

Wrongful Dismissal

Wrongful Dismissal Despite Express Termination Clause and No-Reason Termination: Recent ECT Decision on “Just Cause or Excuse” under Section 14(2) of the Employment Act 1968

In *JJF v JJG* [2026] SGECT 9, the Employment Claims Tribunals (**ECT**) ruled in a 344-page decision that an employee dismissed in accordance with the terms of the employment contract with salary in lieu of notice and without any reasons given had been dismissed without just cause or excuse under Section 14(2) of the Employment Act 1968 (**EA**) (**Section 14(2)**). The ECT found that the performance concerns advanced by the employer at the hearing, coupled with the lack of reasons given for the dismissal were not weighty enough to justify dismissal under Section 14(2).

The ECT held that contractual compliance did not answer the statutory “just cause or excuse” issue under Section 14(2), which subjects an employer’s exercise of its power to terminate an employee’s employment to a statutory restraint separate from, and additional to, the employment contract.

Leave to appeal the decision has been granted under the Employment Claims Act 2016 (**ECA**) on the basis that the decision gives rise to a question of law.

The decision has been the subject of much discussion given its divergence with the common law position affirmed by the Appellate Division of the High Court of Singapore in *Dong Wei v Shell Eastern Trading (Pte) Ltd and another* [2022] 1 SLR 1318 where an employer may exercise its express contractual right to terminate an employee without having regard to whether such right was exercised arbitrarily, capriciously and/or in bad faith, as well as Sections 10(1) and 11(1) of the EA which expressly allow a party to a contract of service to terminate the contract by way of notice (or salary in lieu of notice), without stating that the employer is obliged to provide reasons. Further, paragraphs 3 and 7 of the Tripartite Guidelines on Wrongful Dismissal (**Guidelines**) also recognise the parties’ contractual right to terminate their relationship, and presume such dismissals with notice not to be wrongful.

Background

The claimant (**C**) joined the respondent (**RPL**) as a Senior Construction Manager on 8 July 2024 at a monthly salary of \$9,000. RPL confirmed his employment after probation on 8 October 2024, paid him an annual bonus of \$10,011 in December 2024, and raised his salary to \$9,150 from 1 January 2025.

In April 2025, C allegedly abandoned lean concrete casting works because of a supply shortage, failed to contact an alternative supplier or ensure the concrete met the required level, and left the site before completion without giving clear follow-up instructions (**lean-concrete incident**).

On 11 June 2025, C was diagnosed with major depression and anxiety. A doctor's memorandum dated 30 June stated that he was fit to work but recommended shorter hours. From 1 July 2025, he was moved off a site project to RPL's tender team at its headquarters, where he worked regular hours until the tender was submitted on 18 August 2025.

On 19 August 2025, the day after the tender proposal was submitted, RPL issued C a letter titled "Cessation of Employment" which referred only to the clause in RPL's Employment Regulations (incorporated into C's employment contract) which allowed either party to terminate the employment contract by giving one week's notice or paying salary in lieu once C had served 26 weeks but less than two years (**Termination Clause**), and stated that he would receive one week's salary in lieu of notice and, "as a gesture of goodwill", his full salary for August. No reason for the dismissal was provided in the letter.

C brought a claim against RPL under Section 14(2), contending that he had been dismissed without just cause or excuse because of his disclosure of a mental health condition in June 2025 and RPL's actions after the disclosure of his mental health condition were discriminatory and retaliatory. C sought S\$18,000 in compensation, a written apology from RPL's managing director and a mutually agreed statement that the termination of his employment was without prejudice and no negative reasons for dismissal would be disclosed to future employers.

Relying on the Termination Clause, Section 11(1) of the EA, *Dong Wei v Shell Eastern Trading (Pte) Ltd and another* [2022] 1 SLR 1318, and paragraphs 3, 7 and 9 of the Guidelines, RPL submitted that the dismissal could not be wrongful unless C established the discrimination which he alleged. On the facts, RPL contended that there was no mental health discrimination or retaliation and the dismissal was due to business, suitability and operational considerations. Further, even if the dismissal was wrongful, C had received more than his contractual entitlement, his monetary claim was speculative or legally unrecoverable, and ECT could not compel the non-monetary claims.

The ECT's Decision

The ECT rejected C's case of discrimination and retaliation, but allowed his claim for wrongful dismissal under Section 14(2). The ECT found, on the evidence as a whole and on a balance of probabilities, that it was more likely that C's dismissal was without a sufficiently established, operative and just cause or excuse. C was awarded \$11,437.50 as compensation for harm, plus disbursements.

Discrimination allegation rejected

The ECT rejected C's case of discrimination and retaliation. RPL's steps after disclosure of his mental health condition — seeking medical information, arranging support, honouring leave, assigning regular-hours work — were consistent with medical advice and operational needs.

Proof that RPL had *positively* dismissed C on discriminatory grounds would almost certainly have been enough to establish that the dismissal was "without just cause or excuse". However, the ECT noted that it did not follow that, if discrimination could not be proved, the dismissal was *ipso facto* supported by just cause or excuse.

Statutory "just cause or excuse" inquiry is distinct and separate

Although C's discrimination and retaliation claim failed, the ECT allowed C's claim under Section 14(2) on the basis that there was no "just cause or excuse" for his dismissal. The ECT separately examined whether there was "just cause or excuse" for dismissal under Section 14(2). Critically, the ECT held that payment of salary in lieu of notice does not answer the statutory "just cause or excuse" inquiry under Section 14(2).

