

# CCS Insights

Communication - Managing  
**Absence** at Work

*See beyond the numbers*





# Landex (Malaysia) Sdn Bhd v. Tan



Are

- 涉及员工在1998年12月21日至26日这段时间，获得公司批准休假。

Your

- 他在1999年1月4日重回工作岗位 [1999年1月2-3日，是周末休息日]

Employees

Missing

- Tan already on approved leave from 21 Dec 1998 to 26 Dec 1998.

In

- However he reported for duty on 4 Jan 1999 [2 -3 Jan 1999 were weekend off].

Action



# Landex (Malaysia) Sdn Bhd v. Tan



Are

- 公司在1999年1月6日将他解雇：

Your

- 未经公司许可或批准，在1955年劳工法令第15(2)条文下，违反雇佣合约

Employees

Missing

- He was dismissed by the Company on 6 Jan 1999:

In

Action

- Without prior permission or approval, breach of the employment contract under s 15(2) of the Employment Act 1955



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# 员工的论点 Claimant's Arguments







# Landex (Malaysia) Sdn Bhd v. Tan



Are

- 涉及员工说在1998年12月28日，他有打电话到公司尝试联络他的上司，以便能够知会上司他要延长休假，但是他被告知其上司在忙。

Your

Employees

- 因此，他只好向书记说他要延长休假因为他需要陪伴家人，并特别要求书记通知其上司。

Missing

- Tan said he had telephone his office on 28 Dec 1998 to extend his leave and tried to speak to his superior, but was informed that his superior was busy.

In

Action

- He spoke to the clerk that he wanted to apply for the extension and specifically requested her to inform his superior, as he had to be with family.

A large, textured blue graphic resembling a piece of torn paper or parchment. On the left side, there are two vertical, rolled-up scrolls of the same material.

公司的论点

**Company's Arguments**





# Landex (Malaysia) Sdn Bhd v. Tan



Are

- 员工到底算不算有知会公司?

Your

- 以有关条文为目的, “陪伴家人” 不算是合理原因

Employees

- Whether the claimant had informed the Company?

Missing

- “To be with family” was not a reasonable excuse within the intention of the section.

In

Action





# Landex (Malaysia) Sdn Bhd v. Tan



Are

Your

Employees

Missing

In

Action

- 公司还促请法庭援引《证据法令》第114 (g) 条文，因为涉及员工没有传召书记出庭作证。

- The Company also urged the Court to invoke s 114(g) of the Evidence Act against the claimant for failing to call the clerk to prove his allegation.





Two rolled-up scrolls with a textured, parchment-like appearance, positioned vertically on the left side of the slide.

工业法庭的结论

**Industrial Court's Conclusion**





# Landex (Malaysia) Sdn Bhd v. Tan



Are

- 这不算是违反雇佣合约，因为证据显示涉及员工有合理的原因 [其实真正的原因是他母亲因癌症去世]，并有告知或试图告知其雇主

Your

Employees

- 即使已经确定了旷工的不当行为，仍然存在这样的问题，那就是在了解有关旷工的性质或实情后，是否应施加解雇这种极端的惩罚。

Missing

In

- It was not a breach of contract, the evidence showed that the claimant had reasonable excuse [In fact his mother passed away due to cancer] and also informed or attempted to inform his employer.

Action

- Even is there was established the misconduct of absenteeism, there was still the question whether the nature or evidence of such absenteeism deserved the extreme punishment of dismissal.





公司必需证明解雇的理由  
是正当的

**Company has to prove the just  
cause for the dismissal**







# Landex (Malaysia) Sdn Bhd v. Tan



Are

- 同时，解雇是合情合情的举证责任是在公司身上。

Your

- 最终，员工胜诉，公司作出以下赔偿赔偿

Employees

Missing

In

Action

赔偿	计算	总共	备注
追薪 backwage	RM2,050 x 20 months (*)	RM41,000	• 追薪最高为 24个月
复职替代赔偿 compensation <i>in lieu of reinstatement</i>	RM2,050 x 7 years (*)	RM14,350	* 他在公司服务 了7年，每1年的 服务，可以享有1 个月的赔偿
		RM55,350	



# Landex (Malaysia) Sdn Bhd v. Tan



Are

- Some more the burden was on the Company to prove the just cause for the dismissal.

Your

Employees

Missing

In

Action

296	Industrial Law Reports 2001	[2001] 1 ILR
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## Remedy

The court has decided to award the claimant, *in lieu* of a reinstatement order, in the following monetary compensation:

- |  |              |
|--|--------------|
| a) Backwages @ RM2,050 monthly x 20 months   | ... RM41,000 |
| b) Compensation for loss of employment @<br>RM2,050 x 7 years of service up to<br>dismissal date | ... RM14,350 |

Total	<u>RM55,350</u>
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The total sum of RM55,350 is to be paid by the company to the claimant through his solicitors/counsel within 60 days of the award, less statutory contributions if any.

**For further consultation, please contact:**

**Chin Chee Seng**

Partner

+6012 365 4331

cschin@ccs-co.com

**Jared Low**

Assurance Manager

+6018 763 4813

jared@ccs-co.com

**Wong Woei Teng**

Audit Manager

+6017 237 8233

woeiteng@ccs-co.com

**Vivian Lim**

HR Manager

+6012 618 6220

vivian@ccs-co.com

**Yap Huey Shan**

Assistant Audit Manager

+6012 369 7222

hueyshan@ccs-co.com

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