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WORKPLACE STRESS: THE EMPLOYER'S LIABILITY

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Excessive workload or work demands, stressful deadlines, long working hours, insufficient number of staff, lack of support from co-workers and supervisors, annoying co-workers, dissatisfied customers, hazardous working conditions, job uncertainty and hostile work environment are, among others, some of the commonly known stressors that contribute to occupational or workplace stress. Workplace stress often results in high dissatisfaction among employees in terms of job mobility, burnout, less effective interpersonal relations at work and unsatisfactory work performance. This may be due to several reasons such as persistent lateness or tardiness, taking excessive sick leave and repeated absences. Long-term stress or traumatic events at work can affect the physical as well as physiological health of the worker. An employer has a duty to ensure that the environment at the workplace is safe and conducive, free from threats, intimidation and violence. Considering the above, this article discusses the employer's liability for employee's psychological disturbance arising from occupational or workplace stress and harassment. The discussion will focus primarily on occupational stress arising from bullying, harassment and reprehensible or highhanded manner of a dismissal with particular reference to the law and practice in Malaysia.

2 MLJ cxxxiv at cxxxv

EMPLOYER'S DUTY TO PROTECT WORKER'S HONOUR AND DIGNITY

Employers must ensure that workers are not subjected to loss of dignity, self-respect and self-esteem, and to harassment whether sexual or otherwise, while in employment and when ending the employment relationship. In dealing with employees, employers are expected to conduct themselves properly and should avoid putting the employee to suffering flowing from the employer's acts of bad faith or unfair dealing, both tangible and intangible. In *Malik v Bank of Credit and Commerce International SA (in liquidation); Mahmud v Bank of Credit and Commerce International SA (in liquidation)*,[2] Lord Nicholls of Birkenhead, aptly noted that:

> Employers must take care not to damage their employees' future employment prospects, by harsh and oppressive behaviour or by any other form of conduct which is unacceptable today as falling below the standards set by the implied trust and confidence term.

Again, in *Wallace v United Grain Growers Ltd (cob Public Press)*,[3] Iacobucci J delivering the judgment of the majority,[4] stated:

> The law should be mindful of the acute vulnerability of terminated employee's and ensure their protection by encouraging proper conduct and preventing all injurious losses which might flow from acts of bad faith or unfair dealing on dismissal, both tangible and intangible. I note that there may be those who would say that this approach imposes an onerous obligation on employers. I would respond simply by saying that I fail to see how it can be onerous to treat people fairly, responsibly and decently at a time of trauma and despair. In my view, the reasonable person would expect such treatment. So should the law.[5]

The employer's conduct may besmirch the dignity and reputation of an employee in the following circumstances: addressing the employee with offensive names,[6] accusing the employee of theft without adequate supporting evidence,[7] irrationally undermining the supervisor's authority in the presence of other employees,[8] dismissing an employee without sufficient prior warning,[9]

2 MLJ cxxxiv at cxxxvi

assessing an employee's performance as poor on grounds of malice,[10] demoting an employee without basis,[11] failing to give reasonable support to the employee to perform his or her duties without disruption and harassment,[12] transferring an employee with ulterior motives[13] and the drastic change of conditions of employment,[14] to mention a few.

In *Bina Goodyear Bhd v Subramaniam a/l Kanaiappan*,[15] the company's site supervisor, COW1, had used intemperate language on the claimant in the presence of other employees during a discussion. The incident had caused him humiliation and embarrassment that caused him to tender his resignation. In *Abbott Laboratories (Malaysia) Sdn Bhd v Yeoh Siew Tin*,[16] the employee, a senior medical representative of the company, alleged that she had been a victim of abusive words by the superior and that she suffered mental distress because of the company's working environment. In *Darmawatti Dahari v Malaysia Mining Corporation Bhd*,[17] the employee, a group company secretary, tendered her resignation because of victimisation and oppression by another employee, the head of the human resources. She alleged that she had suffered humiliation for being excluded from meetings whilst she was the group company secretary for ten years. In *Amngran Govindasamy v Lifeline Innovators Sdn Bhd*,[18] the employee was initially forced to sign a resignation letter which he refused. He was then removed from the office by force and was not allowed to report to work. When he went to the office the next day, he was not allowed entry as the automatic door no longer responded to his door key number. The claimant stated that as a consequence of the above ordeal, he suffered mental distress and depression. All these are examples of the employer damaging the dignity and esteem of the employee and of occupational stress.

