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MAPA

THE MALAYAN AGRICULTURAL PRODUCERS ASSOCIATION

PERSATUAN PENGELUAR PENGELUAR PERTANIAN TANAH MELAYU

(Registered under the Trade Union Act, 1959)

MAPA NEWSLETTER

DECEMBER, 2021

By:
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MAPA SERVICES

As a service oriented Organisation and being the largest Employers' Trade Union in the Plantation Industry, we provide numerous services for the benefit of our members, some of which are as follows :

•To provide guidance and render advice on all matters pertaining to labour and industrial relations;

•To represent and assist members during conciliation meetings at the Industrial Relations Department, Ministry of Human Resources;

•To represent and assist members at hearings at the Labour Court or Industrial Court;

•To represent and assist members during negotiations at estate/national level; and

-To conduct Seminars, In-House Training, etc.

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MAPA NEWSLETTER

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DIRECTOR WRITES

Dear readers,

Welcome to the first and latest issue of MAPA Newsletter for the year 2021.

As members are aware, the plantation sector remains one of the significant sectors in Malaysia's economy and has been a critical contributor to the country's socio-economic development. Today, the plantation sector is one of the very few sectors that continues to deliver strong economic performance in a year subdued by the unprecedented global pandemic Covid-19.

Government measures to flatten the curve of the pandemic require significant consideration of issues facing foreign workers, including fulfilling their basic needs, guaranteeing their welfare and upholding labour standards. The implementation of various phases of Movement Control Orders (MCOs) and the way the Government addresses the situation facing foreign workers have significant negative consequences on their already precarious living and working conditions. This includes a growing number of positive COVID-19 cases found among foreign workers in almost all sectors of the economy.

In order to prevent the spread of Covid-19 in the plantations, the Government had announced that foreign workers were required to undergo the Covid-19 tests and the costs were to be borne by the employers.

Growing demand for foreign workers is really unavoidable due to the continued reluctance of local workers to work in plantations. Ensuring a sustainable supply of foreign workers will require serious commitment and intervention of all the relevant Government Agencies. Without that, billions of dollars in terms of export earnings would go down the drain. Timely supply of foreign workers and getting the appropriate number of foreign workers are extremely crucial for the continued survival of the plantation industry.

In the meantime, MAPA would continue to protect and pursue the interest of the industry to the best of our capacity and capability. Further, we would also continue to provide efficient and quality services to the members, particularly during this difficult time.

Director
MAPA

MAPA SERVICES

AS A SERVICE ORIENTED ORGANISATION AND BEING THE LARGEST EMPLOYERS' TRADE UNION IN THE PLANTATION INDUSTRY, WE PROVIDE NUMEROUS SERVICES FOR THE BENEFIT OF OUR MEMBERS, SOME OF WHICH ARE AS FOLLOWS :

TO PROVIDE GUIDANCE AND RENDER ADVICE ON ALL MATTERS PERTAINING TO LABOUR AND INDUSTRIAL RELATIONS;

TO REPRESENT AND ASSIST MEMBERS AT CONCILIATION MEETINGS AT THE INDUSTRIAL RELATIONS DEPARTMENT, MINISTRY OF HUMAN RESOURCES;

TO REPRESENT AND ASSIST MEMBERS AT HEARINGS AT THE LABOUR COURT OR INDUSTRIAL COURT; AND

TO REPRESENT AND ASSIST MEMBERS DURING NEGOTIATIONS AT ESTATE/NATIONAL LEVEL.

COURT CASE

DISMISSAL DUE TO FACEBOOK POSTING
Industrial Court Award No: 220/2021
Between
Mohd Hafizul Bin Abdul Rahim
And
Malaysia Airlines Berhad
(Chairman: Y. A. PUAN SUMATHI MURUGIAH)

Facts:

The Claimant was employed by Malaysia Airlines Berhad ("MAB") as an Aircraft Technician. On 31.05.2019, MAB issued a Show Cause letter to the Claimant, alleging that he posted an inappropriate and disparaging remark about the Company in a Facebook posting. The post was a comment made by the Claimant on the Facebook page of former Prime Minister, Datuk Seri Najib bin Tun Abdul Razak which the Claimant did not deny the posting.

By the Claimant's action in posting the said comment as shown above, the Claimant had been found to have tarnished the reputation of the Company and had breached the Company's HR Corporate Policy and Company's Group Code of Business Conduct.

