

# Laws and Practices of Labor in Malaysia

**The 12<sup>th</sup> Symposium on International Civil and Commercial Law**

**Laws and Practices of Labor in Southeast Asia's Four Countries**

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01

# Salient Employment Laws in Malaysia

# The 2 Main Acts related to Employment

## Employment Act 1955

## Industrial Relations Act 1967

### Other relevant legislation:

- Personal Data Protection Act
- Minimum Retirement Age Act
- Minimum Wages Order
- Trade Unions Act
- Employees Provident Fund Act (Pension)
- Employees Social Security Act (Injury and Disability and Employment Insurance Scheme)
- Human Resources Development Fund Act
- Etc.



# Employment Act 1955 (EA)

ASPECTS	KEY POINTS
PURPOSE	Sets out <b>minimum statutory rights and protections</b> for employees
COVERAGE	Since 1 Jan 2023, applies to all employees (unless expressly excluded)
FOCUS AREAS	<ul style="list-style-type: none"> <li>• <b>Leave entitlements:</b> maternity, paternity, annual, sick &amp; hospitalisation leave</li> <li>• <b>Working hours &amp; rest days:</b> daily/weekly limits, overtime provisions</li> <li>• <b>Flexible Work Arrangements (FWA):</b> right to apply</li> <li>• <b>Protection against discrimination &amp; sexual harassment</b></li> </ul>
TERMINATION BENEFITS	Employment (Termination & Lay-Off Benefits) Regulations 1980 <ul style="list-style-type: none"> <li>• Statutory notice periods (4, 6, 8 weeks depending on service)</li> <li>• Minimum termination benefits (10, 15, 20 days' wages per year of service)</li> </ul>
PENALTIES	Fines up to <b>RM100,000</b> and <b>imprisonment</b> for serious breaches (e.g. forced labour, non-payment of wages)

# Employment Act 1955 (EA) – Coverage Elaborated

The First Schedule to the Employment Act 1955 amended so effective 1 January 2023.

The EA now applies to:

**“1. Any person who has entered into a contract of service.”**

However, certain sections below apply ONLY to a limited scope of employees – [In gist – special protection for certain employees including those who earn RM4,000 or less per month or those who, regardless of how much they earn, are engaged in or who supervise manual labour or operate mechanically propelled vehicles for the transport of passengers or goods.

Sub-Sections	Provides for
60(3)	Payment for work on rest days
60A(3)	Overtime payments for work in excess of normal hours of work
60C(2A)	Any regulations made in relation to entitlement to allowance for shift work
60D(3)	Payment for work on a public holiday
60D(4)	Entitlement to full day’s pay if holiday falls on a half work day
60J	Termination & Lay-Off Benefits

# Industrial Relations Act 1967 (IRA)

ASPECTS	KEY POINTS
PURPOSE	Promotes and maintains <b>harmonious industrial relations</b> between employers, employees, and trade unions
COVERAGE	Applies across all salary levels, including executives and management
FOCUS AREAS	<ul style="list-style-type: none"> <li>• Collective bargaining and agreements/trade disputes with unions</li> <li>• Role of the Director General in referring disputes to the Industrial Court</li> </ul>
INDUSTRIAL COURT	Establishment of Industrial Court that: <ul style="list-style-type: none"> <li>• Resolves trade disputes and collective agreement deadlocks</li> <li>• Interprets agreements and enforce awards</li> <li>• Hears cases of unjust dismissals brought by employees</li> </ul>
<b>UNJUST DISMISSAL</b>	Employee may challenge dismissals under Section 20 (Stage 1 - Conciliation; Stage 2 - Industrial court)

02

# Termination of Employment Relationship

## Types of Termination

**Resignation**

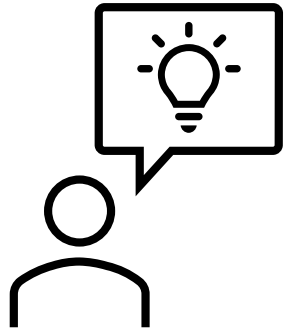
**Direct  
dismissal for  
misconduct or  
poor  
performance**

**Redundancy**

**Voluntary  
Separation**

**Mutual  
Separation**

## Of Critical Importance



You must state  
the reason for  
termination in  
writing

Employer is  
bound by the  
reason given

If a reason is  
given, the Courts  
in a claim of  
unjust dismissal  
will only hear  
evidence with  
regards to the  
reasons given

## Examples

### Resignation

- Issue a written acceptance of resignation.

### Redundancy

- Highlight any redundant (e.g. abolition of position, diminishing work etc.).

### Misconduct

- Highlight processes undertaken e.g. show cause or domestic inquiry resulting in finding of guilt. As nature of misconduct is serious, trust is compromised and hence, termination.