FAILURE TO INQUIRE COMPLAINTS OF SEXUAL HARASSMENT: ITS CONSEQUENCES

It is a trite law that an employer has a duty to ensure safety and health of its workers at the workplace and this necessarily includes the duty to inquire into

2 MLJ cxxxiv at cxxxvii

the complaints of sexual harassment, an issue affecting employee's safety at the workplace. Section 81B of the Employment Act 1955 requires the employer, as soon as practicable but in any case, not later than 30 days after the date of receipt of the complaint, inform the complainant in writing of the refusal and the reasons for the refusal in the event of such refusal. An employer may refuse to inquire into any complaint of

sexual harassment for the following reasons: (a) the complaint of sexual harassment has previously been inquired into and no sexual harassment has been proven; or (b) employer is of the opinion that the complaint of sexual harassment is frivolous, vexatious or is not made in good faith. The employer's refusal to inquire the complainant may be reviewed by the Director General who may direct the employer to conduct a further inquiry or may agree with the decision of the employer not to conduct the inquiry.[19]

Where the employer conducts an inquiry into a complaint of sexual harassment and the employer is satisfied that sexual harassment is proven, the employer shall take **disciplinary** action against the accused employee which may include the following: dismissing the employee without notice, downgrading the employee, or imposing any lesser punishment as the employer deems just and fit, and this includes suspension without pay. Where the punishment is suspension without pay, it shall not exceed a period of two weeks. In the case where the person against whom the complaint of sexual harassment is made is a person other than an employee, the perpetrator must be brought before an appropriate **disciplinary** authority to which the person is subject to.[20]

Where a complaint of sexual harassment is made to the Director General, the Director General shall assess the complaint and may direct an employer to inquire into such complaint. The employer shall inquire into the complaint of sexual harassment when directed to do so and submit a report of the inquiry to the Director General within 30 days from the date of such direction.[21] Section 81F of the Employment Act 1955 provides that an employer who fails to inquire into complaints of sexual harassment; fails to inform the complainant of the refusal and the reasons for the refusal in case of such refusal; fails to inquire into complaints of sexual harassment when directed to do so by the Director General; or fails to submit a report of inquiry of the complaint of

sexual harassment to the Director General when directed to do so shall be deemed to have committed an offence and shall, on conviction, be liable to a fine not exceeding RM10,000.

WORKER'S HEALTH AND SAFETY: EMPLOYER DUTY TO PROTECT

Further, the common law imposes a duty on the employer to provide a reasonably safe system of work and to take reasonable care of his employees. In *Gelau Anak Paeng v Lim Phek San & Ors*,[22] Roberts CJ stated:

> The common law duty of an employer is to take reasonable precautions to protect his workers against danger. He is not required to insure them and to protect them against all risks of any kind but he is obliged to provide a reasonably safe system of work and to take reasonable care for his employees.

Reasonable safety and care require that the employer must ensure that it takes necessary measures to protect workers from being bullied and from harassment.

The employer may be in breach of its duty of care when it knows that certain acts are being done by its employees during their employment, such as bullying or harassment and that these acts cause physical or mental harm to a particular fellow employee, but it does nothing to supervise or prevent such acts. The employer may also be in breach of that duty if it can foresee that such acts may happen and, if they do, that physical or mental harm may be caused to an individual.[23] An employer who failed to take necessary measures to protect worker from incidents of bullying or harassment in the workplace constitutes a repudiatory conduct on the part of the employer, enabling the victim-employee to consider himself/herself constructively dismissed.

In *Melewar Corporation Bhd v Abu Osman*,[24] the Industrial Court held, inter alia, that an employer who failed or refused to take appropriate action against the assailant for the incident of sexual harassment in the workplace is deemed to have repudiated the contract of employment, thus enabling the victim to resign and allege constructive dismissal against the employer. In the same vein, where an employee has been pressured or coerced to resign, for example, where the employer forces an employee to hand in a letter of resignation, such action of the employer breaches the implied term of trust and

confidence. The affected employee may resign forthwith and thereafter allege constructive dismissal against the employer.

