

CHAPTER SIX

LINGUISTIC FEATURES OF INDUSTRIAL LAW REPORTS

6.0 Introduction

This chapter describes the linguistic features of the dismissal cases of the Industrial Law Reports. It discusses the common linguistic features found in the different moves or rhetorical structure of the ILR. Move Four, Giving of Award is the most important part of the case as all the earlier moves are found in this section and furthermore, a few new moves have been identified. This chapter also discusses some of the technical words peculiar to this legal community highlighting the need to be familiar with legalese terms and jargons in reading and understanding the reports better.

6.1 Linguistic Realizations

The realization of genres are mainly through schematic structure and realizational patterns. In the schematic structure, the staged and goal-oriented organization of genre is expressed linguistically through a fundamental constituent structure in the text. The realizational pattern boundaries between stages or moves and the function of each stage or move of the genre are expressed through language choices realized in a text. In this study, some of the common linguistics features of the ILR such as nouns and noun phrases, sentence length, complex prepositional phrases, binomials and multinomial expressions, tenses and verbs of contention are analyzed and described. Although legal language is difficult to understand, their characteristics features can be studied and learned. Hyland (University of Malaya, 2008), in his talk on genre states that, “genres

do constrain us as our choices are made within expected patterns but in making these texts explicit (structural patterns and grammatical choices), we allow students to write effectively". This indicate that although genres do constrain us, knowing the structural organization and the linguistic choices of any genre, in this case the ILR, will help us in identifying and understanding the genre better.

6.2 Findings

Ten cases (Appendix C) are analyzed for the linguistic features of the dismissal cases of the Industrial Law Reports. The cases chosen for this analysis are sample cases of poor performance, insubordination, absenteeism, breach of policies, dismissal – *ex parte* hearing and. Six of the cases are awarded justified dismissal and four other cases are awarded unjustified dismissal. The length of the cases varied from 1128 words per case to a length of 4655 in other cases.

6.4 Move 1 – Identifying the Case

In this move, proper nouns are commonly found. Proper nouns are used here to refer to the disputing parties, the place where the case is heard and the name of the Chairman presiding over the case. The company or the employer is represented by the name of the company and the individual who is challenging the company is identified by his/her name. This is found in all the ten cases. Examples of the **proper nouns** are:

1. FOREST VISION SDN. BHD
v.
MUTALIP BOHARI
LABOUR OFFICE, KAPIT
LIM HENG SENG
AWARD NO. 238 OF 2000
3 MAY 2000

2. CISCO (M) SDN. BHD.
v.
WAN AZIZAN WAN OTHMAN
INDUSTRIAL COURT, KUALA LUMPUR
SITI SALEHA SHEIKH ABU BAKAR
AWARD NO. 266 OF 2000
13 MAY 2000

3. MOTHER'S NURSING HOME
v.
PAKIAN VEERAPPAN
INDUSTRIAL COURT, KUALA LUMPUR
JOHN LOUIS O'HARA
AWARD NO. 522 OF 2000
22 SEPTEMBER 2000

4. TSURITANI (MALAYSIA) SDN. BHD. MELAKA
v.
SHA'ARI SAHAT & ORS
LABOUR DEPARTMENT, MELAKA
YUSSOF AHMAD
AWARD NO 717 OF 2000
20 DECEMBER 20000

5. NAM HENG INDUSTRIES SDN. BHD.
v.
NISHTAR SHAHUL HAMED
INDUSTRIAL COURT, JOHOR BAHRU
K. RAMAKRISHNAN
AWARD NO 124 OF 2001
27 FEBRUARY 2001

6. ASSUNTA HOSPITAL, PETALING JAYA
v.
ROZZANA MOHAMED SAZALI
INDUSTRIAL COURT, KUALA LUMPUR
ABU HASHIM ABU BAKAR
AWARD NO 296 OF 2001
2 MAY 2001

7. TECHNOBOUND GROUP SDN. BHD
v.
CHONG KIEN KEE
INDUSTRIAL COURT, IPOH
SOO AI LIN
AWARD NO 313 OF 2001
10 MAY 2001

8. NT COMPUTERS SDN. BHD
v.
NG AH SIEW
INDUSTRIAL COURT, PULAU PINANG
SYED AHMAD RADZI SYED OMAR
AWARD NO. 480 OF 2001
30 JUNE 2001