### Poor performance

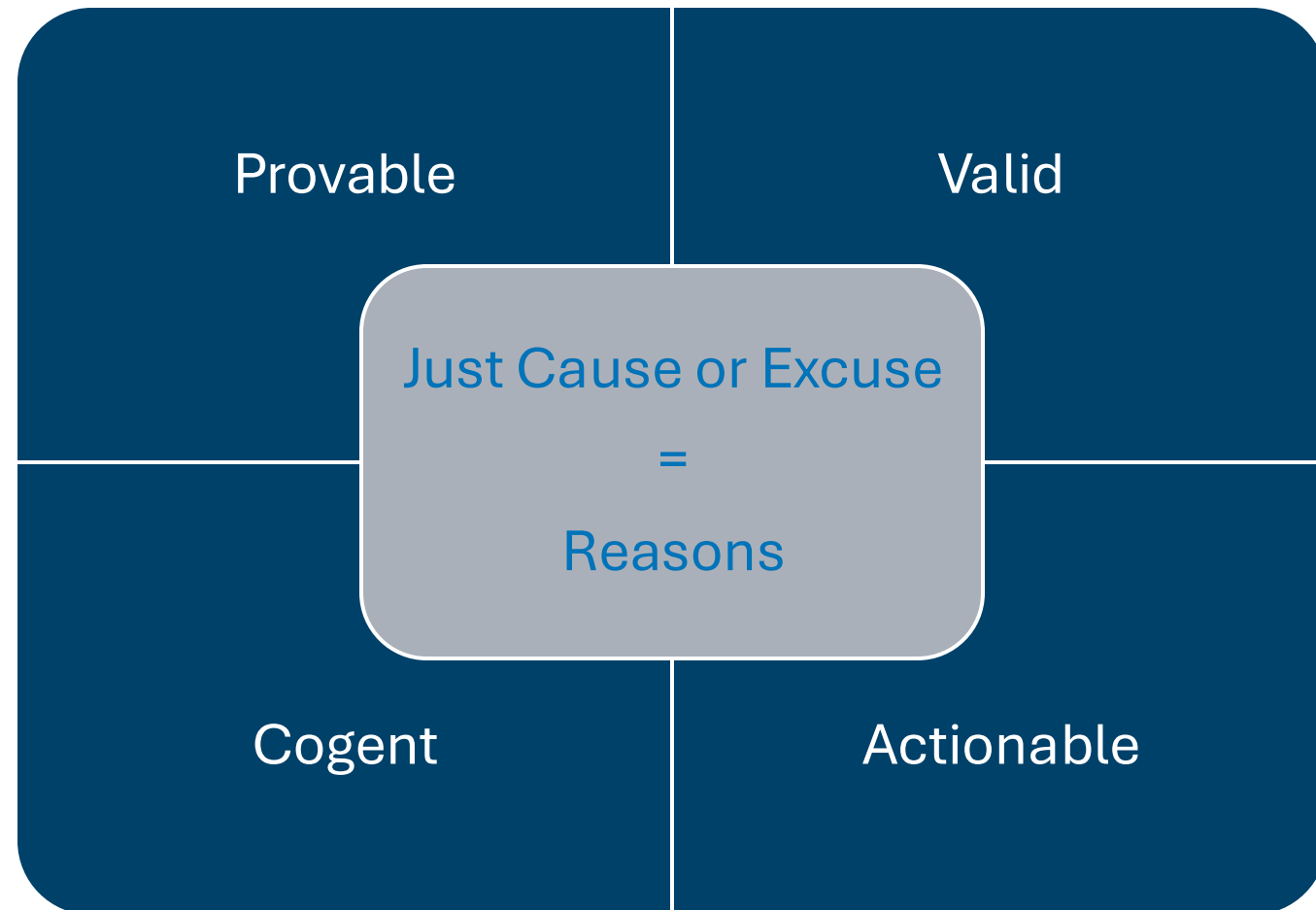
- Highlight warnings and opportunities given. Make clear that there has been no improvement to the expectations of the Company

03

# Establishing Just Cause or Excuse

# Just Cause or Excuse

Section 20 IRA – what is “*just cause and excuse*”?



# Voluntary or Mutual Separations

Critical for voluntariness and mutuality to be present. There must be a meeting of the minds on a voluntary basis;

Paperwork must be complete;



## **VSS –**

Invitation and T&Cs, Offer from Employee, Acceptance by Employer. Terms must be clear and unambiguous

## **Mutual Separation –**

There must be a mutual separation agreement signed.

*Note: Even if Mutual Separation Agreement is signed, this does not conclusively exclude the rights of claim by an employee.*

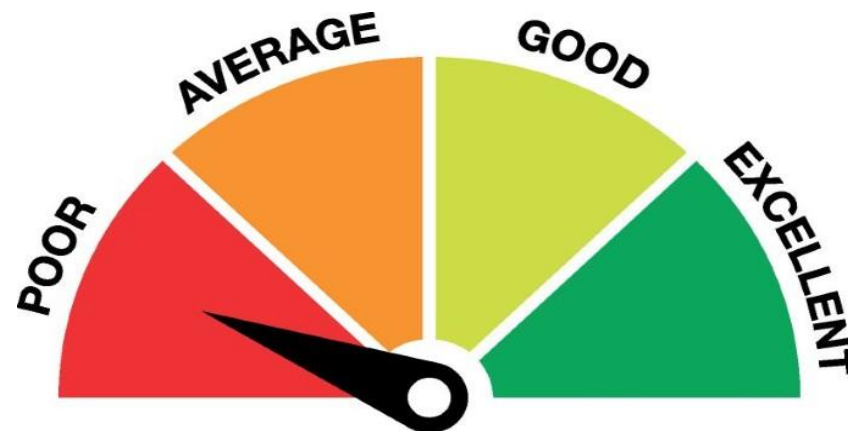
## Poor Performance – Managing Poor Performers

You can't just wake up one day and tell him he's fired as he hasn't been performing.

HR can't help if the groundwork is not there.

Warnings and opportunities to improve are required.

Even for probationers – warnings and opportunities to improve are required.



## Poor Performance – What to Set Out in a Warning

You can counsel but there comes a time when you need to put it down in writing

When you issue notice regarding poor performance, set out:

- Areas of weaknesses;
- Instances (live examples) of shortcomings;
- Benchmarks for achievement going forward;
- Specific (and reasonable) time frames for employee to improve

Explore the possibility of a PIP – Performance Improvement Plan;

Always alert HR when you note poor performance and ask for participation to manage the employee.

This approach of warnings and opportunities for improvement also extends to probationers!

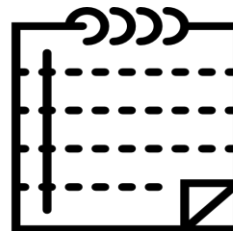
# Poor Performance – Do's and Don'ts in Performance Management

## DO

- Counsel and Warn
- Consult HR
- Give the employee a chance for improvement
- Monitor the employee throughout the performance improvement period
- Give credit where its due and reprimands when deserved

## DON'T

- Jump the gun and sack without prior warning of poor performance
- Set unreasonable targets, KPI or deadlines
- Keep quiet about performance issues till it's too late.



## Redundancies

**Redundancies** – surplus to manpower requirements

**Some points to note:**

- Last in First Out (LIFO) principle;
- Code of Conduct for Industrial Harmony;

**WHY?**

Restructuring exercises, sale of businesses etc.

**WHAT IS LIFO?**

- He who has the lesser years of service will have to be retrenched before he who has more years of service;
- Note – must be comparable jobs – apples and apples, i.e. same job scope.



## Redundancies – What Courts Want to See

Abolition of  
the role

Substantial  
reduction in  
the duties  
and  
responsibilities  
in the role.

