

THE TOP FIVE TYPES OF WORKER DISMISSALS ARE USEFUL INDICATORS FOR INDUSTRIAL HARMONY IN MALAYSIA

Prepared by

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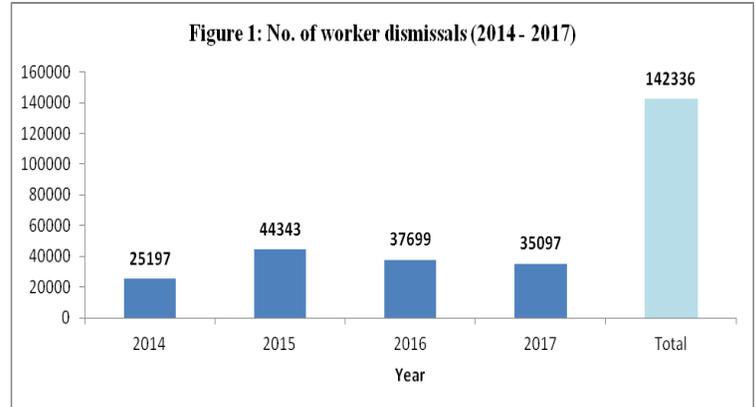
En. Wan Zulkfli bin Wan Setapa

Introduction

Section 20 of the Industrial Relations Act 1967, which came into force on or about 10 February 1989, was introduced to provide protection to workers who have been dismissed for no reason and/or no reasonable causes. This section provides the right to an employee to file a representation to be reinstated to the original employment position.

According to the honourable Datuk Gopal Sri Ram JCA in the case of Hong Leong Equipment Sdn. Bhd. V Liew Fook Chuan & Other Appeals (CLJ665, 1997): *“It cannot be gainsaid that Parliament intended to elevate the status of workman as defined in the Act from the weak and subordinate position assigned to by the common law to a much stronger position. The legislature has willed that the relationship of employer and workman as resting on a mere consensual basis that is capable of termination by the employer at will with the meagre consequence of paying the hapless workman a paltry sum of damages should be altered in favor of the workman. It has accordingly provided for security of tenure and equated the right to be engaged in gainful employment which may not be forfeited save and except for just cause and excuse. Due recognition of this higher status must therefore be accorded by our Courts if they are to act in obedience to the will of Parliament.”*

Statistics from the Ministry of Human Resources, indicated that a total of 142,336 workers were dismissed by employers from the year 2014 until 2017 as depicted in Figure 1.



Sources: MOHR and MEF reports.

Based on the statistics from the Industrial Relations Department for the year 2009 until 2018, a total of 46,915 cases were received by the Department to appeal dismissals under Section 20, Industrial Relations Act 1967.

Figure 2 shows the estimated gap between the appeal cases registered under S20 and the total number of reported workers' dismissal for detailed data available for the shorter period 2014 until 2017. The figure shows that only 21,821 (15%) cases were registered under S20 from the total of 142,336 cases.

This includes all cases with the different reason of termination such as misconduct, constructive dismissal, retrenchment, probationer, fixed term contract, termination simpliciter, forced resignation, voluntary resignation, frustration of contract, retirement, minimum wages, implementation of retirement, dissatisfaction of performance and others.

From 46,915 cases, 37,011 (80%) cases were recorded under five main reasons of dismissal as stated below in Figure 3.

Figure 2: The estimation gap between cases registered under S20 and total numbers of workers dismissal (2014 - 2017)