9. PENAS REALTY SDN BHD
v.
CHEE YEW KONG
INDUSTRIAL COURT, PULAU PINANG
SYED AHMAD RADZI SYED OMAR
AWARD NO. 580 OF 2001
31 JULY 2001

10. HAMAY GLASS SDN BHD
v.
LOGANTHAN VADAMALAI
INDUSTRIAL COURT, KUALA LUMPUR
TAN KIM SION
AWARD NO 127 OF 2000
3 MARCH 2000

The case that is brought to the Industrial Court is identified by the noun ‘Award’ followed by an identification number. Like other legal cases, this is quite a standard or consistent move which is easy to identify. The linguistic features do not pose a problem to any readers including new members of the legal community or lay persons who can recognize this move of Identifying the Case almost immediately.

6.5 Move 2 – Summary of the Case

In Move 2, a headnote is observed, which to Badger (1995) is a string of words and phrases that provide a brief account of the dismissal charge(s) and the nature of the dismissal. **Nouns (N)** and **noun phrases (NP)** are used in these headnotes to give a summary of the case and the dismissal charges. A few examples are given below:

1. **Termination of services (NP) – By words or conduct (PP)** – Whether words uttered tantamount to termination of services (subordinate clause)
2. **Performance (N) – Poor performance (NP)** – Allegation of inability to supply labour force – Whether substantiated (subordinate clause)
3. **Summary dismissal (NP)** – Company absent at trial date – reasons not communicated – *Ex parte* hearing – Whether dismissal with just cause or excuse (subordinate clause)
4. **Absenteeism (N) – Absent from work for two consecutive days (NP)**– Whether tantamount to a breach under s. 15 Industrial Relations Act 1967 – Whether employees must be absent from work three working days for s. 15 to apply Condonation – Existence of – Whether Proven (subordinate clause)

Strike (N)– Whether illegal – Whether employees’ action fell within definitions of s. 2 of Industrial Relations Act 1967 (subordinate clause)

Industrial Court: Procedure – Trials – Whether court could decide on reason not relied upon in dismissing employees – Exception – Industrial Relations Act, 1967, s. 30 (5)

5. **Medical leave (NP)** – Services terminated despite producing medical certificate – Whether dismissed with just cause or excuse (subordinate clause)

6. **Probationer (N) – Performance (N) – Poor performance (NP)** – Allegation of – Whether substantiated – Whether warnings accorded prior to dismissal – Whether reasonable to hold claimant solely responsible for short-comings – Whether claimant accorded reasonable time to carry out duties – Whether dismissal with just cause and excuse (subordinate clause)

7. **Breach of company policies (NP) – Dishonesty(N) – Misappropriation of company funds (NP) – Transfer of company funds into personal account (NP) – Conflict of interest (NP)** – Registration of another company bearing same name and having similar nature of business – Whether allegations substantiated – Whether dismissal with just cause and excuse (subordinate clause)

8. **Insubordination (N) – Refusal to sign letter on redesignation of duties (NP)**– Whether such refusal justified – Performance – Negligence – Failure to discharge duties properly resulting in closure of branches – Whether substantiated – Whether dismissal with just cause and excuse (subordinate clause)

9. **Resignation (N)**– Letter of retirement – Whether signed voluntarily – Whether there was forced resignation (subordinate clause)

10. **Misconduct (N) – Sleeping while on duty (NP)** – Using company’s utilities to further misconduct – Allegation of – Whether substantiated (subordinate clause)

From the examples given, it can be observed that the charges in the headnotes are described using either a single noun word, for example ‘dishonesty’, ‘misconduct’, ‘negligence’, ‘insubordination’ etc. or a few noun phrases such as ‘poor performance’, ‘misappropriation of company funds’, ‘conflict of interest’, ‘sleeping while on duty’, ‘allegation of ‘etc. Nouns and noun phrases are used to identify the type of case and the subordinate clause to indicate the charge (s).