Redundancy  
must be  
genuine

Cannot be in  
bad faith or  
for ulterior  
motive

### ***Sivabalan Poobalasingam v Kuwait Finance House (Malaysia) Berhad***

**[2016] 1 ILR 542**

“The evidence before this court clearly shows that the company together with KFHAM had just wanted the claimant replaced where redundancy was just a mere excuse brazenly concocted to replace the claimant. This court is of the view that this was an irresponsible way for the company to terminate the claimant; and clearly shows mala fide on the part of both the company and KFHAM.” – Punitive compensation ordered against the Company

## Redundancies – Code of Conduct for Industrial Harmony

Before retrenchment – check to see if you have done the following

- a) Limitation on recruitment
- b) Restriction of overtime work
- c) Restriction of work on weekly day of rest
- d) Reduction in number of shifts or days worked a week
- e) Reduction in the number of hours of work
- f) Re-training and/or transfer to other department/work.

If retrenchment has to be carried out, do the following:

- a) Give as early a warning, as practicable, to the workers concerned
- b) Introduce schemes for voluntary retrenchment and retirement and for payment of redundancy and retirement benefits
- c) Retire workers who are beyond their normal retiring age
- d) Assist, in co-operation with the Ministry of Human Resources, the workers to find work outside the undertaking
- e) Spread termination of employment over a longer period
- f) Ensure that no such announcement is made before the workers and their representatives or trade union has been informed.



# Redundancies – Payments

Must follow AT LEAST, the bare minimum set out in the Employment Act 1955 and the Employment (Termination & Lay-Off Benefits) Regulations 1980

## What is the bare minimum?

### Minimum Notice (under the EA – applies to all employees)

- 4 weeks notice for employees employed for less than 2 years;
- 6 weeks notice for employees employed for 2 years or more but less than 5 years; and
- 8 weeks notice for employees employed for 5 years or more;

### Termination Benefits (Regulations 1980)

- 10 days wages for every year of service for employees employed for less than 2 years;
- 15 days wages for every year of service for employees employed for 2 years or more but less than 5 years; and
- 20 days wages for every year of service for employees employed for 5 years or more;

Note: Mandatory payment of termination benefits applies only to a limited scope of employees – e.g. those earning RM4,000 or less or those engaged in manual work or supervise manual work etc. Case law however holds that if an employee is retrenched, employer must pay reasonable benefits in any event.

# Redundancies – Payments

## Is that all? What about those not entitled under the EA

For those not entitled under the EA, there is no statutory minimum applicable.

## Does that mean I don't have to pay anything in terms of severance?

NO. You still need to pay.

## If no statutory minimum is applicable, why do I still need to pay?

The Industrial Court has held in the past that it is unfair labour practice if you retrench and employee and pay him nothing as severance or if you pay very little. An acceptable norm in retrenching an employee is 1 month's salary for each year of service.

So, for EA entitled employees, follow at the very minimum, the 1980 Regulations.

But please note, even for Non-EA entitled employees, you will need to pay some reasonable amount of termination benefits.

## Always remember –

- If you have contractual terms that are more favourable than the statutory minimum, contractual terms will by law apply.
- If you have a Collective Agreement with a trade union, check to see:
  - ✓ Consultation or notification terms before embarking on a retrenchment exercise;
  - ✓ Redundancy benefits set out in the Collective Agreement.

## Redundancies – how to calculate the wages?

Average true days' wage (ATDW) =  
Total earnings for 12 months  
preceding date of termination  
(including basic + overtime + fixed  
allowances) / 365

Termination benefit calculation:

ATDW × Length of Service (number of  
years of service) × Eligibility (10/15/20  
days per year)

Please note that  
you **MUST** not  
limit calculation  
of wages only to  
basic salary.



## Redundancies – example of payment calculation

### Example

Employee A – 10 years service, salary of RM2,000/month plus overtime of 5,000 and allowances of RM5,000 for 12 months preceding termination.

$$\begin{aligned}\text{ATDW} &= \text{RM } 34,000/365 \\ &= \text{RM } 93.15\end{aligned}$$

$$\text{Termination benefits} = \text{RM } 93.15 \times 10 \times 20 = \text{RM } 18,630.00$$

Had the above calculation been limited to 1 month's base salary for each year of service – RM2,000 x 10 = RM20,000. This would have breached the 1980 Regulations

Note however – If you have more favourable terms in your Handbook/Contract/Collective Agreement – FOLLOW THAT!

04

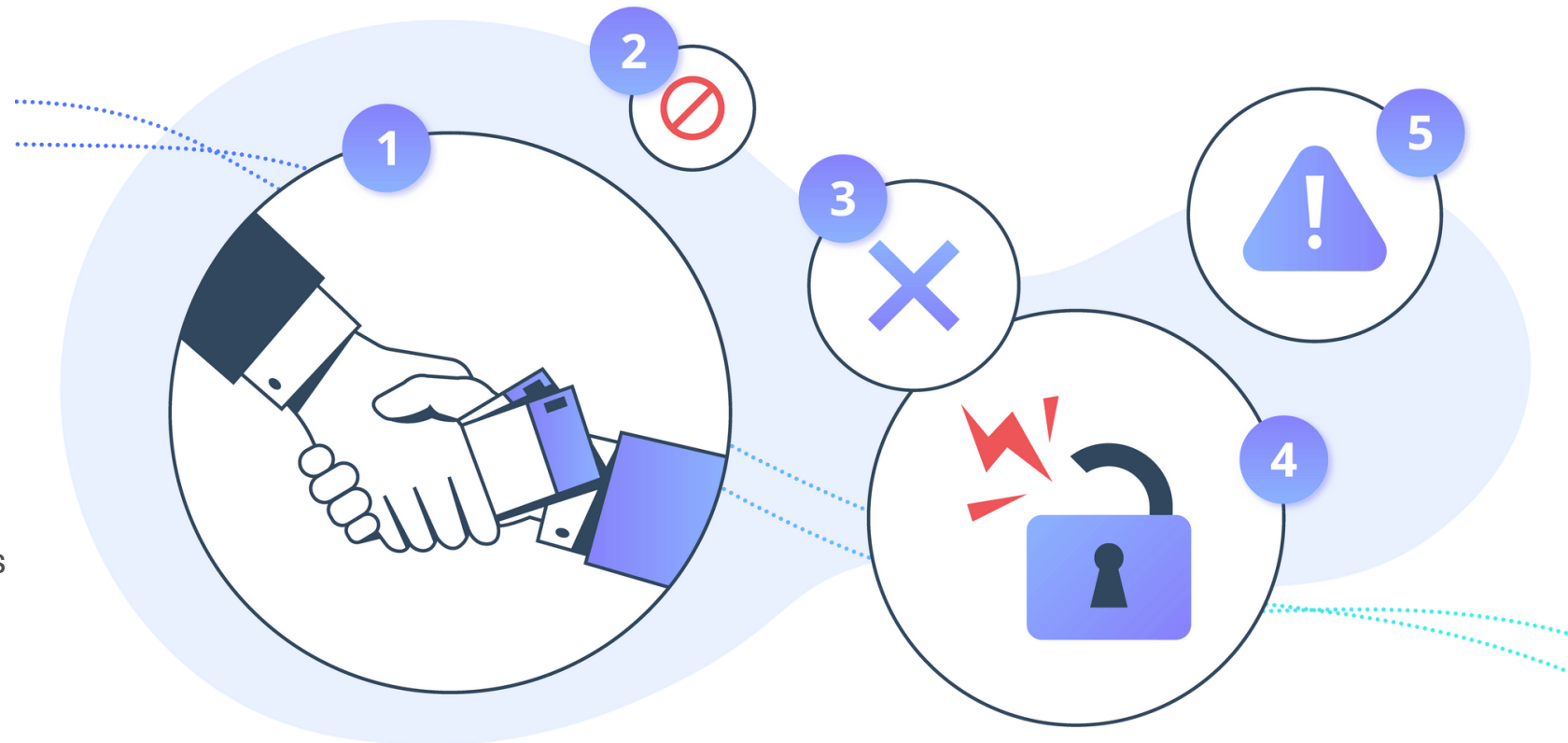
# Internal Processes to Ensure Natural Justice