Apart from a claim for constructive dismissal, the employer may also expose itself to a civil claim for negligence. In *Waters v Commissioner of Police of the Metropolis*,[25] Lord Hutton stated that:

> A person employed under an ordinary contract of employment can have a valid cause of action in negligence against her employer if the employer fails to protect her against victimization and harassment which causes physical or psychiatric injury. This duty arises both under the contract of employment and under the common law principles of negligence, although an employer will not be liable unless he knows or ought to know that the harassment is taking place and fails to take reasonable steps to prevent it.[26]

In order to constitute negligence there should be a duty of care towards another person, breach of the duty and loss resulting from the carelessness.[27] In the tort of negligence, as long as there has been negligence in the exercise of the ordinary skill and care by one person towards another, and the other, without contributory negligence on his part, has suffered injury either to his person or his property as a result, the other has an actionable claim in negligence. The degree of care that is required in a particular case depends on the accompanying circumstances and varies according to the amount of risk to be encountered and the magnitude of the prospective injury.[28]

In cases where an employee has sexually harassed a co-worker or being so harassed by a customer and the employer has not taken steps to rectify or prevent it, the employer could be held liable for negligent supervision in failing to provide a safe place of work. Litigation against the employer is founded on the basis of failure to use reasonable care to protect its workers against foreseeable sexual assault. In *Mohd Ridzwan Abdul Razak v Asmah Hj Mohd Nor*,[29] Zaharah Ibrahim JCA, delivering the judgment of the court held, inter alia, that 'where the acts of sexual harassment were serious enough to cause

2 MLJ cxxxiv at cxl

adverse psychological effect on the victim, those acts would fall within the tort of intentionally causing nervous shock similar to that in *Wilkinson v Downton*'.[30]

In *Mohd Ridzwan Abdul Razak*, the appellant, the general manager of the Pilgrims Fund Board, was alleged to have sexually harassed the respondent, a staff who was under his supervision, with vulgar remarks, dirty jokes that were sexually oriented and had repeatedly offered to take the respondent as his second wife. However, a **disciplinary** action could not be taken against the appellant as there was insufficient evidence. Nevertheless, the company issued a strong administrative reprimand to the appellant and transferred the respondent to the legal division in the company. In the meantime, the appellant lodged a complaint with the employer seeking **disciplinary** action be taken against the respondent for defaming him without basis. However, the request was declined by the employer. Hence, defamation action by the appellant against the respondent seeking damages. Meanwhile, the respondent counterclaimed damages for mental distress arising from the appellant's alleged sexual harassment.

The High Court dismissed his application as the appellant had failed to prove the claim. However, the respondent's counterclaim was allowed as she had followed the proper procedure in lodging the complaint with the employer and that there was ample evidence to show that the appellant had uttered vulgar and/or sexually explicit statements directed at the respondent or within the presence of the respondent. Dissatisfied with the decision, the appellant appealed to the Court of Appeal. The appellant alleged that the trial judge had erred in dismissing his claim for defamation and allowing the respondent's counterclaim. In dismissing the appeal with costs, Zaharah Ibrahim JCA, delivering the judgment of the court, stated:

> The evidence led before the High Court indicated that the defendant was an emotionally vulnerable person, in the sense that she appeared to be under some emotional pressure and had migraine and pains in her leg. She clearly would be more susceptible to being adversely affected by the kind of objectionable remarks made by the plaintiff, and the fact that the plaintiff continually made such remarks indicated that he knew that such remarks would make the defendant extremely uncomfortable. After her complaint was investigated, the defendant
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> *2 MLJ cxxxiv at cxli*
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> was placed in another department, assigned to do duties which had nothing to do with the job she was hired to do. This transfer had a direct nexus to the acts of the plaintiff that she lodged a complaint about. A psychiatrist had diagnosed her as having major depression which was caused by being harassed by the plaintiff that continued to haunt her even after she left LTH. The defendant was under so much emotional stress that she could no longer bear being in

> LTH and left to take up a post in Sabah. The acts of the plaintiff uttering the remarks which amounted to sexual harassment and with the knowledge of her vulnerability fell within the ambit of the tort of intentionally causing nervous shock.