Since move 2 is the summary of the case move, the common linguistic features in the summary texts are the nouns and noun phrases and the use of certain verbs to describe the dispute. I called these verbs, ‘verbs of contention’. The words ‘claimant’ (for the employee) and ‘company’ (for the employer) are important for readers to know to identify both disputing parties. The words are clearly illustrated in all the ten cases. Examples of these two words are given from the ten cases analyzed below:

2. The *claimant* worked for.....The *company*(C.1)
3. The *claimant* was employed....when the *company*....(C.2)
4. The *claimant*.....that the *company* unfairly.....(C.3)
5. The *claimants* consisted of the production or administrative staff.....The *company* in.....(C.4)
6. The *claimant* was the *company*’s operation....the *company* made him(C.5)
7. The *claimant* commenced employmentThe *company* dismissed her.....(C.6)
8. The *claimant* was the managing director....evidence in chief, the *company* (C.7)
9. The *claimant* was employed by.....The *company* however denied.....(C.8)

10. The *claimant*... The *company* however....(C.9)

11. The *claimant* was employed as an....The company also....(C.10)

Readers must also be aware of a few common words in this move which feature the verb of contention. The verbs are ‘contended’, ‘alleged’, ‘disputed’, ‘submitted’ and ‘claimed’. These verbs showed how the disputing parties put forward their charges by describing their versions of the claims and the company refuting it/them. The following examples are given:

1. The claimant **contended** that COW 1 held him responsible for the damage and uttered the word “pulang”, i.e. to go back. The company **submitted** that the claimant left on his own accord when lorry no. 26 broke down and that he did not return to work thereafter.
2. The company **submitted** that the transfer was solely for the claimant to rectify a labour shortage problem of security guard services involving the Titan Group. The claimant was subsequently dismissed when the company **alleged** that he failed to rectify the aforesaid problem.
3. The claimant **alleged** that the company unfairly dismissed her when she was given a 24-hour notice of termination and a cheque for RM500.
4. The claimants **submitted** that on 6 May, they were initially prevented from entering the company premises for the first half of the day. They even **claimed** that they were paid for that day. It is because of this continued absence, i.e. since 4 May, that the company **contended** that the claimants have terminated their employment under s. 15 (2) of the Employment Act.

5. He **alleged** that on 13 November 1999 while on duty in the company's premises, he injured himself. In addition he argued that his salary was not paid by the company during his sick leave and the company never **disputed** the medical leave.
6. She **alleged** the company claimed that the claimant was guilty of sleeping during working hours, misusing the company's utilities by sleeping in the company's van with the air condition on, and not being truthful by giving several versions of the incident when found sleeping on duty. The company also **submitted** his evidence before the court that her superior persuaded her to become a credit control manager due to her satisfactory work performance, that she would no longer be on probation and would be confirmed in the latter post in a redesignation exercise. The company **contended** that the claimant continued to be on probation despite re-designated as credit control manager and that it had given her the necessary notice, warning, counseling and sufficient opportunity to improve herself when her work performance was below its expectation.
7. The claimant denied the above and **submitted** oral and documentary evidence to prove that he had pursued the said actions in the best interests of the company.
8. The company **submitted** that as a result of her failure to detect discrepancies concerning its stocks, it suffered considerable losses which resulted in two of its branches closing down. The claimant **contended** that she refused because the letter contained a penalty clause which she was not agreeable to.
9. The claimant **claimed** that he was forced to a retirement letter. He further **contended** that he was in fact dismissed because he refused to sign a consent letter for a salary reduction of 25%. The company however **claimed** that the claimant had voluntarily signed the option letter to retire and was paid an *ex gratia* payment of RM17,600. The claimant **alleged** that the company's action tantamount to an unjust dismissal.

10. The company **claimed** that the claimant was guilty of sleeping during working hours, misusing the company's utilities by sleeping in the company's van with the air condition on, and not being truthful by giving several versions of the incident when found sleeping on duty. The company also **submitted** his evidence before the court contradicted earlier statements made by him and there was no dispute that on the night the claimant was on duty there had been an emergency.

The claimant **claimed** that he was resting after his meal and that he did not come out of the van when he saw the factory manager because he felt he was not wrong in resting after his meal.