# Misconduct in Employment

Identifying misconduct – examples:

- Fighting
- Bribery and corruption
- Theft and misappropriation
- Gambling
- Sexual harassment
- Insubordination
- Conflict of interest
- Breach of policies and procedures

List is non-exhaustive!



# Misconduct in Employment – sources for terms and conditions of employment

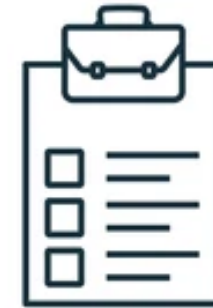
Expressed terms and conditions of employment:



Employment Contract



Employee Handbook



Rules, Regulations and Policies of the Employer

Implied terms in an employment relationship:

- Duty of fidelity and good faith
- Loyalty to the Employer
- Mutual trust and confidence



# Employee's Right to Know Allegations and Defend

## ❑ Rights under Section 20(1) IRA

- ❑ *“Where a workman, irrespective of whether he is a member of a trade union of workmen or otherwise, considers that he has been dismissed without just cause or excuse by his employer, he may make representations in writing to the Director General to be reinstated in his former employment;...”*

## ❑ Rights to livelihood and security of tenure in employment

## ❑ Legal requirement for due inquiry under Section 14(1) EA

- ❑ *“An employer may, on the grounds of misconduct inconsistent with the fulfilment of the express or implied conditions of his service, **after due inquiry**–*
  - a) dismiss without notice the employee;*
  - b) downgrade the employee; or*
  - c) impose any other lesser punishment as he deems just and fit, and where a punishment of suspension without wages is imposed, it shall not exceed a period of two weeks.”*



# Due Inquiry

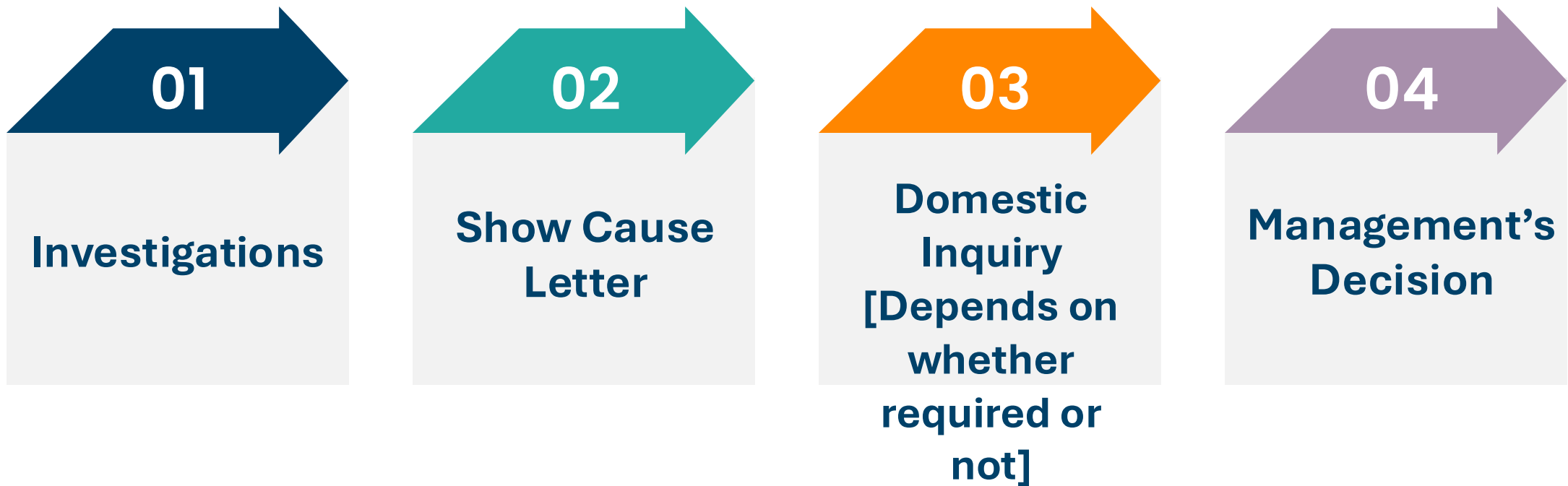
Now, the term "due inquiry" has not been defined but nevertheless the Industrial Courts have quite clearly established the rule that the employer's procedure for dismissal on the grounds of misconduct must conform to the rules of natural justice, that is to say, **the employee must be informed of the grounds alleged against him and he must be given a chance to answer the charge.**

*Ladang Sungai Tamu v National Union of Plantation Workers* [1991] 1 ILR 1

The Employment Act 1955 states that an employer can only punish the employee if they have conducted "due inquiry". The Act does not define what is "due inquiry", and it does not necessarily mean that an employer must conduct a formal domestic inquiry. **What is important is that the employer must investigate the matter fairly.** In some cases, even discussing with the employee in question can be considered as "due inquiry".

