

HR Law Hotline

July 24, 2006

INDIAN LABOUR COURT TREATS RETRENCHMENT WITHOUT NOTICE AS ILLEGAL

A financial daily has reported a case where the Labour Court of the State of Karnataka has sent a legal notice to a subsidiary of a UK-based telecom company, BelAir Communications Private Limited ("**BelAir**"), for abruptly shutting down its captive call center in Bangalore, resulting in the retrenchment of 93 employees without payment of salaries. The Labour Court reportedly acted on a complaint filed by the Union for IT Enabled Services professionals, ("**UNITES**"). BelAir is registered with the Software Technology Parks of India ("**STPI**").

The closure and retrenchment of employees attracts the provisions of the Industrial Disputes Act, 1947 ("**IDA**") if such employees are "workmen" as defined in the IDA. The IDA is a central act extending to whole of India. Under the provisions of the IDA, upon closure of an undertaking, those workmen who have been in continuous service for at least one year will be entitled to notice and compensation as provided in the IDA. The IDA also prescribes certain conditions precedent to the retrenchment of workmen by an establishment which has more than 50 but less than 100 workmen. These conditions include (i) a month's notice in writing to the workmen who have been in continuous service for at least one year, or wages in lieu of such notice; (ii) compensation to such workmen equivalent to 15 days' average pay for every completed year of continuous service or any part thereof in excess of six months and (iii) service of a notice in the prescribed manner to the appropriate government.

Under the IDA, the compensation amount is limited to the average pay for three months if the undertaking is, *inter alia*, closed due to (i) financial difficulties, (ii) accumulation of undisposed stocks or (iii) the expiry of the lease or licence granted to it.

According to reports, BelAir closed its Bangalore office on June 10, 2006 after giving oral notice to its employees, and had neither paid salaries since May 2006 nor any compensation. The IDA requires an employer who has more than 50 workers to give notice to the appropriate government 60 days prior to the intended closing date citing the reasons thereof. The report suggests that such notice has not been given.

BelAir is the third establishment to shut shop in India after the Powergen, a British energy firm and Apple Computer, the IT major in the space of two months.

It now remains to be seen how the matter unfolds and progresses, as it would have a bearing on similar labour law issues arising in future.

- **Rina Kamath & Vyapak Desai**

Source: *Business Standard*, July 20, 2006

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