The use of these verbs of contention are consistent throughout Move 2 in all the ten cases. Case 1 is interesting as code switching can be seen here,

e.g: "The claimant contended that COW 1 held him responsible for the damage and uttered the word "*pulang*", i.e. to go back. The claimant returned to the camp and after having lunch, he went back to see COW 1 again who told him this time "*lu boleh pulang*". The claimant considered this to mean that he had been fired. When the claimant went to collect his pay, he proceeded to see the managing director, one Lau, at the company's headquarters who allegedly said, "*Lu tidak boleh balik lagi sebab lu bikin rosak saya punya lori.*"

Being a multilingual community consisting of people of different ethnic groups, it is not surprising to find that in some cases the use of Malay words are admissible as evidence in the issue of dismissal. It can be seen that Malay words are also found in the other sections of the case. Code switching is especially common among the cases from Sabah and Sarawak because the conversations between the employer (company) and

the employee (claimant) are in Malay as it the main language of communication among some of the uneducated workers. In this case for example, the Malay words that are uttered by the officer are ambiguous and does not actually state that the person is fired but rather that he is to go home. But it could also be the lack of proficiency of the Chinese in speaking Malay and can carry the connotative meaning 'you are terminated'.

Beside the nouns and verbs of contention, another common linguistic features here is the use of complex prepositional phrases which consist of noun + prepositional phrase + noun such as 'pursuant to a show cause letter'(C.5), 'pursuant to its employment rules' (C.6) and 'pursuant to allegations' (C.7) are also found in this move.

Past tense is used in Move 2 because it is a summary of the case which reports what had happened earlier right up to the time the case is brought to the Industrial Court. Move 2 in all the ten cases exhibits this use of tense. Past tense is very common in the reports of legal cases. This is shown in the examples below:

Case 1

The claimant **worked** for the company as a logging truck driver. At the relevant time, he **was assigned** to use lorry no. 26. The lorry **suffered** some damages and the claimant **reported** the matter to the camp manager (COW 1). The claimant **contended** that COW 1 **held** him responsible for the damage and **uttered** the word "pulang", i.e. to go back. The claimant **returned** to the camp and after having lunch, he **went** back to see COW 1 again who **told** him this time "lu boleh pulang". The claimant **considered** this to mean that he **had been fired**. When the claimant **went** to collect his pay, he **proceeded** to see the managing director, one Lau, at the company's headquarters who allegedly **said**, "Lu tidak boleh balik lagi sebab lu bikin rosak saya punya lori."

The company **submitted** that the claimant **left** on his own accord when lorry no. 26 **broke down** and that he **did** not return to work thereafter. They **sought** to prove this by adducing a document dated 1 July 1998 by which the claimant purportedly **self-terminated** himself.

Case 2

The claimant **was** employed by the company as a branch manager. He **was transferred** to the company to the company's branch in Johor Bharu. The company **submitted** that the transfer **was** solely for the claimant to rectify a labour shortage problem of security guard services involving the Titan Group. The claimant **was** subsequently **dismissed** when the company **alleged** that he **failed** to rectify the aforesaid problem.

Case 3

The claimant **alleged** that the company unfairly **dismissed** her when she **was given** a 24-hour notice of termination and a cheque for RM500. The company **was** absent at the trial date despite being given several notices to attend and the matter **proceeded** ex parte.

Case 4

The claimants **consisted** of the production or administrative staff in the company. On 4 and 5 May 1995, they **did** not turn up for work. Their refusal **was found** to be based upon not being paid the proper rate for overtime work and an allegation that the company **was** discriminating against the Malay employees and the dismissal of their assistant manager. The claimants **submitted** that on 6 May, they **were** initially **prevented** from entering the company premises for the first half of the day. After being allowed in, they **had** a meeting with the industrial relations director. They **were** given their punch cards and they **punched** out at the end of the morning shift. They even **claimed** that they **were paid** for that day. The claimants **submitted** that on 6 May, they **were** initially **prevented** from entering the company premises for the first half of the day. This, the company **denied**.

The company **submitted** that on 6 May the claimants not only **continued** to be absent for the first half of the day but **participated** in an illegal strike in front of the company's main gate. It is because of this continued absence, i.e. since 4 May, that the company **contended** that the claimants have terminated their employment under s. 15 (2) of the Employment Act. However the

company, in submitting to this court that the workers **had participated** in a strike on a third day, **had not pleaded** that they **were dismissed** for taking part in an illegal strike.

Case 5

The claimant **was** the company's operation manager. He **alleged** that on 13 November 1999 while on duty in the company's premises, he **injured** himself. Despite producing the medical certificate to the company's attention, the company **made** him work for a few more days in November 1999 during his sick leave.