*Jeana Yeo See Nah v Virgos Oils & Fats Sdn Bhd* [2021] 1 ILR 516

## Processes in Proving Misconduct



# 1. Investigations

- ✓ A fact-finding exercise
- ✓ Evidence to support allegation against employee
- ✓ Must not be a fishing expedition
- ✓ Avoid delays – comprehensive but not excessive

**JUSTICE  
DELAYED  
IS  
JUSTICE  
DENIED**

*but hasty justice is  
no justice*



# Suspension of Employee during Investigations

Depends on the following:

Nature and severity  
of allegations

Compromise to  
investigations

Full pay or half pay?

↳ Section 14(2) of the  
Employment Act 1955:  
➤ Half pay for two (2)  
weeks



# Collation of Evidence



Depends on the disciplinary issue being investigated.

Generally:

- Interview relevant people including the accused employee (AE)
- Record statements – have them signed (within reasonable hours)
- When recording statements – clearly state name of recording officer, name of person giving statement, NRIC no. or Employee no. and have both persons sign off confirming the statement was given voluntarily
- If possible, converse in language the interviewee is conversant in - e.g. Malay or English. (English widely used in urban areas by employees in white collar jobs. Malay may be more predominant in rural areas and when it comes to blue collar workers)
- Open a file and preserve all evidence
- Compile all statements recorded and documentary evidence

# Collation of Evidence: Examples

## SEXUAL HARASSMENT

- Report by Complainant and interview with the Complainant;
- Corroborative statements of witnesses where available;
- Interview with the AE;
- Phone messages, email trails, CCTV recordings etc.;
- Establish – when, where, how

## INSUBORDINATION

- Examples of insubordination:
  - Through emails or actual instances of refusal to obey a valid instructions
- Documentation of events and times when the subordination occurred;
- Single act or cumulative acts of insubordination

## CONFLICTS OF INTEREST

- Establish whether a competing entity is involved;
- What was the act of conflict?
  - E.g. sending out confidential information, channelling contacts to competing entities
- Disruption to work – acting on outside activities which distract the person from carrying out his job properly;
- Do a company search to see the link – not always effective as employees are smart these days!



# Collation of Evidence: Examples

## EXCESSIVE ABSENTEEISM

- Collate a record of absenteeism. Attribute days on medical leave, annual leave, absence without leave;
- Warn first with copy to HR. Keep HR in the loop on such warnings;
- If excessive medical leave, sent employee for independent medical check up first;
- See if there is any need to put employee on prolonged illness;
- Assess if there are any excuses given for the absenteeism.



## BREACH OF POLICIES

- This may generally overlap with some other element of misconduct, e.g. insubordination, misconduct etc;
- What is the policy or term of employment breached?;
- Study the policy or term as to whether the misconduct in question falls within the policy – one size does not fit all;
- Establish factually whether the facts fit into the policy in questions and whether it has indeed been breached;
- How serious is the breach?;
- Work with HR to see if the breach is serious enough to merit formal proceedings;
- Not all breaches may justify the punishment of dismissal – all depends on severity and/or frequency of the breach.

# Collation of Evidence: Examples

## FRAUD. MISAPPROPRIATION, BRIBERY

- Establish the link between employee and the issue
- Establish the personalities/players in the whole scheme of things – vendors, bankers or any third parties involved
- Interview those involved and ensure statements are recorded in a proper manner to establish culpability
- Where evidence is difficult to come by, consider securing experts – e.g. forensic investigators especially when computer crimes involved
- Consider engaging private investigators



# Some further points to note

## Personal devices and cloud services

- Personal devices (e.g. personal mobile phones) and personal cloud services (gmail etc.) generally not accessible UNLESS with consent of the employee
- If the device is company owned and provided for employee's use – the right to access for review and monitoring will typically be possible – Strongly recommended in any event to have robust acceptable use policies to reserve the right to review and monitor.
- For personal devices and cloud services, there must be a contractual right – e.g. a notice which the employees have accepted – allowing for access to personal devices.
- If employer pays for the phone line or access but not for the devices, still arguable that a right to review and monitor would be reasonable – but strongly recommended again for it to be part of written policies that are binding on employee.
- With proper policies in place, employee can still refuse to provide access to devices and services but this can potentially show a reasonable belief that something is being hidden.

## Points to note on investigations

- Ask the employee to explain by issuing a Show Cause Letter
- Show Cause – why disciplinary action should not be taken
- Lay down the allegations – full particulars are a must
- Provide a reasonable time to reply
- Allow controlled access to documentation
- Benefits of show cause:
  - Natural justice – gives the employee a chance to explain
  - Allows you to see what the employee's stand is

## 2. Show Cause

- Ask the employee to explain by issuing a Show Cause Letter
- Show Cause – why disciplinary action should not be taken
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## Importance of Full Particulars

“Needless to say these charges are criminal or semi-criminal in nature. It is a basic requirement that in a criminal or semi-criminal charge it must contain the date, time and place the offence was alleged to have taken place. **These are material particulars to be contained in the charge in order to enable the accused person to prepare his defence adequately.** Without stating the particulars of date, time and place the accused person is put in a prejudicial position to prepare his defence and answer the charge properly. ...It is therefore of utmost importance that such charges are properly framed so that all the material particulars are stated in the charge.”

As decided by the High Court and upheld by the Court of Appeal in *Esso Production Malaysia Inc v Maimunah Ahmad & Anor* [2002] 3 CLJ 242

# Examples of Charges

Defective Charges	Effective Charges
<p>That you had removed the sum of RM500 from the petty cash box and kept it for yourself</p> <p><i>[Note: When? Where? Offence?]</i></p>	<p>That you had on 2 January 2024, between the time of 5.15pm and 6.00pm, in breach of Clause 2.1 of the Petty Cash Handling Procedures of the Hotel, without any authority whatsoever removed the sum of RM500 from the petty cash box in your care and failed to restore the said sum of RM500 to the petty cash box till 4 January 2009 when you were queried by your immediate superior as to the shortage in the petty cash box</p>
<p>That you had on 2 January 2024 committed an act of sexual harassment against your subordinate</p> <p><i>[Note: Where? Who? What?]</i></p>	<p>That you had on 2 January 2024, called your subordinate, Ms Vistana Marriott into your room in the HR Department at about 10.30pm and molested her by putting your hand into her blouse without her consent thereby committing an act of sexual harassment against your subordinate</p>
<p>That you had on 2 January 2024 stolen a room guest's property without any authority whatsoever</p> <p><i>[Note: What? Where? How?]</i></p>	<p>That you had on 2 January 2024, during your shift at the Hotel between 7.00pm till 11.00pm, entered guest room no. 1234 and removed a pair of pearl earrings which you found in the room and kept them for yourself without disclosing such discovery to the Security Officer on duty and filling in the "Lost Property Form" at the Lost and Found department in breach of Clause 22 of the Associates Conduct Guidelines of the Hotel</p>

