Justiciable

CASE SUMMARY

Kuhendran a/l Rajan v American Express (Malaysia) Sdn Bhd

Industrial Court holds that dismissing an employee shortly after he complained to headquarters was a malicious act of retaliation

⚖️ Industrial Relations Act 1967

Facts

R. Kuhendran joined American Express (Malaysia) Sdn Bhd in November 2014 and rose to the position of senior credit specialist, earning a reputation as a strong performer. From 2015 onwards, he received a series of warning letters which he maintained were manufactured as part of a campaign of bullying and harassment by his immediate superior, Vijay a/l K. Jayadevan Nair (referred to in the award as COW2). Kuhendran lodged formal complaints internally between 2019 and 2020, but the company's Human Resources and Labour Relations departments took no meaningful action.

On 3 March 2022, Kuhendran sent a letter of demand to the company's headquarters in New York, seeking intervention. On 30 May 2022, the company issued him a show-cause letter listing five performance-related issues and misconduct charges. He replied in detail on 6 June 2022, answering every allegation. On 23 June 2022, the company dismissed him with immediate effect. Kuhendran filed a complaint under the Industrial Relations Act 1967, alleging that his dismissal was without just cause or excuse.

Legal Issue

Whether the dismissal of Kuhendran was carried out with just cause or excuse, and whether the dismissal was an act of retaliation for his complaints about bullying and harassment.

Held (Industrial Court, 12 May 2026)

Chairman Augustine Anthony found that the dismissal was without just cause or excuse. The court held that the company had retaliated against Kuhendran, shielded the very manager he had complained about, and constructed a case for dismissal that was vague and unsupported. The court awarded Kuhendran RM153,200 in back wages and compensation.

Key Reasoning

- The performance allegations in the show-cause letter were found to be "vague, confusing and can be interpreted in many ways." Kuhendran's evidence was consistent and credible throughout the proceedings.
- The company failed to place Kuhendran on a formal Performance Improvement Plan (PIP) before resorting to dismissal. The court treated this omission as fatal.
- The company's treatment of Kuhendran was described as "nitpicking … to find fault," creating a work environment in which no employee could feel safe.
- The court found that COW2 had a documented history of bullying, harassment, and intimidation, yet the company protected him rather than addressing his conduct. Sexually charged and derogatory messages sent by COW2 on the company's internal messaging system were quoted in the award.
- The timing of the show-cause letter — issued within three months of Kuhendran's complaint to New York — was held to be "an irresistible conclusion of a malicious act of retaliation." The chairman concluded: "Malice is all over the Company's action."

Practical Significance

An employee's complaint about workplace misconduct must be investigated on its own merits, not treated as a performance problem. A formal Performance Improvement Plan is expected before disciplinary action for alleged poor performance; its absence can be fatal to the employer's case. Employers who protect a manager accused of bullying, rather than addressing the complaint, risk a finding of retaliation and significant financial liability. Workplace messages sent on company platforms are discoverable and can become powerful evidence in Industrial Court proceedings.

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