The Claimant contends that the posting was done in his free time and not during his working hours. It is also the Claimant's contention that he did not use the Company's internet facilities and as such he was not bound by or did not violate the Company's HR Corporate Policy and or the Company's Group Code of Business Conduct.

The Claimant also contends that there is no concrete evidence that the Company has suffered irreparable damage as the result of the Claimant's posting of the said comment.

Findings:

Company's Policy and Code, Clause 6.8 (3) of the Company's HR Corporate Policy states as follows:

"Employee's obligation of confidentiality and loyalty towards the Company when using the e-mail, internet facilities and Social Media, extend beyond work hours and outside of workplace."

Based on the foregoing and on the totality of the evidence before of the court, it is the considered view of the court that the Claimant's act had indeed breached the Company's Policy and Code and therefore the Company had proven on balance of probabilities the Claimant's misconduct.

The misconduct that the Claimant had committed not only broke the Company's rules but by his actions he had exposed the Company to the risk of being ridiculed and laughed at, he had compromised the reputation and the integrity of the Company hence breaking down the mutual trust and confidence placed in him as an employee. As such, the Claimant had not only committed a misconduct but a serious misconduct at that.

Helds:

Therefore, by a careful assessment of the evidence taken as a whole, grounded upon equity, good conscience and the substantial merits of this case pursuant to Section 30(5) of the Industrial Relations Act 1967, it is the finding of the court that the Company has established, on balance of probabilities, the appropriateness of the Company's action against the Claimant. In the circumstances of this case, it is the court's opinion that it is unreasonable to expect the Company to have continued the Claimant's employment and the Claimant's claim dismissed.

COURT CASE

MCO COVID-19 – RETRENCHMENT
Industrial Court Award No: 1298/2021
Between
Rasalechumi A/P Kanagaratnam
And
Lourdes Medical Services Sdn. Bhd.
(Chairman: Y.A. TUAN AUGUSTINE ANTHONY)

Facts:

The Company operates a chain of medical clinics at various locations in Malaysia. The Claimant commenced employment with the Company as an Aide Nurse effective 10.01.1983. On the 01.07.2009, the Claimant's position was re-designated as Clinic Manager and by a letter dated 27.02.2018, the Claimant was re-designated to the position of Clinical Assistant with no changes to all other terms and conditions of the Claimant's employment.

In late 2019 and in early 2020, the world experienced an unprecedented health emergency arising out of a disease known as the Corona Virus Disease 19 (now known as COVID19) which became a pandemic.

On the 01.04.2020, the Company sent out a letter to all the Claimants informing them that the Company had undertaken a rationalization exercise and that the management had decided that it would not be feasible for the Company to continue the business and had decided to cease operations. The Claimants now state that they had been dismissed without just cause or excuse by the Company and pray for reinstatement to their former position without any loss of wages or benefits.

Findings:

The Company had failed to explain what was the rationalization exercise that the Management of the Company had carried out which warranted the retrenchment of the Claimants. In any event the Company was unable to prove that an actual redundancy situation of the Claimants had arisen as the letter dated 01.04.2020 did not make any mention of the redundancy of the Claimants due to surplus of the labour that led to the retrenchment of the Claimants.

This Court having perused the evidence must now state that the Company took the decision to retrench the Claimants within 2 weeks from the date of the announcement of the MCO on the 18.03.2021. Surely the hasty decision to retrench the Claimants must have been conceived even before the 14 days period when the MCO was to end on the 31.03.2020 and it is apparent to this Court that this hasty and abrupt decision to retrench the Claimants was so ill conceived that the Company was even prepared to misinform the Claimants that the Company had made a decision to cease operation which is now proven otherwise as the Company is still active in its operation.

In fact, the Claimant had given evidence that she was informed on around the period of mid March 2020 that the Company is already planning to retrench her from her employment with the Company with a possible yet not guaranteed compensation package of 6 months' salary which the Claimant had rejected because she had served the Company loyally for almost 38 years.

The Company that sometime in Mid July 2020 the Claimant was offered reinstatement by the Company suggesting that the Claimant's position was not redundant after all. Seeking reinstatement was plea that the Claimant be restored to her former position. The position offered is not a reinstatement to her former position in Section 15 Shah Alam but an employment in Bangi which the Claimant had correctly rejected.