## Addressing the Reply to Show Cause

Employee admits to everything

- Proceed to punish
- Preferably, allow employee a chance to mitigate before meting out punishment

Employee denies everything/  
doesn't address the allegations

- Proceed to convene a Domestic Inquiry (if required)

### 3. Domestic Inquiry (DI)

- ❑ Issue the **Notice of Inquiry**
- ❑ The Notice of Inquiry must contain:
  - ❑ Full particulars of the allegations
  - ❑ Sufficient period for AE to prepare a defence
  - ❑ Time, Date and Venue of Inquiry
  - ❑ Right to defence self and produce evidence and witnesses
  - ❑ Right to proceed in absence without valid reason



# Roles of Individuals in a DI

Accused Employee/ Representative	<ul style="list-style-type: none"><li>• AE must be present</li><li>• Union representative may be allowed – NO lawyers!</li></ul>
Prosecutor/ Prosecuting Officer	<ul style="list-style-type: none"><li>• Acts as Employer's representative</li><li>• Presents the Employer's case to Panel of Inquiry</li><li>• Must be familiar with the facts</li><li>• Examines witnesses and cross-examines the AE</li></ul>
Witnesses	<ul style="list-style-type: none"><li>• Must be relevant to the case</li><li>• Confined to areas within personal knowledge</li><li>• Do not go into hearsay/ rumours</li></ul>
Chairperson and Members of the Panel of Inquiry	<ul style="list-style-type: none"><li>• Either peers with or superiors to the AE</li><li>• Must be unbiased and independent with no prior knowledge of facts in questions</li><li>• Chairperson leads the inquiry and controls proceedings</li><li>• Panellists are to elicit facts – may ask questions to clarify but do not favour either party</li><li>• Ultimately, role of panellists is to determine guilt or otherwise of the AE based on facts produced</li></ul>
Recording Secretary	<ul style="list-style-type: none"><li>• Independent person without knowledge of the facts</li><li>• Takes down verbatim what transpires during the DI</li><li>• Do NOT paraphrase</li></ul>

# Conduct of a Domestic Inquiry – Preliminaries



## Employee does not show up

- Chairperson and Panel decided whether to proceed or not
- Valid reasons for absence?
  - If yes: defer inquiry
  - If no: proceed

## Employee shows up

- Introduction of parties by Chairperson
- Briefing on how inquiry would be conducted
- Chairperson reads out charges
- Record a plea – guilty/ not guilty

## Employee objects to the Panel members

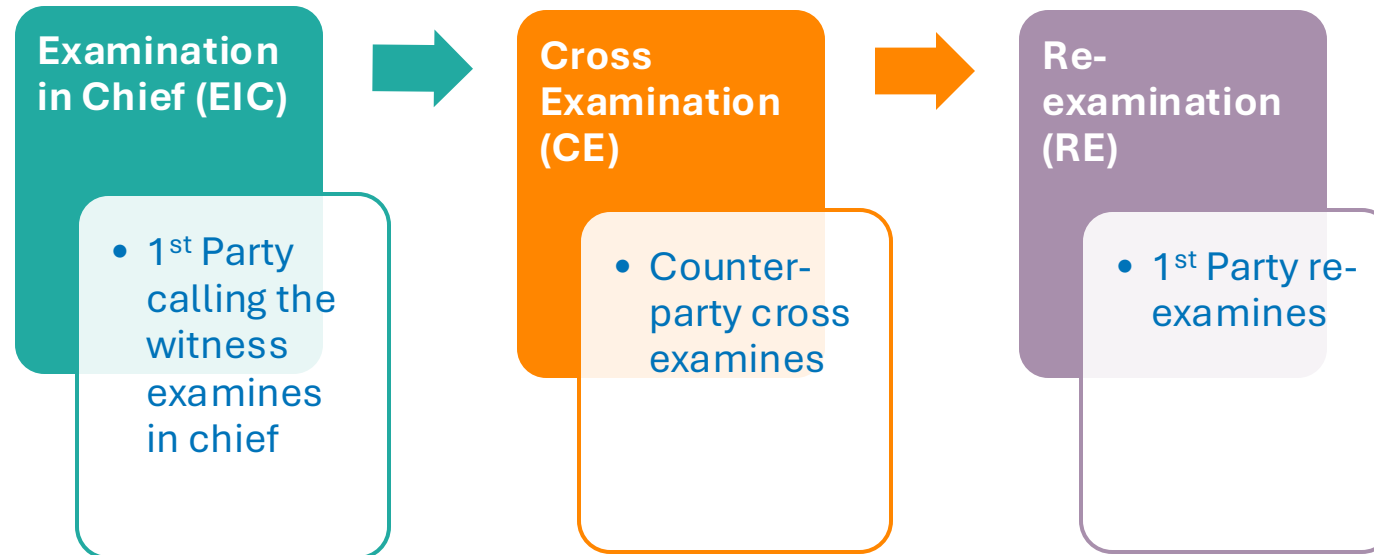
- Panel must record the objections
- Determine – frivolous or valid
- If there is semblance of biasness, adjourn and select new member(s). If not, proceed
- Document ruling

