

5/8/2020

CCS Insights

Employees Has No Right To Be Absent

See beyond the numbers



20年老臣子追逐梦想被炒
Quit Your Job To Chase Your Dreams?



	请假和缺席的定义 Scope of Leave and Absenteeism 
Are	<ul style="list-style-type: none"> • 法律并没有诠释“请假”这个字。
Your	<ul style="list-style-type: none"> • 牛津高阶学习者的《现代英语词典》将“请假”定义为“获得准许、同意、权利缺勤”。
Employees	<ul style="list-style-type: none"> • The term “leave” is not defined in law.
Missing	<ul style="list-style-type: none"> • Oxford Advanced Learner’s Dictionary of Current English defines leave as “Permission, consent, authority to be absent from duty”.
In	
Action	
	<div style="text-align: right;">4</div>

	<p>Pan Global Textiles Bhd Pulau Pinang v. Ang Beng Teik </p>
<p>Are</p>	<ul style="list-style-type: none"> • 没有员工可以在没有获得准许的情况下请假，未经允许就缺席属于严重违反了公司的纪律。
<p>Your</p>	
<p>Employees</p>	<ul style="list-style-type: none"> • 因此，在没有许可下继续旷工将构成行为不当，让雇主为解雇有着正当的理由（工业纠纷法作者 OP Malhotra 在书中如此解说）。
<p>Missing</p>	
<p>In</p>	<ul style="list-style-type: none"> • No employee can claim as a matter of right leave of absence without permission and when there might not be any permission for the same. Remaining absent without any permission is gross violation of discipline. Hence, continued absence from work without permission will constitute misconduct justifying the discharge of a workman from service (OP Malhotra on The Law of Industrial Disputes)
<p>Action</p>	
	<p style="text-align: right;">5</p>



	<h2 style="text-align: center;">Cycle & Carriage Bintang Berhad v. Rita</h2> 
Are	<ul style="list-style-type: none"> • 索赔人当时是该公司的销售代表。
Your	
Employees	<ul style="list-style-type: none"> • 索赔人在公司的批准下，在1998年4月和5月期间，请了一个月零两天的无薪假期，同时间中还多次请假。
Missing	
In	<ul style="list-style-type: none"> • 有鉴于此，公司对她的工作表现不满意，而她也已经知道这一点。
Action	<ul style="list-style-type: none"> • 然而，与其担心自己的工作进展，她似乎对爬山更感兴趣。
	