Upon returning to work, he **was dismissed** pursuant to a show cause letter. In addition he **argued** that his salary **was not paid** by the company during his sick leave and the company never **disputed** the medical leave.

Case 6

The claimant **commenced** employment with the company as a probationary finance manager. She **alleged** that her superior **persuaded** her to become a credit control manager due to her satisfactory work performance, that she **would** no longer be on probation and **would be confirmed** in the latter post in a redesignation exercise. Two months from the said exercise, the company **dismissed** her on the ground of unsatisfactory work performance. The claimant **disputed** the allegation that she **was** an under-achiever.

The company **contended** that the claimant **continued** to be on probation despite **re-designated** as credit control manager and that it **had given** her the necessary notice, warning, counseling and sufficient opportunity to improve herself when her work performance **was** below its expectation. In forwarding the claim of inefficiency, the company's finance director **submitted** that this **included** firstly her inability to locate missing patients' slips; secondly, non-billing of corporate clients; thirdly, unsatisfactory submission of a fixed asset management procedure; fourthly, discrepancies in provision for bad debts; and fifthly, unsatisfactory evaluation of corporate clients in relation to credit facility. Therefore, it **was submitted** that the claimant's dismissal **was exercised** pursuant to its employment rules.

Case 7

The claimant **was** the managing director of the company. He **was removed** as a director pursuant to allegations of transferring company funds into his personal account and registering another company bearing same name and conducting business of similar nature.

The claimant **denied** the above and submitted oral and documentary evidence to prove that he **had pursued** the said actions in the best interests of the company.

It **was noted** that at the end of the claimant's evidence in chief, the company **did** not adduce any evidence to discredit the same. The company's director **did** not even cross examine the claimant so as to challenge his testimony.

Case 8

The claimant **was employed** as an internal auditor. The company **submitted** that as a result of her failure to detect discrepancies concerning its stocks, it **suffered** considerable losses which **resulted** in two of its branches closing down. Consequently, the claimant's duties **had become** redundant. Thereafter, the claimant **was assigned** new duties and **was asked** to sign a letter to such effect. She **refused** and the company **terminated** her services.

The claimant **contended** that she **refused** because the letter **contained** a penalty clause which she was not agreeable to. This clause, she **claimed, required** her to pay for stocks which **went** missing. It **was added** that she **did** not inform the company that she **would have agreed** to sign the letter **had** the said clause **been removed**. The company however **denied** that such a clause **existed**. In defence, she **argued** that the missing stocks could have been removed by the former manager of the branch and he could have adjusted the computer list as well so that the figures would tally. As far as she **knew**, she **had submitted** a report on the discrepancies that **arose** during her stint there.

Case 9

The claimant **claimed** that he **was forced** to a retirement letter. He further **contended** that he **was** in fact **dismissed** because he **refused** to sign a consent letter for a salary reduction of 25%. The company however **claimed** that the claimant had voluntarily **signed** the option letter to retire and **was paid** an *ex gratia*

payment of RM17,600. The claimant **alleged** that the company's action tantamount to an unjust dismissal

Case 10

The claimant **was employed** as an assistant furnace supervisor.

The company **claimed** that the claimant **was** guilty of sleeping during working hours, misusing the company's utilities by sleeping in the company's van with the air condition on, and not being truthful by giving several versions of the incident when **found** sleeping on duty. The company also **submitted** his evidence before the court **contradicted** earlier statements made by him and there **was** no dispute that on the night the claimant **was** on duty there **had been** an emergency.

The claimant **claimed** that he **was** resting after his meal and that he **did** not come out of the van when he **saw** the factory manager because he **felt** he **was** not wrong in resting after his meal.