Again in November 2020, the Company was prepared to reinstate the Claimant to her former position and pay backwages. This pleaded facts of the Company runs contrary to the other pleaded facts of the Company that the Claimant's position had become redundant and that the Claimant needed to be retrenched. the Company is unable to show that the Claimant's position was redundant and that the job no longer exists for the Claimant to continue the employment in the Company.

COURT CASE

MCO COVID-19 – RETRENCHMENT
Industrial Court Award No: 1298/2021
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And
Lourdes Medical Services Sdn. Bhd.
(Chairman: Y.A. TUAN AUGUSTINE ANTHONY)

Helds:

This Court is of the view that the alleged bona fide restructuring and reorganisation of the Company's business that led to the retrenchment of the Claimant is not convincing. The selection of the Claimant for retrenchment due to redundancy and the officers involved in the selection process also remains unclear and reveals unfair labour practices.

The Claimant had demonstrated a very rare sense of loyalty to the Company. Not only had the Claimant worked for this single employer for more than 37 years, she had also willing accepted job re-designation that somewhat shows that she had likely suffered demotion and this can be seen from her position of Clinic Manager since 01.07.2009 to 01.03.2018, only to be redesignated as a Clinic Assistant effective 01.03.2018 reporting to a Clinic Manager a position she had held since 01.07.2009.

This Court having ruled that the Claimant was dismissed without just cause or excuse. As such the appropriate remedy in the circumstances of this case must be compensation in lieu of reinstatement. The Claimant is also entitled for back wages in line with Section 30(6A) Industrial Relations Act 1967 and the factors specified in the Second Schedule.

This Court hereby orders that the Claimant be paid 1 month salary of the last drawn salary of RM3,250.00 for every year of service completed totaling 37 years and back wages of the last drawn salary of RM 3,250.00 for 14 months. Total amount ordered by this Court: RM165,750.00

PRINCIPAL & DOCTRINES

FRUSTRATION OF CONTRACT

One of the ways by which a contract of employment may come to an end apart from the dismissal of an employee is by the application of the doctrine of frustration. By frustration, it means that there has been such a change of circumstances that events make it physically impossible for a contract to how performed as for example, where the illness of the employee lasts or is likely to last for a prolonged period. It cannot be disputed that illness or incapacity which is permanent will frustrate the contract, and so will illness which is of so prolonged a nature to prevent the employer from getting substantially what he has bargained for as it is also accepted that an employee must provide satisfactory performance of the work which he has contracted to do.

(Industrial Court Award No. 901/2010)
Puan Pauline Peck v. Saratim Insurance Agency Services Sdn. Bhd.
By Y.A. Tuan P Iruthayaraj A/L D Pappusamy

HARASSMENT

Harassment is a very serious misconduct and it cannot be tolerated by the employer in any form. The employer bears an obligation to protect its employees from being harassed by their coworkers. Harassment in any form lowers the dignity and respect of the ones who get harassed and disrupts or destroys the harmonious and conducive environment of the workplace. The perpetrators who go unpunished will only intimidate, humiliate and traumatize the victims resulting in an unhealthy working environment.

(Industrial Court Award No. 992/2016)
Shaun Khee Tuck Keat v. Carigali Hess Operating Company Sdn. Bhd.
By Puan Anna Ng Fui Choo

ABSENT WITHOUT LEAVE

Absenteeism may appear to be a minor misconduct but when it is prolonged and employers are not notified, it can subsequently become a very serious problem. The result is that employers will be left in a lurch having to find other staff to cover the absent employees' work and naturally this will cause disharmony in the workplace.

(Industrial Court Award No. 413/2014)
Thawendran A/L Wendran v. Malaysian Airline System Berhad
By Puan Anna Ng Fui Choo

INDUSTRIAL RELATIONS SCENE

FREE MALAYSIA TODAY

16 APRIL 2021

Worker not paid 2 months' salary awarded RM43,000 for constructive dismissal

By **VAnbalagan** - April 16, 2021 10:38 AM

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The Industrial Court held that the company had little respect for its workers and their rights. (Reuters pic)

PETALING JAYA: A probationer who worked two months for a transport services company was awarded RM43,200 in back wages by the Industrial Court for constructive dismissal as the employer had failed to pay his salary.

