

Industrial Court of Malaysia

Practice Note No. 3 of 2019

Guidelines Governing Awards in Dismissal Cases

1. Practice Note No. 1 of 1987 is replaced by this Practice Note.
2. The Court shall take into consideration of the following guidelines in making an award:
 - 2.1 If the Court finds that the dismissal is with just cause or excuse, there shall be no payment of backwages or compensation or benefit.
 - 2.2 If the Court finds that the dismissal is without just cause or excuse, the Court shall:
 - (a) order the workman to be reinstated in his former employment and the employer pays the workman an amount equivalent to the wages that he would have earned had he not been dismissed; or
 - (b) order the workman to be paid such amount of wages as compensation in lieu of reinstatement by the employer, as may be determined by the Court.
 - 2.3 The Court shall not order that the workman be paid compensation in lieu of reinstatement if the workman is incapable of being reinstated (e.g. statutory age of retirement).

3. Method of calculation

3.1 Backwages from the date of dismissal based on the last drawn salary, subject to a maximum of 24 months in the case of a confirmed workman, or 12 months for a probationer.

3.2 Compensation in lieu of reinstatement of one month's salary for each year of completed service. There shall be no compensation in lieu of reinstatement for any uncompleted year of service. For example:

(i) A workman has been employed for 9 months.
No compensation in lieu of reinstatement.

(ii) A workman has been employed for 4 years and 8 months.
Compensation in lieu of reinstatement is calculated:
One month's salary x 4

(iii) A workman has been employed for 7 years and 11 and ½ months.
Compensation in lieu of reinstatement is calculated:
One month's salary x 7

4. Mitigation / Deduction

4.1 It shall be the duty of the workman to mitigate against loss but the burden of proving that the workman has not done so lies with the employer.

4.2 Such mitigation shall be made against backwages only. No deduction to be made in respect of the compensation in lieu of reinstatement.

4.3 Post dismissal earning

4.3.1 There shall be no deduction if the workman has not been able to secure any employment since the date of his dismissal.

4.3.2 Where there is post-dismissal earning, a percentage of such earning, to be decided by the Court, shall be deducted from the backwages given.

4.4 Contributory conduct

Any relief given shall take into account contributory misconduct of the workman.

5. The Court may also order contractual bonus, payment in lieu of leave not taken and other contractual benefits.
6. Any relief given shall not include any compensation for loss of future earnings.

Dated this 1st day of November 2019



EDDIE YEO SOON CHYE
President
Industrial Court of Malaysia