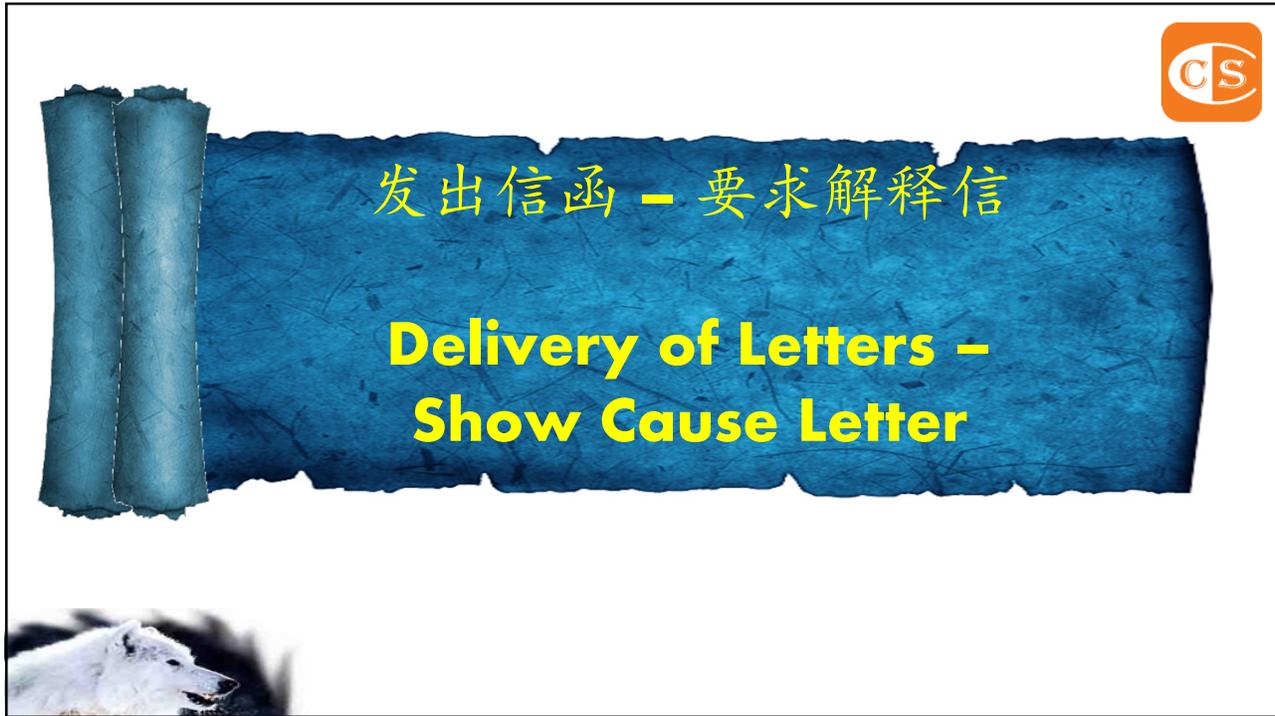
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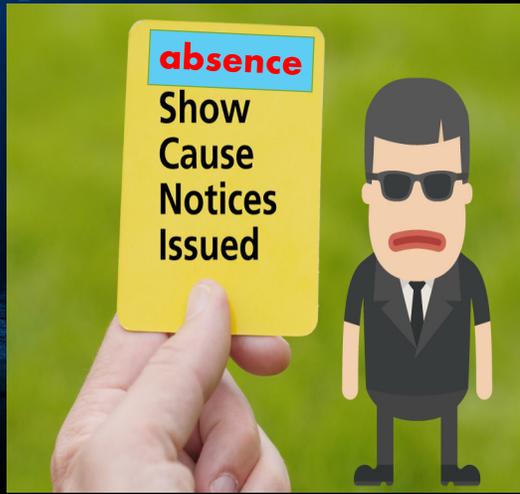
	<h2 style="text-align: center;">Cycle & Carriage Bintang Berhad v. Rita</h2> 
Are	<ul style="list-style-type: none"> • The claimant was working as a sales representative for the company, she had gone on unpaid leave with the approval of the company for one month and two days in April and May 1998 and numerous other times.
Your	
Employees	
Missing	<ul style="list-style-type: none"> • Meanwhile the company was not happy with her work performance and she had known this.
In	
Action	<ul style="list-style-type: none"> • Instead of being concerned about her work she was more interested in going for mountain climbing.
	

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	Cycle & Carriage Bintang Berhad v. Rita 
Are	<ul style="list-style-type: none"> • 索赔人在1998年7月31日给公司写了一封信，要求从1998年9月1日至5日申请四天的无薪假期，因为她要去参加在沙巴亚庇的登山探险。
Your	
Employees	<ul style="list-style-type: none"> • 公司这一次并没有批准索赔人的请假申请，但是索赔人仍然去参加登山探险活动。
Missing	
In	<ul style="list-style-type: none"> • By letter dated 31 July 1998, the claimant had applied for four days unpaid leave from 1-5 September 1998 to participate in a mountain climbing expedition in Kota Kinabalu, Sabah.
Action	<ul style="list-style-type: none"> • The company did not approved the claimant's leave application this time but the claimant still participate in a mountain climbing expedition.
	<p style="text-align: right;">10</p>



	<p>Cycle & Carriage Bintang Berhad v. Rita</p> 
<p>Are</p>	<ul style="list-style-type: none"> 当索赔人于1998年9月7日结束休假回到公司岗位后，她收到了销售经理一封日期标为1998年9月7日的信，信中要求索赔人对她的“缺勤”作出解释。 When the claimant returned from leave on 7 September 1998, she received a letter from the sales manager dated 7 September 1998 requesting an explanation from the claimant regarding her “absence from work”. 
<p>Your</p>	
<p>Employees</p>	
<p>Missing</p>	
<p>In</p>	
<p>Action</p>	
	<p>12</p>



	<p>Cycle & Carriage Bintang Berhad v. Rita</p> 
Are	<ul style="list-style-type: none"> • Dear Sir,
Your	<ul style="list-style-type: none"> • I refer to your letter and would like to bring this matter to your attention once again regarding my taking unpaid leave to climb Mt. Kinabalu in Sabah.
Employees	<ul style="list-style-type: none"> • I have tried appealing to both you and the Human Resources GM for this chance in a lifetime opportunity and with age catching up on me, it would be difficult for this opportunity to be taken again once it has passed.
Missing	<ul style="list-style-type: none"> • In the light of the present economic circumstances, I took this opportunity to achieve this dream of mine... to climb Mount Kinabalu.
In	
Action	
	<p style="text-align: right;">14</p>