On a further appeal to the Federal Court, the court in affirming the decision of the Court of Appeal, stated inter alia that:

> [S]exual harassment is a very serious misconduct and in whatever form it takes, cannot be tolerated by anyone. In whatever form it comes, it lowers the dignity and respect of the person who is harassed, let alone affecting his or her mental and emotional well-being. Perpetrators who go unpunished, will continue intimidating, humiliating and traumatising the victims thus resulting, at least, in an unhealthy working environment.

Further, under the doctrine of vicarious liability, the employer could be found liable towards a third party for the tortious acts of its employees provided that the tort occurred during the course of employment. In *Dee v Commissioner of Police, NSW Police (No 2)*,[31] the complainant complained to the first respondent, the employer, about repeated instances of unwanted bodily contact by the second respondent, a fellow employee. As the first respondent failed to take all reasonable steps to prevent sexual harassment, the court held that the first respondent was vicariously liable for the second respondent's conduct. Again, in *Maslinda bt Ishak v Mohd Tahir bin Osman & Ors*,[32] the respondents -- the Director-General of Rela, the Federal Territories Islamic Religious Department and the Government of Malaysia -- were jointly and severally liable to pay the said damages because the act of the first respondent namely, taking photographs of the said *Maslinda* relieving herself inside a lorry with his camera, which was done within the course of employment.

2 MLJ cxxxiv at cxlii

HIGH-HANDED MANNER OF DISMISSAL: RECOVERY OF COMPENSATION FOR NON-PECUNIARY LOSS

An employee would also be able to recover compensation for non-pecuniary loss such as wounded feelings or the effect of the dismissal on employee's reputation or the chances of finding other employment arising from the highhanded manner of dismissal. In *Malik v Bank of Credit and Commerce International SA (in liquidation); Mahmud v Bank of Credit and Commerce International SA (in liquidation)*,[33] the House of Lords unanimously recognised that there is a reasonable cause of action in breach of the implied obligation of trust and confidence. It was stated that the employer who breaches trust and confidence will be liable if it thereby causes the employee continuous financial loss of a nature that was reasonably foreseeable. For example, if the manner of the dismissal besmirched a worker's reputation thereby making it difficult for him to seek a new employment or forcing him to accept employment offering lower wages than what would have been expected otherwise, or if the manner of the dismissal causes him ill health thereby making him unfit to secure re-employment, then non-pecuniary loss will be recoverable.

It may further be added that humiliation and mental distress arising from the high-handed manner or circumstances in which the act was committed is also actionable in the sphere of tort law. For example, in *Mas Anum Samiran v Othman Mohamed,* the plaintiff, a former personal assistant of the defendant, alleged that she was sexually harassed by her former boss, the defendant. The allegation included physical and verbal harassment by the defendant throughout the period she served as his personal assistant. Because of the repeated incidents of sexual harassment, the plaintiff suffered anxiety, stress and humiliation, and was forced to resign from her job. As the plaintiff had succeeded in proving the elements of sexual harassment by the defendant, the sessions court awarded the plaintiff a sum of RM25,000 which included both tangible and intangible losses.

Again, in *L v Burton*,[34] a Hong Kong case, the defendant sexually harassed the plaintiff during the plaintiff's short-lived employment. The employment relationship between the plaintiff and the defendant deteriorated when she refused the sexual advances by the defendant. The plaintiff's dismissal from the employment was extremely high-handed and openly oppressive of the plaintiff's personal dignity. The plaintiff was extremely distressed and

2 MLJ cxxxiv at cxliii

humiliated. As a result of the sexual harassment, she suffered anxiety, stress, humiliation, physical injury and insomnia. The court found in favour of the plaintiff and awarded her a sum of $100,000 as damages which included the non-pecuniary losses flowing from both the acts of sexual harassment and dismissal.

It may be added that the manner of dismissal is also a relevant factor when computing reasonable compensation under the employment legislations in some developed countries. For example, the English Employment Rights Act 1996, in s 123, provides as follows:

> The amount of compensation shall ... be such amount as the court or tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the aggrieved party in consequence of the matter to which the complaint relates, in so far as that loss was attributable to action taken on behalf of the party in default.

