

**A CRITICAL ANALYSIS ON THE ADJUDICATION PROCESS OF
DISMISSAL UNDER SECTION 20 OF THE INDUSTRIAL RELATIONS ACT
1967**

By

Muhammad Aizat Bin Abd. Rahim (2009816348)
Syed Ahmad Oraif Bin Syed Mokhtar (2009870914)
Amir Hamzah Bin Zainal (2009460002)
Muhamad Wafi Bin Mohd Dzulkaflee (2009491906)

Submitted in Partial Fulfillment of the Requirements
for the Degree of Bachelor of Legal Studies (Hons)

**Universiti Teknologi MARA
Faculty of Law**

December 2011

The students/authors confirm that the work submitted is their own and that appropriate credit has been given where reference has been made to the work of others.

Acknowledgement

With regards to this research, we would like to express our heartfelt thanks to every one who has directly or indirectly contribute towards the completion of this research, especially to our supervisor for our Honours Project Paper (LAW 533), Madam Ibtisam @ Ilyana Ilias for her advice, assistance and support throughout completion of this research. Besides that, we would like to express our greatest appreciation to Dato' Haji Jalaldin bin Haji Hussain, one of the chairman of the Industrial Court of Kuala Lumpur and also to Mr. Somasundram, the Education Officer of the Malaysian Trades Union Congress (MTUC) for their cooperation in giving us relevant and useful information regarding this research.

Abstract

One of the trade dispute relating to the industrial relations, is involving unlawful dismissal. Thus, based on section 20 of the Industrial Relations Act (IRA), the provision itself provides the guidelines for the aggrieved workman to seek for reinstatement. Therefore, this raises a question whether the guidelines or procedure provided is effective or not in handling the arising numbers of trade disputes. Hence, this research will examine the effectiveness and also the defects of the guidelines or procedures provided by the provision. Apart from that, this research will also examine the alternative procedure which might be appropriate to be use to rectify the defect of the current procedure. Findings showed that the guidelines or procedures provided by the provision do have their own defects in handling the arising numbers of trade disputes. It is also hoped that this research can be a useful guidelines to the concerned parties (especially to the government) to review the existing provisions in order to provide new provisions and guidelines so that that the guidelines or procedures can be much more effective in settling the arising numbers of trade disputes especially involving unlawful dismissal in the near future.

TABLE OF CONTENTS

Acknowledgement	ii
Abstract	iii
Table of Contents	iv
List of Cases	vii
List of Statutes	ix

CHAPTER ONE:

INTRODUCTION

1.1 Background	1
1.2 Research Question	6
1.3 Objectives of the Research	6
1.4 Research Methodology	7
1.5 Scope of the Research	8
1.6 Limitations of the Research	8
1.7 Significant of the Research	9

CHAPTER TWO:

LITERATURE REVIEW

2.1 Introduction	10
2.2 Literature Review	11
2.3 Conclusion	27

CHAPTER THREE: THE CURRENT PRACTICE OF THE CLAIM FOR REINSTATEMENT UNDER SECTION 20 OF INDUSTRIAL RELATIONS ACT 1967

3.1 Introduction	28
3.2 The Current Practice under Section 20 of Industrial Relations Act (IRA) 1967	29
3.2.1 General Requirements to Entitle the Employee to Claim for Reinstatement	29
3.2.2 Filing of Representation Level under Section 20(1) of the IRA	31
3.2.3 Conciliatory Level under Section 20(2) of the IRA	34
3.2.4 Reporting Level under Section 20(2) of the IRA	36
3.2.5 Referral Level under Section 20(3) of the IRA	36
3.2.6 Adjudication Level	38
3.2.6.1 Industrial Court	38
3.2.6.2 Process of Adjudication	40
3.3 Conclusion	43

CHAPTER FOUR: THE DRAWBACKS OF THE CURRENT PRACTICE

4.1 Introduction	44
4.2 Filing of Representation	44
4.2.1 Time Frame to Report	45
4.2.2 No Standard Format	45
4.2.3 Strict Requirement to Plead for Reinstatement	46
4.2.4 Action Abates with the Death of Claimant	47
4.3 Conciliation in the Industrial Relations Department	48
4.3.1 Expertise of the IRD Officer	48
4.3.2 Delay	49
4.3.3 No Specific Period for Conciliation	50
4.4 Minister Discretion to Refer Representation to Industrial Court	51
4.4.1 Discretion is Very Subjective	51
4.4.2 Delay	52