	<h2 style="text-align: center;">Cycle & Carriage Bintang Berhad v. Rita</h2> 
Are	<ul style="list-style-type: none"> • Dear Sir,
Your	<ul style="list-style-type: none"> • I have been preparing myself physically for this difficult and strenuous climb for the past 6 months.
Employees	
Missing	<ul style="list-style-type: none"> • I have also paid in full about RM3,000.00 in advance for the above expedition for my husband and I.
In	<ul style="list-style-type: none"> • The group for this expedition comprises 2 Americans and 2 Germans who have make the advance arrangement to join us.
Action	<ul style="list-style-type: none"> • Therefore, the date for the expedition cannot be changed.
	<p style="text-align: right;">15</p>

	<h2 style="text-align: center;">Cycle & Carriage Bintang Berhad v. Rita</h2> 
Are	<ul style="list-style-type: none"> • I have been a loyal and productive employee of this company for the last 20 years and my record has shown some exemplary and outstanding performance for my sales department.
Your	
Employees	
Missing	<ul style="list-style-type: none"> • Over the years, I have even given up my annual leave in order to achieve more sales for the company.
In	<div data-bbox="1013 1329 1398 1791" style="float: right; border: 1px solid black; padding: 5px;">  <p style="text-align: center;">一品</p> <p>依老臣之见，楼上一日不踢，日后必成傻逼，请管理三思啊！</p> </div>
Action	<ul style="list-style-type: none"> • Yours faithfully
	<p style="text-align: right;">16</p>



	<p style="text-align: center;">Cycle & Carriage Bintang Berhad v. Rita</p> 
<p>Are</p>	<ul style="list-style-type: none"> • 1998年9月8日早上，公司给索赔人一封标为1998年9月7日的信。
<p>Your</p>	
<p>Employees</p>	<ul style="list-style-type: none"> • 拒绝了她的书面解释，并从1998年9月1日起终止其雇佣合约，理由是：“公司认为你违反了你的雇佣合约，解雇从1998年9月1日起生效。
<p>Missing</p>	
<p>In</p>	<ul style="list-style-type: none"> • The next morning on 8 September 1998, the company gave the claimant a letter dated 7 September 1998 rejecting the claimant's written explanation and terminated her services with effect from 1 September 1998 on the grounds that, "it is deemed that you have breached your contract of employment effective 1 September 1998."
<p>Action</p>	
	<p style="text-align: right;">18</p>



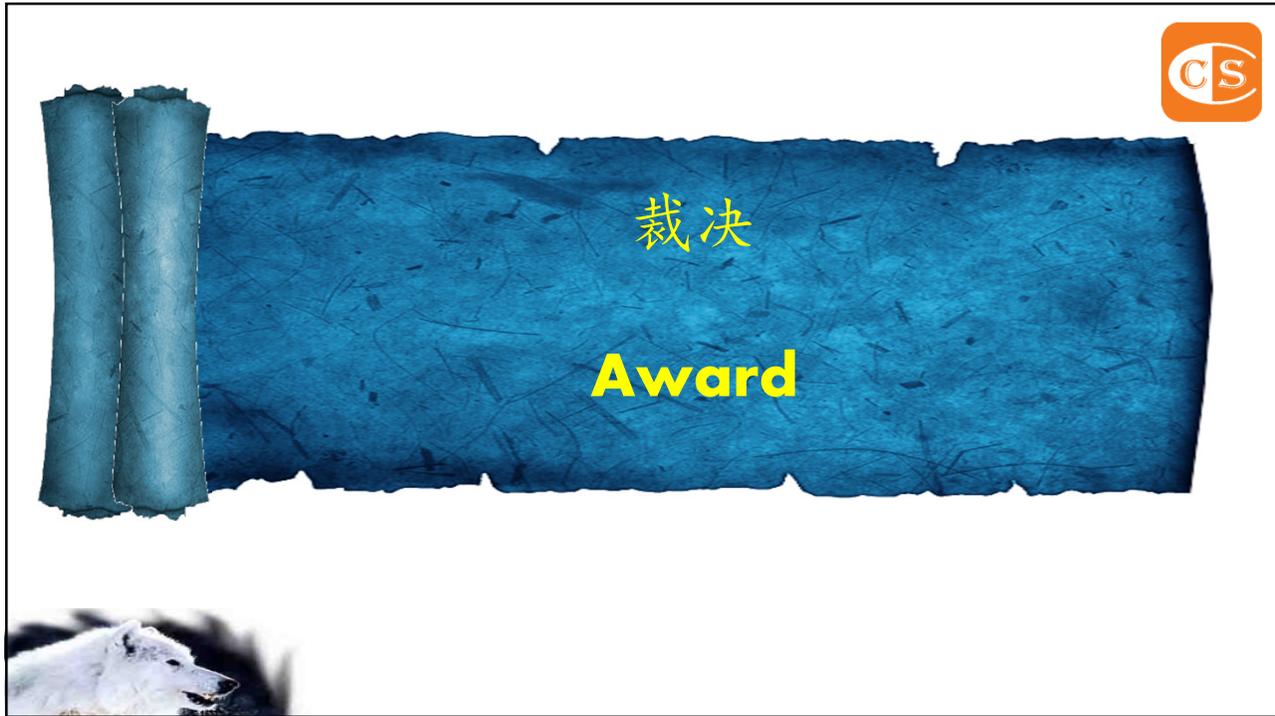
	<p>Cycle & Carriage Bintang Berhad v. Rita </p>
Are	<ul style="list-style-type: none"> • 索赔人在1998年9月8日收到解雇信，离开公司前，她向销售经理提交了上诉和道歉信。
Your	
Employees	<ul style="list-style-type: none"> • 索赔人争辩说，她曾向销售经理提出请求，而销售经理对她说：“如果真的想去，就去。我不想破坏你的假期。”
Missing	
In	<ul style="list-style-type: none"> • Before the claimant left the company’s premises on 8 September 1998 following the termination letter, she submitted a letter of appeal and apology to the sales manager.
Action	<ul style="list-style-type: none"> • The claimant contended she had pleaded with the sales manager, who had remarked “Go if you have to go. I don’t want to spoil your holidays.”
	<p style="text-align: right;">20</p>