Industrial Court chairman K Rajeswari said although I Gauthaman Thevar had asked for reinstatement, she felt it was not the appropriate remedy as the company's managing director, S Mahindren, had assaulted him.

"His safety may be compromised if he is reinstated. As such, the court will order monetary compensation instead," she said in her 15-page award.

INDUSTRIAL RELATIONS SCENE

FREE MALAYSIA TODAY

16 APRIL 2021

Rajeswari said the court could only award 12 months' back wages as that is the maximum compensation that may be ordered pursuant to the Second Schedule of the Industrial Relations Act.

Gauthaman had represented himself while JSAE Resources Sdn Bhd was unrepresented, leading to the court to hear the claimant's case ex-parte pursuant to its powers under Section 29(d) of the Act.

Gauthaman, who was appointed as operations executive, worked for JSAE with a monthly salary of RM3,000 with allowances amounting to RM600. He left the company on Sept 14, 2019.

Facts revealed that the claimant, on Sept 20, 2019, had followed up with Mahindren with regards to his unpaid August salary but his superior dared him to lodge a report with the authorities.

The following day, Mahindren had gone to the claimant's residence and there Gauthaman was pushed and physically punched in the chest by the managing director.

The claimant reported the trespass and assault to the police but no action was taken.

Rajeswari said it was trite law that withholding employees' salaries when they become due or an unjustified delay in paying the agreed remuneration to employees constituted a fundamental breach of an employment contract.

"So is the act of unreasonably withholding payment of properly incurred monetary claims. Such acts destroy the very foundation of the employment relationship."

She said the claimant was abused by the managing director for asking for his overdue salary and monies which he had expended out-of-pocket for the company. These were incurred from the purchase of safety equipment for the company's workers.

She said Mahindren's impudence was shocking to say the least and this further went to show that the company had little respect for its workers and their rights, as enshrined in the country's laws.

INDUSTRIAL RELATIONS SCENE

THE MALAYSIAN LAWYER.COM

29 MAY 2020

Retrenchments in Malaysia — some recent cases

29 May, 2020 Marcus van Geyzel

COVID-19 has had a devastating impact on jobs around the world. Almost every country has experienced an economic downturn, and as businesses struggle to steady the ship and stay afloat, many employers have been doing their best to retain their employees where possible. It has been a very busy 2020 for employment lawyers and HR professionals.

Unfortunately, for employers in many industries, COVID-19 has negatively affected their revenues too significantly, and cutting jobs has become the only solution to keep the businesses going. This has also been the case in Malaysia, where the Movement Control Order crippled many businesses, and the government has been unable to provide meaningful assistance to employers. For example, the aid provided under the Prihatin wage subsidy program is very low and short-term compared to other countries, and comes with conditions attached that make it impractical for many employers.

Unfortunately, for employers in many industries, COVID-19 has negatively affected their revenues too significantly, and cutting jobs has become the only solution to keep the businesses going. This has also been the case in Malaysia, where the Movement Control Order crippled many businesses, and the government has been unable to provide meaningful assistance to employers. For example, the aid provided under the Prihatin wage subsidy program is very low and short-term compared to other countries, and comes with conditions attached that make it impractical for many employers.

As a result, there have already been many retrenchments carried out in Malaysia, with even more to come. Indicative of the times, in the past couple of months, we have suddenly seen a significant amount of traffic on an old article I published here in January 2016 — *"What you need to know about the law on retrenchment of employees"*.

But retrenchments can be tricky. Over the years I've seen many employers make mistakes that result in unfair dismissal claims, a messy and costly court process, and sometimes very big court awards to be paid to former employees. Often, these mistakes are made even by employers who have done their research on the law, and sometimes even by those who have obtained legal advice (which ultimately turned out to be incomplete or flawed).

Knowing how to properly carry out a retrenchment exercise — and knowing what practical mistakes and missteps to avoid — comes with experience. It also helps greatly to analyse how other businesses have implemented retrenchments (both properly and improperly), and so in this article I set out very brief summaries of a selection of retrenchment-related decisions by the Industrial Court in the past year.