# Conduct of a Domestic Inquiry – During Proceedings

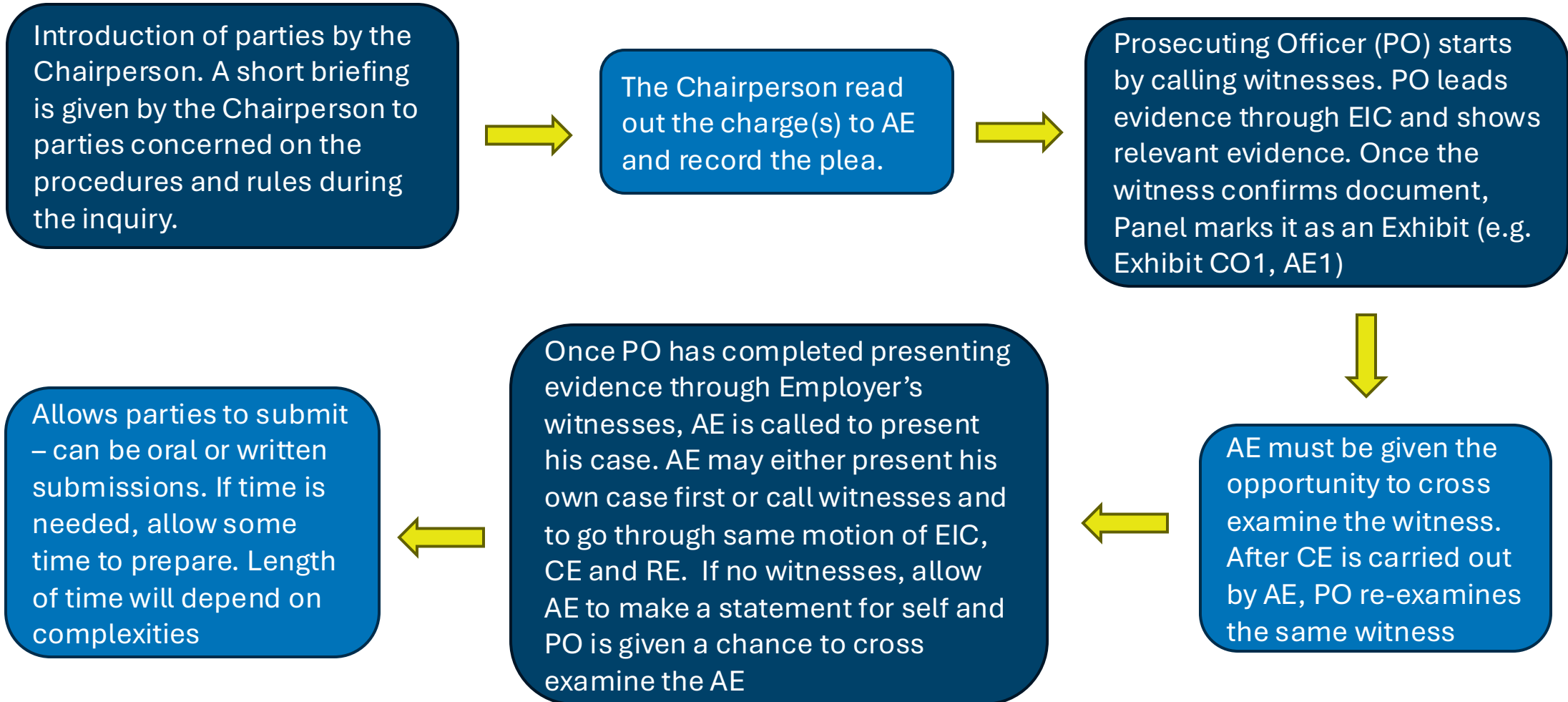
## Flow of the Proceedings:



## Adducing Oral Evidence:



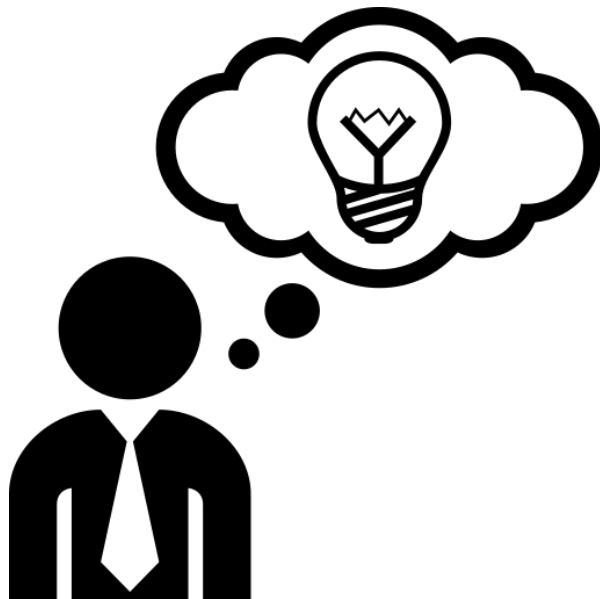
# Conduct of a Domestic Inquiry – During Proceedings



# Conduct of a Domestic Inquiry – Findings

## Deliberations

- Take reasonable time to deliberate
- Do not act in haste
- Analyse and consider all facts and evidence
- Determine if facts alleged by either party are proven and/or supported by evidence
- Make reasoned conclusions



## Arriving at the decision

- Panellists – ensure you know your scope
  - Finding of guilt only?
  - Finding of guilt + recommendation for punishment?
  - Finding of guilt + determining punishment?
- Document your findings
- Reason out why you think the charge is proven or otherwise
- Relate findings to the evidence adduced
- All panellists are to sign off on the findings

WHAT'S  
NEXT?



## 4. Management's Decision

- Refer findings to Management
- Once referred to Management, Panelists role ends
- Management makes ultimate decision based on findings
- Authorized independent personnel (i.e., HR) to notify AE of the outcome and punishment if any
- Punishment order should not emanate from one who was involved in the Domestic Inquiry
- If AE is found guilty, employers can penalized employee guilty of misconduct in the following manner:
  - Oral warning, which should be combined with counselling, which is a penalty suitable for an act of minor misconduct;
  - Written warning;
  - Downgrading/ demotion;
  - Suspension without pay for not more than two weeks;
  - Dismissal.



# Practical Examples of Defects in Domestic Inquiries

Defective charges. This is of EXTREME IMPORTANCE. This not only renders an inquiry defective, but it could also render the entire disciplinary action VOID!