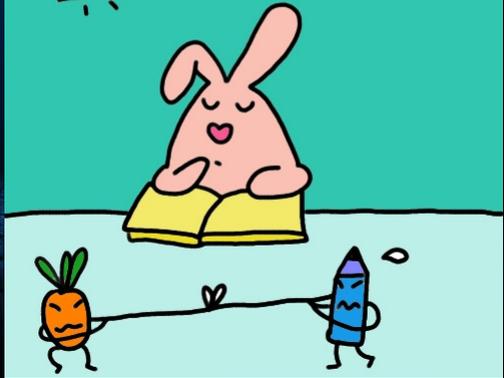


公司不接受上诉

Company rejected the Appeal

	<p>Cycle & Carriage Bintang Berhad v. Rita</p> 
<p>Are</p>	<ul style="list-style-type: none"> • 随后，公司在1998年9月23日的信中通知索赔人，她的上诉已被驳回。
<p>Your</p>	
<p>Employees</p>	<ul style="list-style-type: none"> • 也因为这样，索赔人举报遭到公司不公正的解雇。
<p>Missing</p>	<ul style="list-style-type: none"> •
<p>In</p>	<ul style="list-style-type: none"> • Subsequently, by letter dated 23 September 1998, the company informed the claimant that her appeal has been rejected.
<p>Action</p>	<ul style="list-style-type: none"> • It was with this remark that the claimant proceeded to go on leave. The claimant claimed unfair dismissal.
	 <p>22</p>



	<p>Cycle & Carriage Bintang Berhad v. Rita</p> 
<p>Are</p>	<ul style="list-style-type: none"> • 公司有责任在工作场所保持纪律，员工如果完全拒绝遵守公司的指示，那么这将是严重违反纪律的行为。 • 一而再的请假爬山，她表现出一种完全蔑视公司权威的态度。 • 因此，公司终止她的雇佣合约的决定是正确的。 <div data-bbox="917 1291 1421 1795"> <p>http://mini528.pixnet.net/blog</p> <p>興趣 ≠ 工作?!</p>  </div>
<p>Your</p>	
<p>Employees</p>	
<p>Missing</p>	
<p>In</p>	
<p>Action</p>	

	<h2 style="text-align: center;">Cycle & Carriage Bintang Berhad v. Rita</h2> 	
Are	<ul style="list-style-type: none"> The company has a duty to maintain discipline at a workplace and when there is a total refusal to comply with the direction of the company it amounts to a gross violation of discipline. 	
Your		
Employees		
Missing		
In		
Action	<ul style="list-style-type: none"> By doing so she had displayed an attitude of outright defiance of authority. Hence, the company was right in deciding to terminate her services. 	
		

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