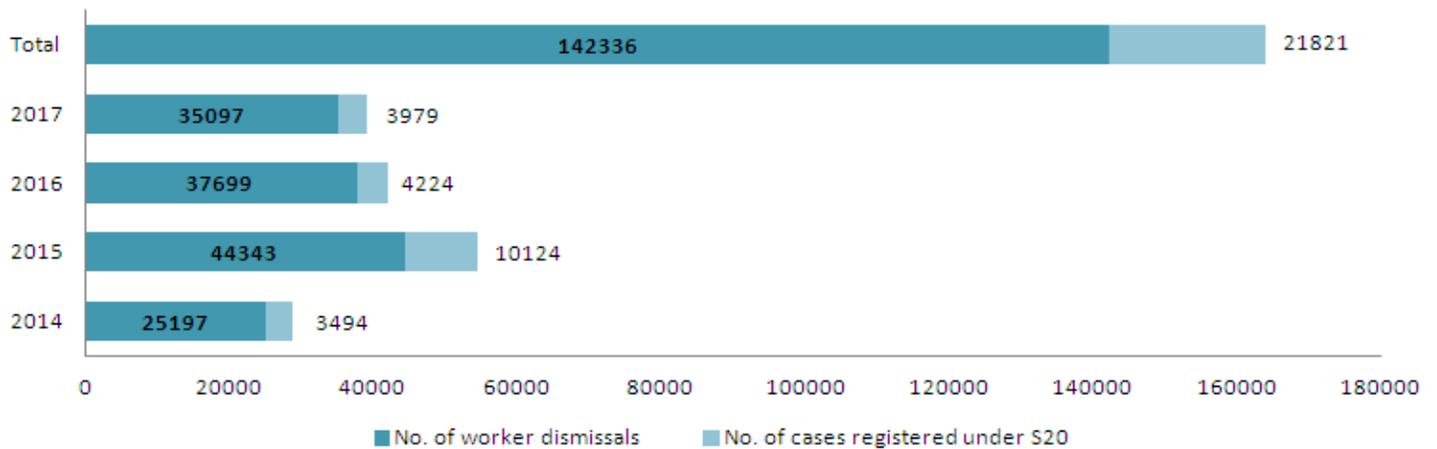
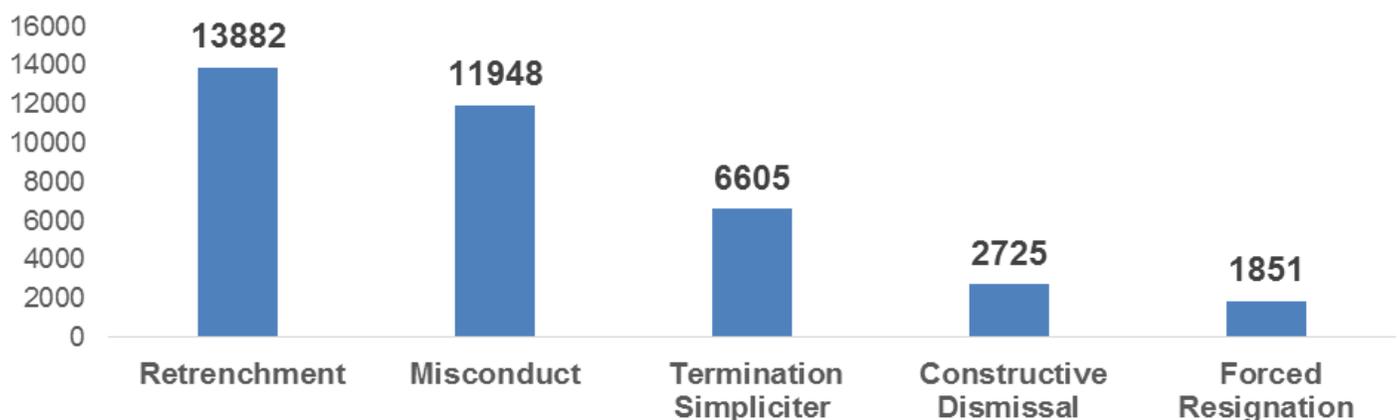


Figure 3: Reasons of Dismissal Cases Registered Under S.20, IRA 1967 (2009 – 2018)

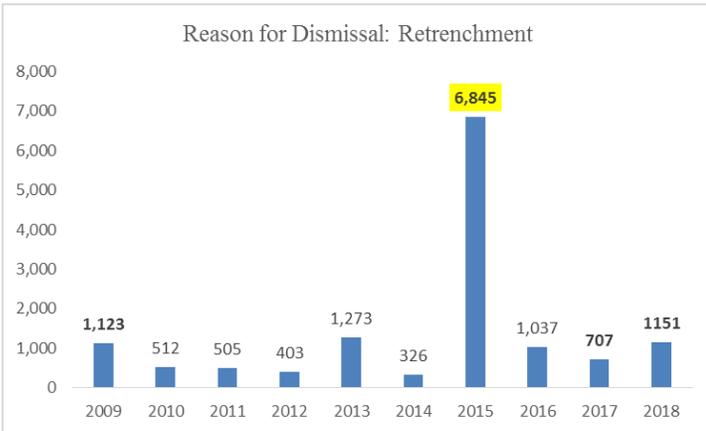


FIGURE 3: FIVE TOP REASONS OF DISSMISSAL UNDER S.20, IRA 1967 (2009 - 2018)



