Dealing with Employees during Investigations: A Cautionary Tale

Against the backdrop of the decision in Dong Wei v Shell Trading (Pte) Ltd and another [2022] SGHC(A) 8, corporations ought to be mindful when it comes to managing employer-employee relationships in connection to internal investigations.

Key Facts:
Dong Wei had been in the employ of Shell Eastern Trading (Pte) Ltd ("Shell Eastern") since 2006 until his employment was terminated on January 10, 2018.

The sequence of events leading to Dong Wei's dismissal originated from a telephone conversation in September 2017. During this call, Dong Wei discussed the utilization of a third-party vessel referred to as a "cheap ship" with a trader from Vitol Asia Pte Ltd ("Vitol"), purportedly owned by Dong Wei's acquaintance. This departure from industry norms attracted the attention of his line manager, Lim, who received a complaint from Shell Eastern.

Having been previously investigated by Shell Eastern for two distinct allegations, Dong Wei had undergone disciplinary actions. Subsequently, upon learning about Dong Wei's communication with Vitol, Shell Eastern suspended him with full pay. The suspension notice explicitly promised to inform Dong Wei of the investigation's outcome. However, despite the findings being deemed "inconclusive," Dong Wei was not informed of the investigation's conclusion. Shell Eastern declined to disclose the outcome on the basis that: (a) it was under no obligation to do so; and (b) its termination of the employment relationship was not a result of the outcome of the investigation In November 2017, an editor from S&P Global Platts ("Platts") contacted Shell Eastern regarding market "chatter" surrounding investigations into members of Shell Eastern's chartering team.

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Shell Eastern chose not to comment on the matter. Shortly thereafter, Platts published an article, the "Platts Article," which, while not naming Dong Wei, identified the chartering team under scrutiny.

Sometime in January 2018, Dong Wei was informed of Shell Eastern's decision to exercise its contractual right to terminate his employment with three months' notice. The rationale provided was not a direct consequence of the recent investigation's outcome but rather a culmination of events over the preceding years.

Following his termination, Dong Wei encountered challenges in securing new employment. Consequently, he initiated legal proceedings against Shell Eastern and Lim, attributing his difficulty in reemployment to the events leading to his dismissal.

Outcome: The Appellate Court dismissed Dong Wei's claims and ruled that it is not settled in Singapore that there is an implied term of mutual trust and confidence into a contract of employment.

2 Key Takeaways in the context of Internal Investigations:

a. Transparency in Employee Termination: While corporations are not legally required to disclose the outcome of their investigations to an employee, the case underscores the vital need for employers to transparently share investigation outcomes with employees facing termination, particularly if such a promise was made. Beyond the legal realm, the decision

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stresses the ethical obligation for employers to communicate such critical information, fostering a culture of fairness and acknowledging the emotional and professional impact on the individuals involved. The Appellate Court's exhortation bears noting: "It seemed to us that it would only be fair for Shell Eastern to inform the Appellant of the outcome since he was the subject of the investigation, whether or not Shell Eastern was legally obliged to do so. This was all the more so when Shell Eastern's own notice provided that the Appellant would be informed of the outcome. In the circumstances, we were not impressed by Shell Eastern's subsequent conduct and approach, both of which lacked sense and sensibility. In our view, employers will do well to consider with greater circumspection, how to treat their employees with dignity and respect even upon the parting of ways."

b. Emphasis on Documentation: The ruling accentuates the importance of documentation in employment investigations. The presence of documentary evidence of the formal steps taken before suspension and the subsequent interview process, demonstrates the critical benefit of documentation in justifying actions taken but also ensuring transparency and fairness in the overall investigative process. Put simply, the strategic value of well-documented procedures can mitigate potential losses and contribute to a robust and defensible decision-making framework in connection to HR related matters in connection to internal investigations.

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