It would also be useful to read some of the previous articles I've published here, in particular the following:

1. *"Case Update: Can an employee bring an unfair dismissal claim after accepting a severance payment?"* (16 November 2017)
2. *"Case Update: Relevant issues when an employer uses financial difficulties as a reason for retrenchment"* (24 January 2018)
3. *"Case Update: Insufficient justification and improper handling of Voluntary Separation Scheme may give rise to unfair dismissal"* (20 March 2019)

These are the cases from the past year that I'll briefly summarise below:

1. ***Tharmabalan Suppiah Velliah v. MSL Travel Sdn Bhd*** *(Award No. 3081 of 2019).*
2. ***Rasyidah Rosli v. Ally Azran Holding Sdn Bhd*** *(Award No. 3105 of 2019).*
3. ***Ganesh Beloor Shetty v. Ranbaxy (Malaysia) Sdn Bhd*** *(Award No. 3210 of 2019).*
4. ***Anthony van der Wal v. Petroleum Geo-Services Exploration (M) Sdn Bhd*** *(Award No. 3238 of 2019).*
5. ***Mohd Zakir Yusoff v. Telarix (M) Sdn Bhd*** *(Award No. 349 of 2020).*

Reading the summaries will provide insights as to how the Industrial Court assesses the fairness of challenged retrenchments. Seeing what these employers have done right — and wrong — will be useful to HR professionals and in-house counsel of employers when planning and implementing retrenchments.

1. *Tharmabalan Suppiah Velliah v. MSL Travel Sdn Bhd*

In the *Tharmabalan Suppiah Velliah* case, the employee was retrenched as part of a down-sizing exercise. One of the employee's complaints was that the employer did not take any necessary steps to minimise its financial problems before implementing the retrenchment.

The employer gave evidence that ***it had taken cost-cutting measures for the past year***, including moving premises, not replacing employees who had resigned, and reducing overheads. The employer's director also gave evidence that he himself had undergone two paycuts.

The evidence also showed that all the staff, including the employee in question, were aware of the business slowdown. The employer also gave evidence that, in selecting the employee for retrenchment, the employer had complied with the LIFO principle.

The Court concluded that ***the employer had taken all necessary steps to stay in business***, and that the employer had exercised its power genuinely when retrenching the employee. The Court upheld the employer's right to reorganise its business, and ***dismissed the employee's claim***.

2. Rasyidah Rosli v. Ally Azran Holding Sdn Bhd

The *Rasyidah Rosli* case is a consolidated case, involving 3 claimants. All 3 employees were terminated in the same manner, via a notice of termination. The notice of termination referred to a prior meeting whereby the employees were informed of the employer's financial constraints, and the need to reduce the workforce.

All 3 employees refuted that any prior meeting took place, and the employer was unable to provide evidence of the meeting, or that the employees were previously informed of financial difficulties. The termination notices also did not state the reasons for the terminations, and ***it is only in subsequent court pleadings that the employer cited retrenchment due to redundancy***.

The company provided their financial statements for the preceding 3 years. However, the statements showed that, despite declining revenues, ***the company was still profitable*** in all of those 3 years. Based on the review of the financial statements and the testimony of the company Chief Operating Officer, the Court concluded that ***although there was a drop in revenue and profits, the company did not appear to be having financial difficulties***.

The Court viewed poorly the fact that ***the termination notices did not set out the reasons for the terminations***, and that the company ***failed to produce evidence of the purported prior meeting*** with the employees. The company also ***could not prove that the employees' positions were redundant***, and in fact the employer's witness admitted that the employees' job functions were still in existence at the point of termination and had subsequently been taken over by other staff or outsourced.

In respect of the first claimant, although there was testimony that her job functions had been outsourced, ***the company failed to justify how the outsourcing was a cost-cutting measure***.

The Court ***concluded that the dismissals were unfair***, and awarded each employee backwages of 14-15 months, and compensation in lieu of reinstatement of one month's salary per year of service.

3. Ganesh Beloor Shetty v. Ranbaxy (Malaysia) Sdn Bhd

In the *Ganesh Beloor Shetty* case, the employee's services were terminated on the grounds of retrenchment arising from redundancy as part of a restructuring. The company gave evidence that following a corporate amalgamation and restructuring, the employee's role no longer existed, the relevant regional office had been closed down, and that the employee's boss had also been made redundant.

The employee contended that his position as Head of Medical Affairs could not have been redundant, as it was compulsory for the company to have such a position to comply with the law. However, the court concluded after reviewing the relevant guidelines that there was no such requirement.

