1360 of 2013).
- 60 See *Ulf Ernst Keil v. Siemens (M) Sdn Bhd* [2015] 1 ILR 73 (Award No. 1280 of 2014).
- 61 See *Transport Worker Union and Kartar & Sundar Singh Ominibus Co Ltd* (Award No. 7 of 1970).
- 62 [1981] IRIR 119.
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