

Constructive Dismissal: The Contract Test Explained

How a RM1 million award turned on four conditions — and a retaliation the courts refused to ignore

 **Industrial Relations Act 1967**

When Wong Jun Kit challenged his late father's will in October 2018, his stepmother — a director of the family-run forklift business — slashed his salary in the same month. His wages went unpaid, his EPF and SOCSO contributions stopped, and he was left with no work. He resigned and claimed constructive dismissal. The Industrial Court awarded him approximately RM1 million, and every higher court agreed. The flowchart below traces the "contract test" that decided the case — and what it means for employers, HR professionals, and anyone who manages people.

THE CORE QUESTION

Has the employer committed a fundamental breach of the employment contract?

The "contract test" — established in *Wong Chee Hong v Cathay Organisation* and articulated in *Bayer (M) Sdn Bhd v Anwar Abd Rahim* — asks whether the employer's conduct goes to the root of the contract, entitling the employee to treat it as terminated.

FOUR CONDITIONS MUST BE SATISFIED

The Contract Test

- **Condition 1:** There must be a breach of contract by the employer.
- **Condition 2:** The breach must be sufficiently important to justify the employee resigning.
- **Condition 3:** The employee must leave in response to the breach — not for any other unconnected reason.
- **Condition 4:** The employee must not delay in terminating the contract, otherwise they may be deemed to have waived the breach and agreed to vary the contract.

WHAT THE EMPLOYER DID

Four Fundamental Breaches — Wong Jun Kit's Case

- Salary reduced from ~RM27,500 to RM9,000, then RM6,000 — without consultation
- Wages for February and March 2019 unpaid
- EPF and SOCSO contributions ceased
- No work assigned — placed in "cold storage"

THE EMPLOYEE'S RESPONSE

Wong Jun Kit Acted Without Delay

- 10 April 2019: Issued letter setting out the fundamental breaches and requesting a response by 5.00pm on 15 April 2019
- Company failed to respond within the deadline
- 15 April 2019: Issued letter claiming constructive dismissal
- 16 April 2019: Hand-delivered the letter to director Wong Jun Yi at the company's office — who refused to acknowledge receipt

- No undue delay — Condition 4 satisfied



THE MOTIVE

Retaliation — Not Coincidence

The salary reduction was imposed in October 2018 — the same month Wong filed suit challenging his late father's will. Industrial Court Chairman D Paramalingam found the reduction was "certainly no coincidence" and "a retaliation by (Sim) against the claimant for having filed the suit."



DEFENCES REJECTED

The Company's Arguments Failed

Business downturn: No evidence other employees were affected.

Poor performance: Raised for the first time after constructive dismissal notice — no evidence produced.

Reinstatement: Not appropriate — family relationship irretrievably damaged.



THE AWARD (INDUSTRIAL COURT)

Approximately RM1 Million

- Compensation in lieu of reinstatement: **RM550,000**
- Back wages: **RM660,000**
- Less post-dismissal earnings: **RM198,000**
- **Total award: approximately RM1 million**



THE JOURNEY TO FINALITY

Affirmed at Every Level

High Court: Dismissed judicial review — company failed to discharge burden of proof (RM6,000 costs).

Court of Appeal: Affirmed the High Court's decision.

Federal Court (July 2026): Refused leave to appeal — no novel legal question. Company ordered to pay Wong Jun Kit **RM50,000** in costs. Award now final.

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