6.6 Move 3 – Pronouncing Judgment

This move is signaled by the word '**Held**' followed by the decisions of the Court. All ten cases have this word to signal the decision of the court. Arguments for each decision/ charges/allegations of the dismissal are presented here in point form. A number of technical words can be observed as it is a summary of the Court's decisions on the case. Words like 'reinstatement', 'backwages', 'compensation' and peculiar words to the legal community such as 'offence', 'evidence', 'contemporaneous', 'adduce', 'onus' are found in the judgment. Latin words such as in lieu of, mala fide, vide, inter alia, ex gratia, forthwith, thereafter, jurisprudence, notwithstanding and notwithstanding the aforementioned are also found in the decisions of the Court. The use of Latin words are actually common in legal texts. Examples of the words as used in the decisions of the case are described below:

Case: Forest Vision Sdn. Bhd. v. Mutalip Bohari

Held:

[2] COW 1 did not say that the claimant was fired but again merely uttered the word "Lu boleh pulang". Considering that the claimant had already returned to the camp the words could only mean that he had no place in the company, i.e. that he was dismissed and must leave the camp and return to his longhouse **forthwith**. At no time during his testimony did COW1 state that the words he had uttered meant that the claimant was to return home temporarily until lorry no. 26 was repaired and that he could return to his job **thereafter**.

[4] The alleged resignation **vide** the letter dated 1 July 1998 and the **ex gratia** payment of RM1,020.95 reflected in a document entitled "Debit Note" were in fact **contemporaneous** documents issued to the claimant when he went to the company's head office to collect the wages due to him.

Case: Mother's Nursing Home v. Pakiam Veerappan

Held:

[1] It is a basic principle of industrial relations **jurisprudence** that in a dismissal case, the employer must produce convincing and cogent evidence that the employee had been incapable of performing his duties for which he had been dismissed. The burden of proof is on the employer on a balance of probabilities to **adduce** evidence that the workman was dismissed for just cause and excuse.

Case: Nam Heng Industries Sdn. Bhd. v. Nishtar Shahul Hamed

Held:

[2] Reinstatement would not be a proper remedy in this case. As such, the company was ordered to pay **backwages** and **compensation in lieu of reinstatement**.

Case: Assunta Hospital, Petaling Jaya v. Rozzana Mohamed Sazali

Held:

[1] In order to justify the dismissal of the workman on this ground the employer has to establish that the workman was warned about his poor performance; that the workman was accorded sufficient opportunity to improve; and that **notwithstanding** the above the workman failed to sufficiently improve his performance.

Case: NT Computers Sdn. Bhd. v. Ng Ah Siew

Held:

[1] The *onus* was on the claimant to prove that she had submitted the weekly report of the discrepancies. This, she did not do. **Notwithstanding** this, an internal auditor is not assiduous in performing her job if she could not trace the incidence of malpractice in the company.

[4] There was no evidence to infer **mala fide** on the part of the company in dismissing the claimant.

Case: Penas Realty Sdn Bhd v. Chee Yew Kong

Held:

[2] Regarding the pay reduction, the company had proved that they were in fact financially distressed and that the option of reducing staff wages instead of its staff was a way of reducing its overhead costs. The claimant was the only staff in his department to refuse the said reduction. There was no evidence of *mala fide* on the company's part.

The use of binomials and multinomials are also found in this move. Binomial and multinomial expressions are common in legal text. Binomial and multinomial is a sequence of two or more words or phrases that belongs to the same grammatical category and having some semantic relationship and are joined by some syntactic device such as 'and' or 'or' (Bhatia, 1994) or as conjoined phrases (Tiersma, 1999).

The function of these binomial and multinomial are to make the words of legal texts as all inclusive and for further emphasis. Examples of binomials and multinomials are:

Case: Mother's Nursing Home v. Pakiam Veerappan

[1] It is a basic principle of industrial relations jurisprudence that in a dismissal case, the employer must produce *convincing and cogent* evidence that the employee had been incapable of performing his duties for which he had been dismissed.

Case: Nam Heng Industries Sdn. Bhd. v. Nishtar Shahul Hamed

[1] *Apart from* not filing the statement in reply, the company *also made* no attempts to file the relevant documents to support its case. On the other hand, the claimant produced medical certificates to substantiate his medical leave.

Case: Assunta Hospital, Petaling Jaya v. Rozzana Mohamed Sazali

[1] In order to justify the dismissal of the workman on this ground the employer has to establish that the workman *was warned* about his poor performance; that the workman *was accorded* sufficient opportunity to improve; *and* that *notwithstanding* the above the workman failed to sufficiently improve his performance.

[3] There may have been *discussions, comments or dissatisfaction* expressed by the claimant's superior, the finance director, but they are not sufficient to *specifically and finally* warn the claimant to the effect that if she failed to improve within a *specified or given* period, she will have to go.

