

PERSPECTIVE INSIGHTS

Articles

DISMISSING PROBATIONARY EMPLOYEES FOR POOR PERFORMANCE: WHAT EMPLOYERS MUST PROVE

Posted on December 16, 2025 by Jassmine Joseph

“Disagreement with an employee’s work output does not automatically amount to poor performance. Without evidence, warnings, and procedural fairness, dismissal will fail the test of just cause or excuse.”

Employers often assume that probationary employees may be terminated easily for unsatisfactory performance. However, Malaysian Industrial Court jurisprudence has consistently clarified that probationers enjoy the same statutory protection against dismissal without just cause or excuse. Poor performance, even during probation, must be properly managed through clear instructions, warnings, and reasonable opportunities to improve.

This principle was reaffirmed in the recent Industrial Court decision of **Nasrul Ain Ahmad v. Excelvite Sdn Bhd, Award No. 1478 of 2025**, where the Court examined whether a probationary employee’s termination for alleged poor performance was lawful.

Brief Facts

The Claimant was employed by the Respondent as a Human Resources and Administration Manager with a monthly salary of RM6,400, subject to a six-month probationary period. Barely two and a half months into his probation, the Claimant received emails alleging delays in submitting the HR Budget for 2024, implementing a new shift schedule, and completing other tasks outlined in a handover list.

Despite explaining that the tasks required time, cross-departmental input, and analysis, and that these were additional responsibilities beyond his existing role, the Claimant was terminated with one month’s notice on the ground that his performance did not meet the company’s expectations. No show-cause letter or formal warning was issued prior to the termination. The Claimant filed a claim under Section 20 of the Industrial Relations Act 1967, contending that his dismissal was without just cause or excuse.

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Issues Before the Industrial Court

The Industrial Court was required to determine:

Whether the Respondent had proven poor performance on the part of the Claimant; and, Whether the termination of a probationary employee, before the expiry of the probation period, was carried out with just cause or excuse.

Industrial Court's Findings

The Industrial Court ruled in favour of the Claimant and found that the dismissal was without just cause or excuse.

(a) Poor Performance Was Not Established

The Court held that the Respondent failed to substantiate its allegations of poor performance.

Key findings included:

The HR Budget was submitted within the timeline stated in the handover list, and there was no documentary evidence that the Claimant was informed of an earlier internal deadline.

While management disagreed with the Claimant's shift schedule proposals, disagreement alone did not amount to poor performance. The Claimant had, in fact, acted on the task and submitted proposals which were open to refinement.

In relation to the boilerman incident, the Court accepted that the situation arose suddenly and that the Claimant acted promptly to secure a replacement. Any administrative shortcomings should have been addressed through guidance or warnings rather than termination.

Allegations of sexual harassment were rejected entirely, as they were not cited in the termination letter, were unsupported by any show-cause process, and were raised only as an afterthought during proceedings.

(b) Lack of Warnings and Opportunity to Improve

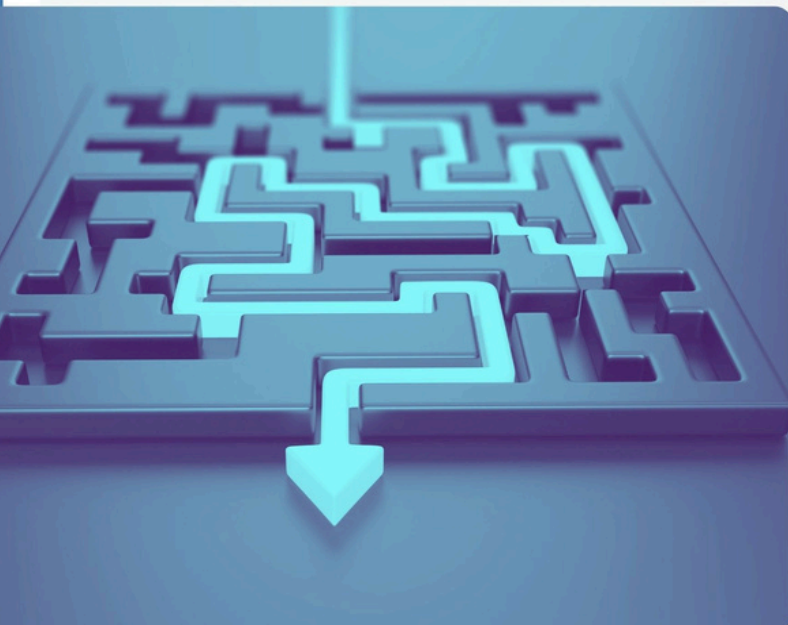
Relying on established authorities, the Court emphasized that dismissal for poor performance requires the employer to demonstrate that:

the employee was warned about the deficiencies;

the employee was given sufficient opportunity to improve; and

the employee nevertheless failed to improve.

None of these elements were satisfied in this case. The Claimant was not issued any formal warning or show-cause letter, and his probation was cut short prematurely.



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(c) Probation Does Not Mean “Hire and Fire”

While employers retain discretion to assess suitability during probation, such discretion must be exercised reasonably, bona fide, and not capriciously. The Court found the Respondent's actions to be unduly hasty and arbitrary, particularly given the short duration of the Claimant's service.

Remedy Awarded

The Court held that reinstatement was inappropriate as the Claimant was a probationer with no lien to the post. Instead, the Court awarded four months' backwages, amounting to RM25,600, which it considered proportionate given the short tenure and the fact that the Claimant had secured alternative employment shortly after dismissal.

Key Takeaways for Employers and HR Practitioners

This decision serves as a critical reminder that:

- Probationary employees are protected against dismissal without just cause or excuse.
- Allegations of poor performance must be supported by clear instructions, documented feedback, warnings, and time to improve.
- Employers cannot rely on new or unrelated allegations raised only during Industrial Court proceedings.
- Performance management, even during probation, must be handled with procedural fairness and proportionality.

For HR professionals, the case highlights the importance of maintaining proper documentation, issuing timely warnings, and using structured performance improvement measures before resorting to termination, particularly where the employee is still within their probationary period.

