

Placing an Employee on a PIP: Can It Constitute Constructive Dismissal?

The issue of whether an employee can be considered constructively dismissed after being placed on a performance improvement plan was discussed in the case involving **Edotco Group Sdn Bhd**.

1. Background

The employee (claimant) was employed as a Specialist in Supply Chain Management at Edotco Group. On 23 August 2022, the company placed him on a PIP, citing "inappropriate workplace behavior" as one of the main reasons. The Claimant argued that the PIP was unjustified, vague, and violated the company's own policies, as he had previously received favorable performance ratings. He tendered his resignation the following day, claiming constructive dismissal. The claimant served out his notice.

The Claimant's basis for claiming constructive dismissal includes:

- He had never been rated as 'Needs Improvement' throughout his employment with the Company
- The Company failed to provide any justification for placing him on a PIP
- The PIP is not an accurate representation of the situation on the ground
- Additionally, he alleged mistreatment by his superior, including shouting at him. The Claimant believed the working issues he had with his superior contributed to the situation.

2. Company's Defense

The company maintained that Claimant voluntarily resigned without raising objections or seeking clarification about the PIP. It also pointed out that no termination letter was issued, and the Claimant served his three-month notice period without further incident.

3. Court Findings

The Industrial Court, held that:

- The Claimant failed to prove constructive dismissal on the balance of probabilities.
- He did not object to the PIP or provide evidence of mistreatment by his superior.
- His resignation letter did not detail specific grievances or provide the company an opportunity to address his concerns. Through cross-examination, the Claimant mentioned that he did not object to the Company's decision to place him on PIP - instead, he merely mentioned that it was 'unacceptable' without providing reasons.
- The term 'unacceptable' is a very general term. The employee should've been more specific on the reasons that led him to leave him employment.
- The claimant did not even mention about the superior's alleged shouting at him in his resignation letter.
- The PIP did not constitute a fundamental breach of the employment contract.

The court agreed with Counsel for the Company that the Claimant "jumped the gun" by resigning without first seeking clarification or raising objections to the PIP. It emphasized that constructive dismissal requires clear evidence of a breach going to the root of the employment contract, which was absent in this case.

4. Key Takeaways

A PIP ≠ Constructive Dismissal: Employers seeking to carry out a performance improvement plan should not be overly concerned about constructive dismissal. A constructive dismissal claim requires the employee to prove that the employer has breached a fundamental term of the employment contract.

When a decision has been made to place an employee on PIP, be clear and document the performance or behavioral issue. While setting your KPIs, use the SMART model and ensure proper communication channels to avoid any form of misunderstanding. Vague and general points will constitute grounds for dispute.

When you sense a breakdown in a relationship (normally identifiable through a change in behavior or when an employee becomes overly-defensive), give employees a chance to clarify their position. Engaging employees in the process can often mitigate claims of unfair / constructive dismissal.