

Obey first, then challenge

(A commentary on *Ngeow Voon Yean v Sungei Wang Plaza Sdn Bhd/Landmarks Holding Bhd*)

by Peh Lee Kheng, Partner, & Daphne Au, Associate, Human Capital Services Practice

In the case of *Ngeow Voon Yean v Sungei Wang Plaza Sdn Bhd/Landmarks Holding Bhd* [2006] 3 CLJ 837, the issue of whether an employee is required to obey an order from his superior even if the employee is doubtful over the legality of the order came before the Federal Court. The Federal Court ruled that the employee is obliged to obey the order first and challenge the order in separate proceedings and in so ruling, confirmed the decision in the Industrial Court.

Facts

The facts of the case are as follows:

The employee was instructed by his superior to endorse 2 deeds of assignment. He was assured by his superior that everything was in order and that the superior would take the responsibility for collecting the purchase price of the properties sold. Disciplinary proceedings were subsequently instituted against him for gross negligence. In his defence at the domestic inquiry, the employee contended that he was obeying the orders of his superior. His defence was not accepted and he was dismissed. The employee challenged his dismissal. The Industrial Court made a finding that the employee was acting on his superior's instructions and representations and concluded that his dismissal was without just cause or excuse.

The employer challenged the Industrial Court decision and succeeded before the High Court and the Court of Appeal. The Court of Appeal decided that the employee was entitled to disobey an order if the employee thought that the order was manifestly wrong.

Federal Court decision

The Federal Court disagreed with the Court of Appeal decision and opined as follows:

"From the case law, it is clear that the duty of obedience is confined to compliance with the lawful and reasonable orders of an employer and as such the concept of an order being manifestly wrong has no part in the doctrine of superior orders. To that extent the Court of Appeal erred when it made an exception to the general rule on superior orders when stating that an employee is entitled to disobey the orders of his superior if he, the employee, is aware that such orders are manifestly wrong."

The Federal Court recognised that there may be situations where an employee has doubts as to whether an order is legal or not. In such situations, the Federal Court advised that the proper course is for the employee to obey the order first and then challenge its legality in separate proceedings. The employee may voice his concerns over the order but he should nevertheless obey the order if the employer still insists, and then take up the issue in separate proceedings or through the union. This is a more prudent course to take than to disobey the order and risks the court finding the order to be a lawful one.

The basis for the Federal Court decision was that *“if the law allows the employee to disobey any order he thinks is not legal, it would be impossible for the management to maintain discipline and industrial peace”*.

Conclusion

In conclusion, an employee is required to obey the orders of his superior unless the order is illegal or dangerous. Even if the employee is doubtful, the employer is entitled to insist on its lawful and reasonable order being obeyed and an employee who refuses to obey would expose himself to the risk of dismissal. It is no defence to a charge of wilful disobedience that the employee honestly believed that the order was manifestly wrong.