The ECT was of the view that contract, the Guidelines and the common law perform functions separate from and subordinate to Section 14(2) read with the ECA.

- Importantly, the ECT interpreted Section 14(2) to impose an *additional* statutory requirement on the employer's exercise of the power to terminate an employee's employment, for such termination to be supported by a factually established, operative, and sufficiently just cause or excuse. A dismissal that is contractually valid may still be without just cause or excuse pursuant to Section 14(2).
- In relation to the Guidelines, while the ECT must have regard to the Guidelines, the Guidelines' legal force is confined to that which the ECA gives them. Accordingly, the Guidelines' treatment of positive wrongful reasons and presumption that a dismissal for no reason based on contractual notice was not wrongful cannot override the statutory "just cause or excuse" inquiry where there is inconsistency.

On the facts of the case, the ECT accepted that the lean-concrete incident was a genuine performance shortfall of C's but it was limited. However, the ECT found that the other criticisms were not adequately proven. Of note, the ECT observed that RPL's position that C's termination was "not for any particular reason" rendered the operative role of its criticisms uncertain. Against the objective employment record (such as C's confirmation, bonus, annual salary increment, continued assignment to important work, and absence of formal warnings or performance management), the ECT found that the proved material was insufficiently weighty to justify the dismissal.

Burden of proof for no-reason dismissals

In a no-reason dismissal pursuant to contract, the legal burden ordinarily rests upon the employee. Where the employer does not provide a reason for dismissal, the employee may nevertheless establish the absence of a sufficient justification for the dismissal under Section 14(2) through circumstantial evidence, such as reference to the employment history and remuneration, the timing and flow of events, the work given to the employee, concerns at the material time, as well as inconsistent treatment compared to other employees.

If this legal burden is met, an evidential burden would then fall upon the employer, which would likely require the employer to produce its records and appropriate witnesses. That said, the legal burden and ultimate risk of non-persuasion remains with the employee.

Process is not required, but its absence may weaken the employer's account

While nothing in Section 14(2) imposes a general statutory requirement of due process (e.g., a hearing, warning, consultation or performance improvement plan) for every category of dismissal, process may bear evidential weight. For example, a warning, investigation, or opportunity to answer may strengthen the employer's account, while its absence may weaken an allegation which was contestable or readily answered.

Compensation awarded

In relation to the compensation for harm, the ECT selected the maximum base of two months' salary as it was of the view that the abrupt and unexplained severance carried a substantial affront and disruption which could properly be inferred without proof of a recognised psychiatric injury. The lean-concrete incident was a limited instance of poor performance which contributed to RPL's decision and justified a reduction of 0.75 month pursuant to paragraph 7 of the Second Schedule to the Employment Claims Regulations, leaving \$11,437.50.

The ECT's guidance for employers facing dismissal claims

The ECT offered the following guidance for employers facing dismissal claims:

- (a) An employer should keep the contractual and statutory questions separate. A termination pursuant to an express notice clause or Section 11(1) of the EA may be contractually effective and leave no notice pay outstanding. However, where the employee brings a statutory claim, the employer must still identify the actual basis of its decision and answer that statutory claim. Compliance with the notice obligation goes only to the separate contractual question.
- (b) There is no general rule which requires an employer to state a reason whenever it terminates employment with notice, but a reasons-based statutory inquiry remains necessary when a claim is brought.
- (c) If the employer later relies upon misconduct, poor performance, redundancy, operational requirements or suitability, it should be prepared to adduce evidence of the same to show what the concern was, the impact upon the dismissal decision, and why it justified dismissal. High-level assertions, post-event accounts, or evidence from third parties may carry less weight than contemporaneous records and the testimony of those who made or informed the decision.
- (d) Above all, both parties should identify the protection invoked under the law before relying upon the familiar label "wrongful dismissal".

Key Takeaways

This decision highlights the following:

- **Dismissal of an employee based on a contractual termination clause without reasons is not a defence to Section 14(2) wrongful dismissal claims.** The ECT would still be entitled to

consider whether the employer had just cause or excuse to dismiss the employee. A valid termination pursuant to contract may still be without just cause or excuse under statute.

- **Be prepared to substantiate dismissals with actual reasons.** Even if an employer terminates an employee's employment with salary in lieu of notice without reasons, the employer must be prepared to substantiate the actual basis of dismissal. This may extend to being able to respond with contemporaneous employment records that the termination was made with just cause or excuse based on the reason put forward by the employer in legal proceedings or if the employee has adduced sufficient evidence to call for an answer. With this ECT decision, depending on the circumstances, it would not be sufficient for the employer to remain silent or simply assert that there was no particular reason for the dismissal. Generally speaking, misconduct, poor performance, genuine redundancy, incapacity, loss of a necessary qualification, or a real operational requirement may provide just cause or excuse but must be properly substantiated.
- **The importance of maintaining contemporaneous records.** Timely warnings, feedback, performance assessments and evidence from decision-makers are important. Such records carry more evidential weight than general assertions made after the event in a wrongful dismissal dispute. In contrast, high level assertions, or ex post facto explanations or accounts after the event are generally insufficient to demonstrate just cause or excuse under Section 14(2).

However, as mentioned, this decision has been the subject of much debate and discussion due to the divergence between the approach adopted by the ECT in this decision, and the common law position, Sections 10(1) and 11(1) of the EA, and the Guidelines. It remains to be seen whether the Singapore High Court would affirm or overrule this decision as leave to appeal the decision has been granted.

If you would like information and/or assistance on the above or any other area of law, you may wish to contact the Partner at WongPartnership whom you normally work with or any of the following Partners:

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