The word 'loss' in the above section was given a broad meaning by the House of Lords in *Johnson v Unisys Ltd*,[35] where it was held inter alia that the word 'loss' here was not merely confined to financial loss but included the non-pecuniary losses arising from the manner of the dismissal such as damage to reputation. Hence, the manner of dismissal is a relevant factor in the computation of reasonable compensation provided that the manner of the dismissal has caused financial loss, such as by making it more difficult to find future employment.[36]

Again, in *Burazin v Blacktown City Guardian Pty Ltd*,[37] the Industrial Relations Court of Australia (full court) adopted a liberal interpretation of the word 'compensation' in s 170EE(2) of the Workplace Relations Act 1996 (Cth)[38] where it was stated that 'compensation' was not restricted to pecuniary losses but may include non-pecuniary loss flowing from the harsh, unjust and unreasonable termination of the employment contract. In *Burazin*'s case, the claimant had complained to her superior regarding the non-payment of

2 MLJ cxxxiv at cxliv

commission to her. As a result of the complaint, she suffered a series of ugly incidents perpetrated by her superior before being forcibly removed from the premises by two police officers.

Similarly in Canada, the Canadian Labour Code, RSC, 1985 s 243(1), states that an adjudicator in computing appropriate compensation for unjust dismissal, may include firstly, the harsh and unfair manner in which the dismissal took place, secondly, the effect of the dismissal on the employee's career development and thirdly, the prospect for alternative employment. In *Fidler v Sun Life Assurance Co of Canada*,[39] the Supreme Court of Canada held, inter alia, that damages for mental distress are recoverable when such damages were in the reasonable contemplation of the parties at the time the contract was made.

Again, in *Joseph Wilson v Atomic Energy of Canada Limited*,[40] the Supreme Court of Canada stated, inter alia, that the adjudicators routinely award mental distress damages 'where the employer's conduct in dismissing an employee is egregious or in bad faith'. In particular, the court stated that: 'These remedies are available in the civil courts and they are routinely awarded as remedies for wrongful dismissals. They are equally available to employees who challenge the lawfulness of their dismissal through the adjudicative provisions of the Code'.

In *Poulter v Gull Bay First Nation*,[41] a sum of $10,000 was awarded for bullying, demeaning, and harassing that led to a constructive dismissal. In *Morrisseau v Tootinaowaziibeeng First Nation*,[42] the employee was awarded three extra months' salary and benefits payable as a result of the employer's callous behaviour in dismissing the employee. In *Parrish & Heinbecker Ltd v Knight*,[43] four months' salary was ordered as punitive damages for the employer's conduct in dismisses the employee without cause or notice.

The New Zealand Employment Relations Act 2000, in s 123, expressly authorised the authority or the Employment Court to award compensation for 'humiliation, loss of dignity, and injury to the feelings of the employee'. In Malaysia, the Court of Appeal in *Lembaga Tatatertib Perkhidmatan Awam*

2 MLJ cxxxiv at cxlv

Hospital Besar Pualu Pinang and Anor v Utra Badi K Perumal,[44] held that 'right to life' in art 5(1) of the Federal Constitution should necessarily include 'right to reputation'. The court further added that 'the right to reputation is part and parcel of human dignity' and that 'it is the fundamental right of every person within the shores of Malaysia to live with common human dignity'. Hence, where an employer dismissed the employee in a reprehensible manner such as removing him from the office 'like a dog'[45] or making serious unfounded

allegations of criminal misconduct[46] or humiliating and embarrassing a worker of high standing in the company to undertake such works as monitoring the time spent by other employees in the toilet,[47] the employee may be awarded the non-pecuniary compensation.

Unfortunately however, the Industrial Relations Act 1967 does not specify the guideline on the assessment of monetary award for successful dismissal claims except to mention in s 30(6A) of the Act that the court in making the award shall take into consideration the factors specified in the Second Schedule which are as follows:

(a) in the event that back wages are to be given, such back wages shall not exceed twenty-four months' back wages from the date of dismissal based on the last-drawn salary of the person who has been dismissed without just cause or excuse;
(b) in the case of a probationer who has been dismissed without just cause or excuse, any back wages given shall not exceed twelve months' back wages from the date of dismissal based on his last-drawn salary;
(c) where there is post-dismissal earnings, a percentage of such earnings, to be decided by the Court, shall be deducted from the back wages given;
(d) any relief given shall not include any compensation for loss of future earnings; and
(e) any relief given shall take into account contributory misconduct of the workman.

