

Why was I fired?

The importance of a carefully crafted dismissal letter cannot be overstated. The recent Singapore High Court decision in *Piattchanine, Iouri v Phosagro Asia Pte Ltd* [2015] SGHC 259 held that close attention will be paid to the grounds for dismissal stated in the letter, such as whether the employment contract was terminated by reliance on a contractual right, or on the basis that the other party was in repudiatory breach. It is only in the latter situation that an employer may raise new facts in its defence to a suit for wrongful dismissal.

Iouri Piattchanine (the Plaintiff Employee) was formerly the Managing Director of Phosagro Asia Pte Ltd (the Defendant Employer), a company engaged in the fertiliser trade.

The Plaintiff's employment as director was terminated with immediate effect by way of a letter dated 28 February 2014 (Termination Letter).

The Termination Letter made it clear that the Defendant Employer was terminating the employment contract pursuant to its contractual rights under the same contract, **but did not refer to or rely on specific contractual clauses**. It was undisputed that the Termination Letter was effective in terminating the employment contract.

The material terms of the employment contract dealing with termination are:

- (a) Clauses 2 and 14, which allowed either party by giving three months' notice in writing to terminate without cause. In the event that the contract is terminated before three years, the Plaintiff was entitled to 100% of a year's salary as a one-off payment;

- (b) Clause 20, which allowed the Defendant Employer to terminate without notice or payment in lieu of notice in the case of serious misconduct or wilful breach of the employment agreement. No entitlement to 100% of a year's salary arises when the employment contract is terminated with cause.

Subsequent to the Termination Letter, the Defendant Employer sent another letter on 18 March 2014, now purportedly to summarily terminate the Plaintiff Employee's employment for serious misconduct or wilful breach of the employment agreement. Apparently, the Defendant Employer had discovered, after the initial Termination Letter was sent, that the Plaintiff Employee had purportedly made improper expense claims during his employment.

As the employment contract was terminated before three years, the Plaintiff Employee brought a claim for wrongful dismissal, seeking sums due to him under the employment contract and/or damages pursuant to a breach of contract. The Defendant Employer counterclaimed for sums which it alleged the Plaintiff had wrongfully paid to himself by way of expense claims.

Key points

- Employers should not issue dismissal letters hastily, as once contractual rights are crystallised by the terms of a dismissal letter, they cannot be retrospectively redefined by evidence that the employer could have terminated the employment contract in another way
- Ideally, a dismissal letter should be issued only after full internal investigation has been completed, as it will reduce the risk of additional grounds (not known at the time of termination) surfacing subsequently that would change the entire complexion of the dismissal letter (had they been known at the time of drafting).

Following established principles, the Court held the right to terminate an employment contract will arise in the following three circumstances:

- (a) Exercise of a contractual right to terminate that is not dependent on any breach or non-performance by the other party (as per Clauses 2 and 14 of the employment contract which allowed termination by giving three months' notice in writing);
- (b) Exercise of a contractual right to terminate which arises where the contract clearly and unambiguously provides that upon the occurrence of certain events *the innocent party* is entitled to terminate (as per Clause 20, which allowed for termination with cause in the case of serious misconduct or wilful breach of the employment agreement);
- (c) Exercise of the right to terminate under common law because of renunciation, breach of a condition, or because the consequences of the breach will substantially deprive the innocent party of substantially the whole benefit which it was intended that he should obtain from the contract.

As the right to terminate is ordinarily exercised by giving notice to the employee via a dismissal letter, the Court will carefully scrutinise the letter in order to ascertain the ground(s) relied on for the termination. In doing so, the Court will take the point of view of the reasonable reader receiving the termination notice, and ask how he or she would construe the said notice.

An interesting but difficult question which arose in the case was whether the consequences of termination

"It follows that attention must be paid to the character of the termination of the contract. The court must consider the legal grounds upon which the contract was purportedly terminated. This will be determined by looking at the facts and circumstances at the time of termination, and by consideration of how a reasonable reader would interpret the termination.

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ought to be determined by reference to the actual legal grounds and reasons relied upon by the party **at the time of termination**, or whether it ought to be determined by reference to all the possible options available to the party who terminated the contract at the time of termination.

In other words, **is a party allowed to adduce new grounds or reasons which were not relied on at the time of termination, to justify the termination?**

In the present case, the Defendant Employer was keen to argue that the Plaintiff Employee was guilty of serious misconduct or wilful breach of the employment agreement by making improper expense claims during his employment, as this would allow it to avoid paying the contractually stipulated penalty of one year's salary for terminating the employment contract before its expiry date.

The Court found that as the Termination Letter stated that the Defendant Employer was terminating the employment contract **pursuant to its contractual rights under the same contract**, this meant that it could not rely on the common law right of termination by asserting a repudiatory breach due to the Plaintiff Employee's conduct in making improper expense claims.

However, the same ambiguity also worked to the Defendant Employer's advantage. The Court reasoned that while a party may not depart from the legal ground upon which it elected to terminate the employment contract, as the Termination Letter did not set out the specific reasons or basis for the exercise of a right of contractual termination, the Defendant Employer had therefore not elected to rely on either Clauses 2 and 14 or Clause 20 to justify termination. It was therefore free to rely on any of these clauses to justify its case.

In that regard, the Court also held that **new grounds** not raised in the Termination Letter **could** be raised to justify reliance on the summary termination clause (i.e. Clause 20) in the employment contract. After all, if retrospective justification of a common law termination for repudiatory breach could be given, there was no good reason not to allow the same for the retrospective justification of a contractual termination.

Nevertheless, the Court ultimately found on the facts that the Plaintiff Employee's conduct did not amount to serious misconduct or a wilful breach of the employment agreement. Accordingly, it found that the Plaintiff Employee was entitled to one year's annual salary as a one-off payment for termination of the employment contract before its expiry.

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