The employee claimed that he had not been given notice that a restructuring was being carried out. The company contended that the employee was in fact ***consulted and informed on two occasions*** in the preceding months. The evidence also showed that the employee was aware that his boss was retrenched earlier, and therefore the employee would have been aware of the ongoing restructuring. In any case, the Court pointed out that ***a failure to notify an employee of an impending retrenchment exercise does not automatically render the exercise unlawful***, as long as it can be shown that the company acted in good faith.

The Court concluded that ***there was a genuine redundancy***, and the retrenchment was made genuinely, and ***dismissed the employee's claim***.

4. Anthony van der Wal v. Petroleum Geo-Services Exploration (M) Sdn Bhd

The *Anthony van der Wal* case involved an employee who was retrenched having served the Company for 22 years. The Company's reason for retrenchment was to centralise, simplify, and streamline its workforce due to adverse business conditions.

The employee refuted the Company's assertion of being in an adverse situation, and contended that the Company was making healthy profits. The employee also provided a list of reasons showing that the Company's actions globally showed that it was not facing financial challenges, including spending on non-essentials and lucratively remunerating executive directors.

The employee further claimed that his dismissal was not carried out fairly, and that the Company did not adhere with the Code of Conduct for Industrial Harmony. The employee said he was arbitrarily selected for retrenchment, as was not informed of the selection criteria. He was also not consulted prior to the dismissal, and the town hall sessions only generally addressed the reorganisation. The employee also said he was not genuinely offered an alternative position.

The Company provided evidence that the group on a global level had suffered losses, and the outlook was not good. The Company submitted that the group made a business decision that it was necessary to reorganise, and that it was entitled to do so. The Company contended that ***even if an employer was not suffering financial losses, it is still entitled to undertake a retrenchment exercise to ensure that it is kept afloat.*** It was also shown that 54 of the Company's employees were made redundant as part of the reorganisation.

In relation to the severance compensation, the Company contended that there is no statutory obligation to pay termination benefits to non-EA employees. Nevertheless, the Company did offer to pay termination benefits as a goodwill gesture, but the employee refused to sign off on the relevant documents to accept them.

After scrutinising the evidence, the Court did find that the Company's behavior did not reflect an adverse financial situation, but ***there was sufficient evidence to show that the Company was operating with a negative operating income*** in the preceding years. The Court also noted that ***the employee was offered an alternative position*** in England, but he declined due to the reduced salary.

The Court further pointed out that ***there was no legal obligation for the Company to consult the employee*** and give him early warning of the impending retrenchment, and that ***a lack of consultation would not automatically render the retrenchment male fide.*** In any case, the Court found that ***the Company did give ample notice — a newsletter was sent*** to all employees informing them of the need to reorganise, and ***townhall meetings were held*** outlining the retrenchment package.

The employee also claimed that the decision to cap his severance package at 7 months' salary, and subject to preconditions, was an unfair labour practice. However, the Court said that ***once a retrenchment is found to have been genuine, a failure to provide sufficient compensation would not invalidate the retrenchment.***

The Court was satisfied that the Company had proven its case, and ***dismissed the employee's claim.***

5. Mohd Zakir Yusoff v. Telarix (M) Sdn Bhd

In the *Mohd Zakir Yusoff* case, the employee was issued with a letter of termination stating that he was being retrenched due to redundancy.

The Company contended that both the Company and its global group companies had been suffering financial losses, and challenging business conditions that necessitated a global workforce reduction. It was the Company's position that the workforce reduction was genuine and motivated by the group's poor financial position, and that there were 15 employees made redundant across different jurisdictions. The employee's performance was not an issue.

The employee disputed his redundancy, and contended that his position was taken over by another recently-hired individual. Further, the employee argued that the Company advertised 3 positions covering similar job functions 5 months after he was made redundant.

The Court found that the evidence submitted by the Company of its financial difficulties was not convincing. ***The maker of one of the financial statements was not called to give evidence***, and so the employee's counsel could not cross-examine him/her, which ***made the accuracy of the information questionable***. The Company also failed to explain material contradictions in one of the financial statements. The maker of one of the audited accounts submitted was also not called to testify, and the Court found that some of the figures were contradictory. The Court concluded that the documents submitted were suspicious and disputable, and therefore ***the Company failed to prove that it had been suffering losses***.

