

Director vs Workman: The Federal Court's RM2Million Answer

The legal test that turned directors into employees

 Industrial Relations Act 1967

In 2019, two founding shareholders and directors were ousted by a majority-led EGM. The company insisted they were never employees. After a five-year legal battle that reached the highest court in the land, the Federal Court disagreed. The flowchart below traces the legal test that turned directors into “workmen” — and what it means for companies, directors, and employment lawyers.

THE CORE QUESTION

Is a director also a “workman” under section 2 of the Industrial Relations Act 1967?

The Court of Appeal said the answer depends on whether a **contract of service** exists — not on the person's title.



OLD RULE — REJECTED

Inchcape rule

Directors are the “directing mind and will” of the company and

can **never** be employees. (*Expressly overruled*)



NEW TEST — APPLIED

Contract of service test

A director-employee relationship exists where the company exercises **control**, pays **wages** for services rendered, and a genuine employment contract (written, oral, or implied) is in place. (*Gopala Krishnan; Hoh Kiang Ngan; Salomon*)



EVIDENCE CONSIDERED

Factors that indicated Woon & Chang were employees

- Monthly salary (not director's fees)
- EPF & SOCSO contributions
- EA tax forms classified as "SG" (salary)
- Listed in the company's Register of Employees
- Defined operational roles (Technical Director / Project Director)
- Reported to the Board of Directors

Also relevant: the company's argument that a pending minority oppression action barred the employment claim was rejected — the two actions can coexist.



CONCLUSION

Woon & Chang were "workmen"

The Industrial Court had jurisdiction. Their dismissal was without just cause or excuse. Compensation was awarded.



CASE TIMELINE

From Industrial Court to Federal Court

1. **Industrial Court** – Not a workman → claim dismissed
2. **High Court** – Upheld; judicial review dismissed
3. **Court of Appeal** – Allowed Woon & Chang’s appeals; quashed the Industrial Court’s dismissal and set aside the High Court’s order; awarded ~RM2 million
4. **Federal Court** – Dismissed the company’s appeal; affirmed the Court of Appeal’s decision (the ~RM2 million award stood)

For the full story behind this visual guide, read [Woon Kim Choy & Anor: When a Director Is Also a Workman](#).

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