[6] The evidence is glaringly absent about any *warnings or counseling* for the previous four months when the claimant discharged her responsibilities as the finance manager - no evidence of her shortcomings *then, but* suddenly the criticisms of poor work performance emerges for that short duration after assumption of her new duties.

[12] The claimant was indeed *confirmed but dismissed* due to *bad faith and victimisation* on some ulterior motives of the company. *Unfortunately, or fortunately* for Assunta, there was no *allegation or evidence* of discrimination based on *racial or gender bias or prejudice* against the claimant, because if that was proven, Assunta will have been in deep trouble.

Case: NT Computers Sdn. Bhd. v. Ng Ah Siew

[2] There were contradictions in the claimant's evidence. *On one hand*, she blamed the company's lack of proper procedures for the discrepancies going untraced but *on the other hand*, submitted that she sent the report pertaining to the discrepancies.

Case: Penas Realty Sdn Bhd v. Chee Yew Kong

[1] Evidence showed that the claimant had a *steady and strong* character. It was improbable that he could have been forced to sign his resignation letter by the company.

It is evident that this linguistic device for all inclusiveness is a feature of ILR cases.

The last common linguistic features for move 3 is the words of either 'Just Dismissal' or 'Unjust Dismissal' for the decision of the Court. 'Just dismissal' indicates that the process and charges of dismissal in the case is right and properly carried out while 'Unjust dismissal' indicates otherwise. 'Just Dismissal' are found in six cases and 'Unjust Dismissal' in four of the ten cases analyzed.

Although Move 3 Pronouncing Judgment is given in point form here, there are a number of significant linguistic features peculiar to this genre that can be identified in this move.

6.7 Move 4 – Giving of Award

As stated in chapters four and five earlier, this is the most important part of the ILR. Readers of the ILR will have to read this section for further details of the case and the reason for the award given. Referred to as the **Giving of Award** move, the details of the case, the dismissal charges, the evidence, the findings and the decisions are contained in this move. This move consists some of the earlier moves as well as new moves. The following are the moves that are found in this section of the case:

- (i) Introducing the claimant and his employment history/
Introducing the case
- (ii) Stating the issue of the dispute/Allegation(s) of dismissal
 - Step 1 Claimant's version
 - Step 2 Company's version
- (iii) Providing the evidence to support or dispute the allegation
 - Step 1 Reference to previous cases and laws to support the chairman's argument
 - Step 2 Deriving ratio-decidenti
- (iv) Pronouncing judgment

As mentioned in Chapter Five, reading of the Award move is not necessary if there is no relevance to the case. Readers of ILR are able to know from the headnote and summary of the case move whether they need to read further about a case. The award move is necessary/obligatory when there is a need for further reference, information and details of the case. In this section, I will highlight the linguistic features that are commonly found in the move.

6.7.1 Move 4 – Step 1 Introducing the Claimant and his employment history/Introducing the case

This is the first move in the award section of the report. It either introduces both the disputing parties or the claimant's employment history or both. The common word used here are the verbs '**employed**', '**joined**' and '**appointed**' which indicate the claimants' employment history with the company.

Nouns referring to the cases are indicated by words such as '**reference(s)**', '**dispute**' and '**dismissal(s)**'.

Examples are as follows:

Case 1: The claimant was **employed** as a logging truck driver of the company on 6 September 1997. He was assigned a logging truck to haul logs from various points in the company's timber logging operations area to the company's log pond. The claimant was paid according to the tonnage and distances of logs hauled by him.

Case 2: The **dispute** is over the **dismissal** of the claimant by the company on 5 September 1998.

The claimant was **appointed** as a branch manager of the company at the Alor Setar branch effective on 21 July 1997. His salary was RM1,500 per month.

Case 3: The **reference** is over the **dismissal** of the claimant by the Home on 14 November 1999. The reference was received by this court on 29 June 2000.

Case 4: The honourable minister of human resources had referred to this court under illegal strike s. 20(3) of the Industrial Relations Act 1967 ("the Act") the alleged **dismissals** of a number of employees by a Japanese company in Melaka called Tsuritani (Malaysia) Sdn. Bhd. ("the company"). The **references** were originally registered separately. However subsequently they were consolidated into one case. Some of the **references** were subsequently struck off as the persons were absent and/or had not filed their statements of case.