The Company also contended that the employee was selected for retrenchment over another recently-hired employee because he did not speak Mandarin, but the Court ***deemed this to be an afterthought, as it was not given as a reason at the point of termination***.

The Court found that the Company ***failed to provide evidence to show how the decision was made to restructure, and the basis on which the employee was selected***. The Company failed to produce any records of discussions by the Board or management of the retrenchment exercise.

The Court concluded that the Company had ***failed to prove a genuine redundancy***, and that the employee's services, job functions, duties and responsibilities existed at the time of his dismissal, and continued to exist thereafter. The Court awarded the employee backwages of 15 months, and compensation in lieu of reinstatement of one month's salary per year of service.

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QUESTIONS OF INTEREST

WORK DONE DURING PUBLIC HOLIDAY

Q: The Estate required its workers to work on Public Holiday that was on 16th September 2021 (Malaysia Day) due to the high crop. Should the Estate substitute the Public Holiday to another day or pay the workers for work done on Public Holiday rates?

A: Referring to Section 60D of Employment Act 1955, Malaysia Day is one of the five compulsory Public Holiday and it cannot be substituted to another day. Therefore, the Estate shall pay the workers for work done on Public Holiday rates.

DEFRAY SPECIAL EXPENSES ENTAILED ON HOUSING

Q: Do all employees covered under MAPA/NUPW Field and Other General Employees and Fringe Benefits Agreement, 2019 are entitled to a payment of Defray Special Expenses entailed on housing?

A: The entitlement of Defray Special Expenses entailed on housing is stipulated under Article 33 of MAPA/NUPW Field and Other General Employees and Fringe Benefits Agreement, 2019. The payment is entitled to the employee who is the principal breadwinner of the employee's household and no approved accommodation is available. Such payment shall not be due to any employee who rejects accommodation provided by his employer.

TIPS & THOUGHTS

15 TIPS FOR GETTING STARTED WITH THOUGHT LEADERSHIP

Establishing yourself as a thought leader, somebody who drives innovation and the discussion of new ideas within an industry is a valuable and ultimately profitable goal for any businessperson. It can both boost credibility and make your brand more visible on multiple platforms. Thought leaders are popular, well-respected and are able to create more connections. They are revered by customers and industry experts alike.

But becoming a thought leader can't happen overnight. It takes a lot of work and careful planning to put yourself in a position to earn recognition as a go-to authority on industry developments. Gaining the respect and loyalty of others takes time and dedication. It goes beyond simply having the knowledge; you have to put yourself out there and draw an audience to your expertise. Once you do reach the summit, you have to introduce new ideas on a consistent basis in order to maintain your status within the industry.

Everybody has to start somewhere. Are you ready to learn about how to become a thought leader? Here are 15 tips to get you started.

1. Make Yourself Accessible

Part of putting your name out there is by getting your name everywhere. Always open the door for inquiries from media outlets and bloggers, especially on platforms that are popular with your target audience. Let them splash your name on their pages and screens. It can help tremendously if you nurture your relationships with these folks. Let them know you're always available for a quote or a live broadcast hit. Boost your visibility and share your expertise in many places as possible.

2. Don't Stop Creating Content

Channelling your thoughts and expertise into content is only the beginning. It's important to keep pumping out information, so you don't lose your place in the public conversation. Creating content on a consistent basis also shows you're staying on top of the latest industry news. Eventually, you should begin reaching out to other publications to publish more of your work. Content with your name or face on it being published on popular platforms only firms up your reputation as a leading industry expert and can grow your audience.

3. Maintain a Strong Online Reputation

Opinions can change quickly, especially on social media. One minute you're an industry darling, and the next you're a destructive or divisive force. It simply isn't enough to have an online presence; you must protect your reputation as well. Social listening tools can be used to track what people are saying about you and your brand. If you keep track of what people are saying in real-time, you can nip any negativity in the bud by acting quickly to reach out to your audience and resolving the problem.

4. Collaborate with Other Influencers

Once you've established a baseline reputation, start interacting with and reaching out to other influencers in your industry. Depending on how active the community and the length of your reach, this can be a relatively easy task. Combine your brand power with that of another high-profile expert and collaborate on content production. Both parties benefit by using the other's brand and audience to boost exposure. If consumers see a common bond between two powers, it can push your credibility through the roof.