Be that as it may, it is submitted that s 30(6) of the Industrial Relations Act 1967 ('the IRA') has conferred on the Industrial Court a certain degree of

2 MLJ cxxxiv at cxlvi

flexibility in that in making an award the court may include any matter or thing which it thinks necessary or expedient for the purpose of settling the reference under s 20(3) of the IRA. The key words from the above section is 'court shall not be restricted' and 'may include in the award any matter or thing which it thinks necessary or expedient'. This implies that the Industrial Court is conferred a discretion to award appropriate compensation for unfair dismissal claim which includes the non-pecuniary losses as discussed above.

The current practice of the Industrial Court, however, is that the court usually will award compensation at a fixed rate of one month's wages for each completed year of service as contained in the Practice Note No 1 of 1987. In exceptional circumstances, however, the court may award exemplary compensation in excess of the normal rate. For example, in *Pelabuhan Tanjung Pelepas Sdn Bhd v Thangasamy Brown DN Gnanayutham*,[48] the claimant who had been subject to deplorable acts of victimisation while in employment and had contributed much to the company during the short tenure before being constructively dismissed was awarded exemplary compensation in a sum equivalent to three months' remuneration. Again, in *Chin Sooi Chon v Tamco Corporate Holdings Sdn Bhd*,[49] the claimant was able to establish to the satisfaction of the court that he was driven out of the employment by the acts and omissions of the employer. In relation to employer's reprehensible conduct, the court awarded the claimant, in addition to the normal monetary award, a sum of RM8,000 to reflect the court's findings that the employer's termination of the claimant was capacious.

Likewise, in *Palaraman Panadian v Suria Spices Sdn Bhd*,[50] the company's manager had reprimanded the claimant without any reasons and had forced the claimant to leave the company and made the termination to take effect immediately. The Industrial Court held that the claimant was dismissed without just cause or excuse. Because of the high-handed and unreasonable manner in which he was dismissed, the court ordered the company to pay the claimant 12 months' back wages to reflect the court's findings that the company's termination of the claimant was capacious. In *DNT (Malaysia) Sdn Bhd v Kek Boon Hua*,[51] the Industrial Court stated, inter alia, that in determining the monetary award, factors such as claimant's age, mental distress and suffering and his unblemished record with the company ought to be taken into consideration.

2 MLJ cxxxiv at cxlvii

CONCLUSION

In dealing with their workers, employers should prevent all injurious losses which might flow from acts of bad faith or unfair dealing, both tangible and intangible. The wrongful conduct of the employer such as harassing or humiliating the employee, victimising or targeting particular members of staff, falsely accusing an employee of gross misconduct, inappropriately demoting worker with a substantial reduction in salary and status, and forcing resignation are likely to have psychological effects on the employee. Again, a high-handed manner of dismissal from employment may affect the employee mentally such as serious trauma from being dismissed, the discredit of being an unemployed person with real prospects of humiliation and embarrassment.

In the aforesaid circumstances, apart from resigning from employment and thereafter alleging constructive dismissal, the aggrieved employee may recover compensation for non-pecuniary loss such as wounded feelings or the effect of the dismissal on his reputation or the reduced chances of finding other employment. A civil claim for negligence or failure to provide a safe place of work may also lie against the employer. The tort of intentionally causing/inflicting nervous shock can also be maintained against the employer as in *Mohd Ridzwan Abdul Razak v Asmah Hj Mohd Nor.*[52] Further, the Industrial Court has also awarded the claimant exemplary compensation in situations, among others, where he or she had been subject to deplorable acts of victimisation while in employment. To sum up, an employer can be held liable for reasonably foreseeable employee's psychological disturbance arising from occupational or workplace stress and harassment.

1 Corresponding author.

2 [1997] 3 All ER 1 (HL).

3 [1997] 3 SCR 701; (1998) 152 DLR (4th) 1, SC (Can).

4 With him were Lames CJC, Sopinka, Gonthier, Cory and Major JJ.

5 *Ibid*, at p 37.

6 See*Wight Tourist Board v JJ Coombes* [1976] IRLR 413.

7 See *Robinson v Crompton Parkinson Ltd* [1978] ICR 401.

8 See *Associated Tyre Specialist (Eastern) Ltd v Waterhouse* [1977] ICR 218; *Wetherall (Bond Street W 1) Ltd v Lynn* [1978] ICR 205.