***Esso Production Malaysia Inc v Maimunah Ahmad & Anor***  
**[2002] 3 CLJ 242**

Duplicity of roles – e.g., panel member also the investigating officer

***Metal Box Malaysia Bhd v Metal Industry Employees' Union*** [1982] 1 ILR 205

AE not given a chance to hear evidence of witnesses or to speak at all or only given a limited chance to speak during the inquiry

***Gaya Film Berhad v Muniandy a/l Sinnayah*** [1988] 2 ILR 55

Evidence of panelists having discussed the matter and having prior knowledge of facts or biasness

***Mohamad Nasir Bin Che Tan & Anor v Syarikat Gula Perak Berhad*** Award No. 24 of 1982

## Common Mistakes in a Disciplinary Process

- Hastiness – jumping to conclusions without sufficient evidence;
- Delay – condoning the act and then taking action much later;
- Defective charges;
- Incomplete or improper statements taken from witnesses;
- Failing to take into account relevant evidence that could exculpate, credible defences or mitigating factors;
- Failing to take into account policies within the Company and whether the charges are made out;
- Taking into account irrelevant evidence



## Some practical points to note in other courses of action

### Criminal Procedure

- Can lodge police reports for theft and other criminal related issues
- Prosecution is subject to discretion of the authorities – not within the control of the employer
- Disciplinary proceedings can proceed independent of police report/action
- However, no action from police may be exploited by employee to suggest that the matter is not all that serious after all.
- Timing is not within the control of the employer

### Civil Procedure

- Can sue for loss and damage
- Must be able to prove losses as a result of employee's action
- Typically in cases where there is a clear loss to the Company – like misappropriation or negligence resulting in loss of money etc.
- Timing will be subject to the Court's schedules

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# External Resolution – Employment Laws and Court System

## Section 20 of the Industrial Relations Act 1967

“(1) Where a workman, irrespective of whether he is a member of a trade union of workmen or otherwise, considers that he has been dismissed without just cause or excuse by his employer, **he may make representations in writing to the Director General to be reinstated in his former employment;** the representations may be filed at the office of the Director General nearest to the place of employment from which the workman was dismissed.

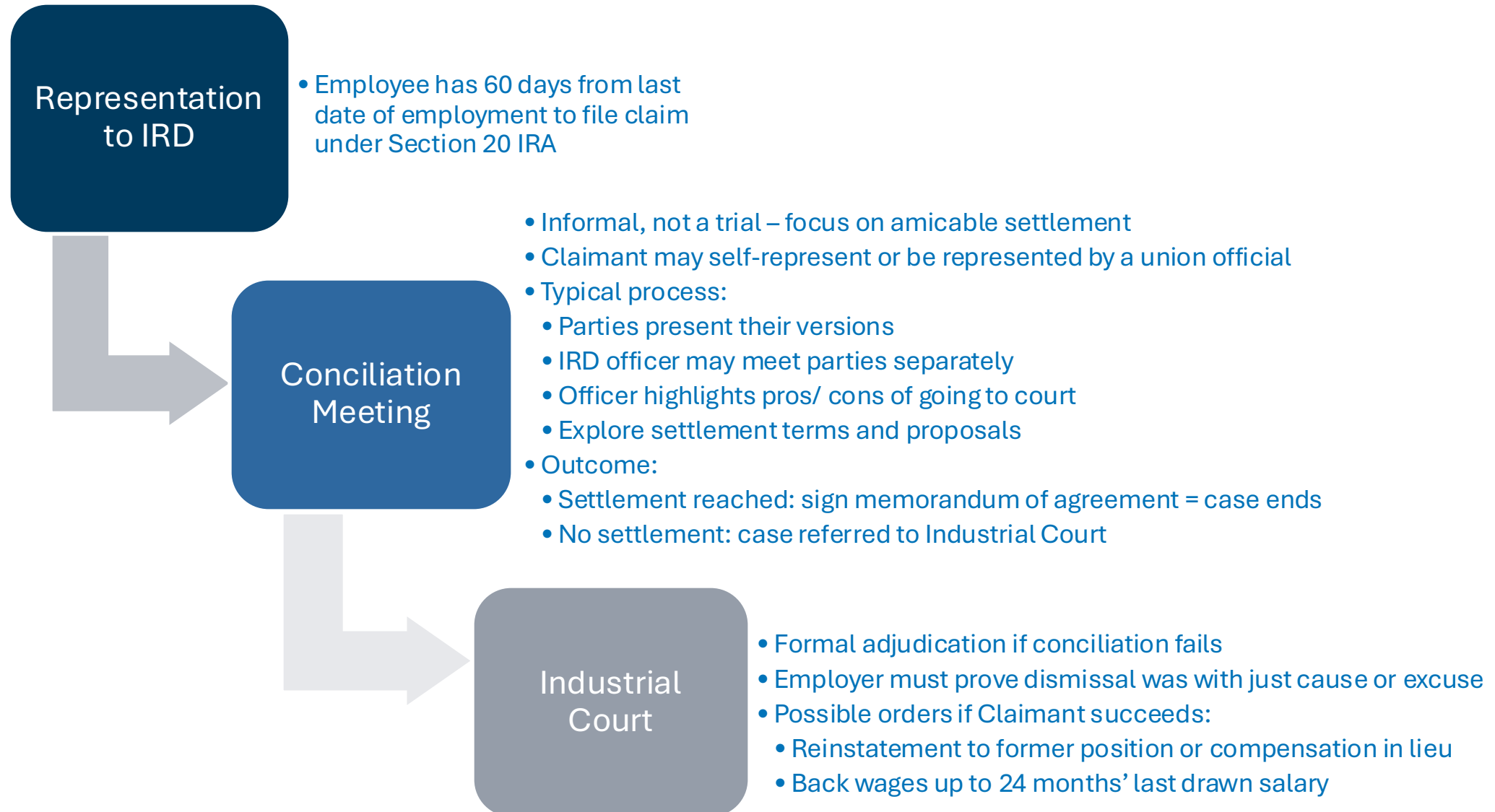
(1A) The Director General shall not entertain any representations under subsection (1) unless such representations are filed **within sixty days of the dismissal:**

Provided that where a workman is dismissed with notice he may file a representation at any time during the period of such notice but not later than sixty days from the expiry thereof

(2) Upon receipt of the representations the Director General shall take such steps as he may consider necessary or expedient so that an expeditious settlement thereof is arrived at.

(3) Where the Director General is satisfied that there is **no likelihood of the representations being settled under subsection (2), the Director General shall refer the representations to the Court for an award.**”

# Unjust Dismissal Process



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# Conclusion

## Conclusion

- Can be easy to HIRE in Malaysia – all you need is to issue and sign the employment contract;
- Not so easy to FIRE in Malaysia – not to say it can't be done, but you need to follow processes and ensure you have valid and provable reasons;
- With the changes to the Employment Act 1955, employers need to be more aware of compliance obligations;
- Minimum terms must be observed across the board as relevant and applicable;
- Non-compliance and at will terminations without good reason can be expensive.
- So ALWAYS practice fairness, be aware of obligations, make informed decisions and comply!





## Presenter



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