5. Make Things Personal

At the end of the day, both thought influencers and regular consumers are human beings. We all react emotionally to the same things. Don't be afraid to show this side of yourself in your content. When pitching stories, preparing speeches or writing blogs, find ways to work in a personal element. Turn what you say into a story, which is relatable to everybody. Highlight real-world examples and authentic solutions. Shine a light on the human aspect, so audiences have a reason to hang on to your every word.

6. Love What You Do

If you're going to be known as an authority on a topic, you better be passionate about it. You will be writing and speaking about your industry on a regular basis and talking about the same concepts and ideas in different cycles for many years. This shouldn't be a problem if you love what you do, but if not it can be draining. Believe in what you're doing, and others will follow. People who are enthusiastic about a topic will also be able to sniff out anybody who isn't. Don't try to be something you're not. Be authentic.

7. Be Humble and Generous

Setting up roadblocks between you and your audience will lead to frustration. If it's difficult for consumers to access your expertise, you will lose followers fast. Don't publish content in a place where it may be difficult to reach.
In addition, don't act like a know-it-all. It's impossible for one person to understand everything. Pretending to do so can backfire in catastrophic ways. Admit when something is beyond your expertise. People will respect you for it.

8. Choose Engagements Wisely

The events and speaking engagements you choose to attend will eventually help define your status as a thought leader. It may take time to develop your networking and public speaking skills before you land top spots at industry events, which makes it tempting to accept every invitation. But as your brand grows and you get more requests for speaking engagements, performing at too many events can saturate your value as an industry expert. Try to focus on high-profile events and those where your target audience will be in attendance.

9. Boost Your Online Visibility

Thought leaders need to be visible. It adds to their credibility. Make it easy for new connections to find you online because they won't seek you out specifically. Being on Google's first page, for example, can have a tremendous impact on your brand. Stay up to date with search engine and social media algorithms so you can maximize your exposure.

10. Be Social

Pick the social media platform in which you have the largest following and are most comfortable with and engage with people every day. Social media doesn't have to be something you do in your spare time; your personality will be part of your brand. Be in the thick of conversation and try to interact with other influencers. It's an opportunity to learn more from thought leaders and your own followers.

11. Start the Conversation

Part of being a thought leader is driving the conversation. Don't be afraid to start a discussion and express your opinion. The stronger your stance, the more reaction you will receive. That's not to say you should be intentionally controversial, but if what you say results in high engagement levels you can learn more about the needs and desires of your target audience.

12. Gather Information

Asking questions and sending out surveys can be a valuable way to gain insight from your target audience. They bring the answers to you, which make collecting data and doing research easier. It can position you as somebody who takes the industry seriously and can be a gateway to content ideas.

13. Be a Problem Solver

Thought leadership isn't just about postulating ideas but finding solutions to existing problems. People respect authority figures whose knowledge and expertise can be leveraged into something meaningful. If you're able to offer fresh and innovative ideas, you will be seen as a substantial contributor on the cutting edge. This can skyrocket your status among thought leadership.

14. Assume a Leadership Role

Being a thought leader requires more than just an expression of ideas, but action as well. If a hot-button issue arises, jump right into the controversy. Of course, you need to take a balanced approach in order not to alienate consumers and prospects, but the point is to show you won't cower when things get heated.

15. Pitch Yourself to the Media

There's nothing stopping you from sending pitches to media outlets. If there's a story regarding your industry in the current news cycle, let them know you're available to speak as an expert. Provide them with polished information, so they don't have to do the research themselves. It may not always work, but you might find yourself in front of cameras and a broader audience at the end of the day.

EXECUTIVE & NON EXECUTIVE STAFF MOVEMENT

NEW APPOINTMENT

We wish to take this opportunity to welcome our new Stenographer/Secretary, Puan Siti Masliza binti Rabon, who joined us on 13 July 2020 and our new Industrial Relations Adviser, Encik Dzulfadhli bin Dzulkarnain, who joined us on 2 January 2021.

CONTRIBUTIONS

MAPA Newsletter welcomes any contributrions on all related and relevant matters from Readers for publication in the next issue. Please send your contributions to:-

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ACKNOWLEDGEMENT

MAPA Newsletter acknowledges with thanks all articles published in this issue but wishes to express that views and comments expressed may not necessarily reflect the views and policies of this Association.

SS/MA/ha
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