

CASE STUDY
JOSEPH LIM CHIEN SHIUH V.
DANCOM TT & I TELECOMMUNICATIONS (M) SDN BHD
AWARD NO. 1052 OF 2021

The fact of the case is the claimant is employed as General Manager on the 19 July 2017 and he is confirmed employee of the company. On 1 July 2018, the claimant position was redesignated to the position of Acting General Manager. Nine month later, the claimant was redesignated as General Manager with effective 1 April 2019. Then in mid of December 2019, the company appointed a new General Manager and the claimant was instructed to report to this Manager who take over certain of his function. Then in May 2020, the company appointed another new General Manager and the claimant was ask to report duties to her. On the 12 Mei 2020, the company issued a memorandum stating the company are taking austerity initiative effective 1 April 2020 until 30 June 2020 due to COVID 19 pandemic which resulted in Movement Control Order imposed by the government. Nevertheless, within two (2) week from the date of the memo, on 1 June 2020, the claimant is given a letter of termination as part of the Company's austerity measure to ensure the Company long term sustainability of business. The company alleged that at the time of the Claimant dismissal, the company is facing unprecedented business slow down and financial difficulties due to the Covid19 Pandemic that had affected the world. At the time of dismissal the claimant was heading the Operation of Apple Beats division. Under the austerity initiatives the Company restructuring its business, resulting the business operation reduced for 6 division to 4 where the Appeal Beat Division under the claimant was absorbed and consolidated into Apple Core Division resulting the position of claimant redundant. The company also gave evidence that claimant performance over the 3 year had not been promising and the claimant generally argumentative, uncooperative and ill tempered. The court made following observation:

a) The company has been taking away systematically many of the claimant job scope and placing under different managers suggesting something sinister that the company was planning against the claimant

- b) The company memorandum clearly stated that the austerity initiative will be discontinued upon assessing the statuses of recovery if the Group business and revenue recover but the court observe there is no evidence that the company had taken any measures in its commitment to discontinue the purported austerity initiatives or taken any assessment of the status of recovery of the company business but within two (2) week have given the termination to the claimant.
- c) The decision of the company to seize the COVID-19 pandemic as an opportunity to terminate the claimant form his employment is smack rash and ill thought exercise.
- d) The method, manner and the person who made decision to select the claimant for the retrenchment on the ground of redundancy is not explained.
- e) None of the officer of the company who participate the selection of the claimant was not called and also the company failed to adduce proper evidence of the financial difficulties leading to the austerity measures or retrenchment exercises.

Observation

In this case the company try to justify the termination by depending on the COVID-19 pandemic as reason which the court does not agree. The court still requires to see the step taken by the company before the alleged retrenchment is done Company still need to prove a *bona fide* retrenchment including the selection process and the financial standing of the company at the point of time and the effect of improvement to the company after the retrenchment being done.

Prepared by

Department of Industrial Relations Negeri Sembilan

3 October 2022