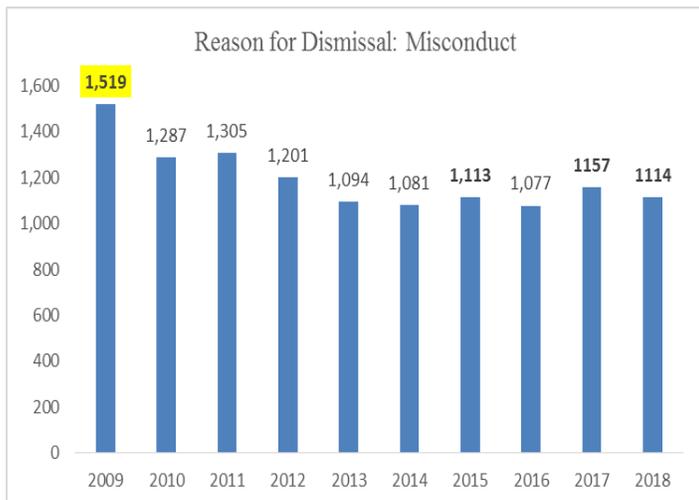
#1: Retrenchment

Retrenchment refers to the termination of service due to adjustments for an employee surplus. From year 2009 until 2018, 13,882 cases were recorded. The highest recorded cases were received in 2015 (6845 cases). This was attributed mainly to closure of business of Malaysia Airlines System Berhad.



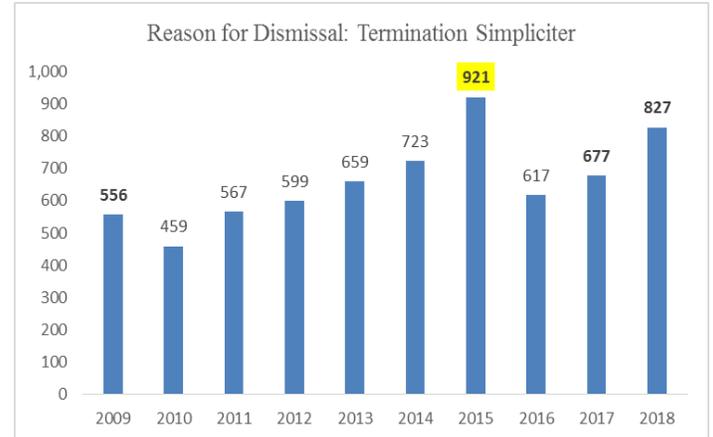
#2: Misconduct

Misconduct refers to the improper behavior of an employee which is deemed unsuitable and against the rules and ethics set by the company. From year 2009 until 2018, 11,948 cases were recorded. The highest cases were received in 2009 (1,519 cases). The highest sub-reason is that employee did not comply with the rules and regulations of the company.



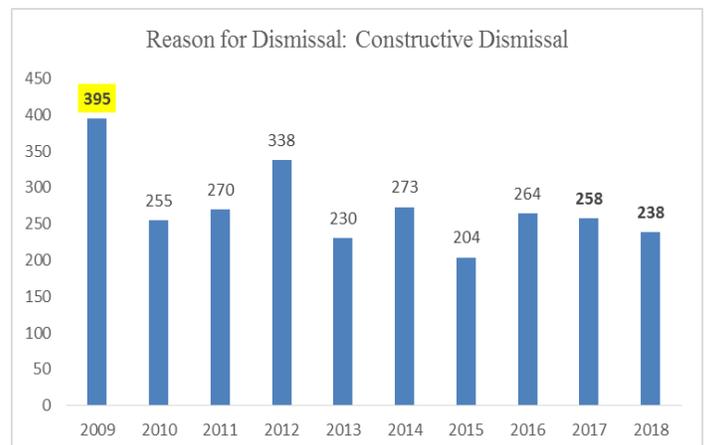
#3: Termination Simpliciter

Termination simpliciter can be defined as termination by contractual notice (or salary in lieu) and for no reason, if not grounded on any just cause or excuse would still be a dismissal without just cause or excuse. The highest cases were received in 2015 (921 cases). 2015 was also the year in which the highest number of the group cases were recorded by the Department.



#4: Constructive Dismissal

Constructive dismissal refers to an action taken by the employers in the organization that intentionally make working conditions for an employee difficult or unfair so that the employee feels forced to leave their job. From year 2009 until 2018, the highest cases were received in 2009 (395 cases). There are two main sub-reasons under this category: transferring employees without reasons and failure to pay employees' salaries and wages.



#5 Forced Resignation

Forced resignation refers to a situation in which an employee has no choice but to resign because of the element of duress or pressure from the employer. From the analysis, it shows that the highest cases were received under this category in 2018 (248 cases).



Conclusion

It is important to understand the evolution of the dismissal scenario and their trends in Malaysia. These offer insights into determining the development in the level of industrial harmony between employers and employees. This analysis can be the first step for the Industrial Relations Department in identifying the best options for devising policy measures to address potentially emerging issues arising from worker dismissals in Malaysia.