9 See *Country Fare (Christchurch) Ltd. v Dixey* [1995] 2 ERNZ 372.

10 See *Courtaulds Northern Textiles v Andrew* [1979] IRLR 84.

11 See *Moser v Farm Credit Corp* [1993] 2 WWR 122.

12 See *Wigan Borough Council v Davies* [1979] IRLR 127.

13 See *Mayban Assurance Bhd v Chern Geok Eng* [2001] 2 ILR 372.

14 See *Pelabuhan Tanjung Pelepas Sdn Bhd v Thangasamy a/l Brown DN Gnanayutham* [2002] ILJU 8; [2003] 1 ILR 62.

15 [2004] ILJU 55; [2004] 3 ILR 148.

16 [2005] 1 ILR 43.

17 [2004] ILJU 2; [2005] 1 ILR 93.

18 [2010] 2 LNS 0847.

19 Employment Act 1955, s 81B.

20 *Ibid*, s 81C.

21 *Ibid*, s 81D.

22 [1986] 1 MLJ 271.

23 See *Waters v Commissioner of Police of the Metropolis* [2000] IRLR 720 (HL).

24 [1994] 2 ILR 807.

25 See footnote 22.

26 *Ibid*, at p 724.

27 See *Bata Malaysia Bhd v Lim Yang Ker* [1993] 2 ILR 247.

28 See *Diethelm (M) Sdn Bhd and Metal Industry Employees Union* (Award 87 of 1976).

29 [2014] MLJU 1872; [2015] 4 CLJ 295.

30 [1897] 2 QB 57. In *Wilkinson*'s case, the defendant deliberately and falsely told the plaintiff that her husband had been injured in a road accident and this had caused the plaintiff to suffer severe shock and become seriously ill. The court held that the plaintiff was entitled to recover in tort for the psychiatric illness which she suffered as a result of the defendant's wilful act.

31 (2004) EOC 93-346; [2004] NSWADT 168.

32 [2009] 6 MLJ 826; [2009] 6 CLJ 653 (CA).

33 [1997] 3 All ER 1 (HL).

34 DCEO15/2009.

35 [2001] ICR 480 (HL).

36 See *Vaughan v Weighpack Ltd* [1974] IRLR 105, 107 (NIRC). See also *Malik v Bank of Credit and Commerce International SA (in liquidation); Mahmud v Bank of Credit and Commerce International SA (in liquidation)* at footnote 32.

37 (1996) 142 ALR 144.

38 Section 170EE(2) of the Workplace Relations Act 1996 (Cth) provides '[if the Court thinks, in respect of a contravention of a provision of this Division ... constituted by the termination of employment of an employee, that the reinstatement of the employee is impracticable, the Court may, if the Court considers it appropriate in all the circumstances of the case, make an order requiring the employer to pay to the employee compensation of such amount as the Court thinks appropriate'.

39 [2006] 2 SCR 3.

40 [2016] SCC 29.

41 [2011] CarswellNat 3466.

42 [2004] 39 CCEL (3d) 134.

43 [2006] CarswellNat 6950.

44 [2000] MLJU 837; [2000] 3 CLJ 224 (CA). Unfortunately however, the Federal Court in *Pihak Berkuasa Negeri Sabah v Sugumar Balakrishnan* [2002] 3 MLJ 72;; [2002] 4 CLJ 105 (FC) had adopted a narrow and restrictive interpretation of art 5(1) of the Federal Constitution.

45 See *Phua Been Lee v Syarikat Perniagaan Shiong Heng The Star* 5 December 2000 at 18.

46 See *Phip (Johor) Sdn Bhd, Johor v Hee Ai Ching* [1996] 2 ILR 946.

47 See *Hybrabend (M) Sdn Bhd v Boey Pak Leng* [1998] 1 ILR 333.

48 [2002] ILJU 8; [2003] 1 ILR 62.

49 [2007] 2 LNS 2279.

50 [2011] ILJU 671; [2011] 2 LNS 1124.

51 [1998] 3 ILR 16.

52 [2014] MLJU 1872; [2015] 4 CLJ 295.