Case 5:

The claimant was **employed** by the company on 4 February 1998 as operations manager with a salary of RM2,200 per month. By a letter dated 27 June 1998, the claimant was confirmed in his post and his salary increased from RM2,200 per month to RM2,350 per month with effect from June 1998.

Case 6: The **dispute** arising out of this particular **reference** is the **dismissal** of the claimant on 9 December 1996 as the company's credit control manager, which she claims was effected without just cause and excuse.

Case 7: The **dispute** is over the **dismissal** of the claimant by the company.

The claimant joined the services of the company as a salesman on 1 September 1995. There was no letter of offer or appointment issued to the claimant by the company and neither was there any formal contract of employment between the parties.

Case 8: The **dispute** in this matter is between NT Computers Sdn. Bhd. ('the company') and Ng Ah Siew the claimant').

The claimant was **employed** by the company on 1 July 1997 as an internal auditor.

Case 9: The **dispute** in this matter is between Penas Realty Sdn. Bhd. ('the company') and Chee Yew Kong ('the claimant').

Case 10: The claimant **joined** the company as a boiler foreman on 4 October 1991 and was dismissed by the company 29 June 1996 after the domestic inquiry found him guilty of sleeping during working hours.

'**Employed**', '**joined**' and '**appointed**' are verbs of employment. They are used in the introduction to show the claimant(s) was/were employees of the company. In cases where the case is introduced, the word used to signal this move is '**dispute**'.

6.7.2 Move 4 – Step 2 Stating the issue of dispute/Allegation(s) of dismissal

This move is signaled by the verbs of contention as mentioned in Move 2 earlier. This move is similar to Move 2 Summary of the Case. The common linguistic features here are:

Case 1: The **claimant alleged** that on 10 May 1998 he was dismissed by the company. The **company on the other hand says** that the claimant had left the job on his own accord.

Case 2: Vide letter of 8 September 1998 (appendix C in statement of case) **the claimant was dismissed**. The **claimant contends** that he has been dismissed without just cause and excuse.

Case 3: In this matter the court has to be fair to the claimant who had faithfully attended court on both occasions the matter had been set down, and who was eager to press forward **her claim of dismissal** without just cause or excuse.(ex parte hearing)

Case 4: In their original statements of claims they either **alleged dismissals** without just cause or unjust or **wrongful termination** amounting to constructive dismissal and prayed for reinstatement. By their amended statements of case they dropped the allegation of constructive dismissal and only **alleged simple dismissal**. The company in its amended statement in reply **denied terminating** the employment of the claimants and pleaded that it was the claimants' themselves who had terminated their employment under s. 15(2) of the Employment Act 1955.

Case 5: It was the claimant's **contention** that while he was on medical leave the company made him work on 16, 17, 18 and 19 November 1999. He also says that when he produced the medical certificates to the company, the company did not **dispute** to such medical certificates.

Case 6: The claimant **claims** that the decision to dismiss her was *mala fide* which tantamounts to an act of victimisation by the hospital against her, infringing the rules of natural justice.

Case 7: By a letter dated 30 January 1999 (exh. CLB1) the company **terminated** the claimant's services with immediate effect. In paras. 4 and 5 of the statement of case, the claimant **contends** that he was dismissed without just cause or excuse and that his dismissal was contrary to the principles of natural justice, equity, good conscience and an unfair labour practice.

Case 8: The claimant **refused** to sign the new job functions accorded to her and subsequently the claimant was issued a termination letter.

The company's **contention** is that the claimant had failed to discharge her duties as an internal auditor.

Case 9: The claimant **claimed** that his resignation letter was signed under threat or duress. The claimant further **contended** that he was in fact dismissed because he refused to sign a consent letter for a salary reduction of 25%. The company however **claimed** that the claimant had voluntarily signed the option letter to retire and was paid an *ex gratia* payment of RM17,600.

Case 10: ... and was **dismissed** by the company 29 June 1996 after the domestic inquiry found him guilty of sleeping during working hours.

Verbs of contention are shown in all the ten examples. It is important to know and use these verbs of contention because these words are used to put forward the argument and pleadings by the two disputing parties. According to the specialist informant, knowing how to use these words are important in writing up the charges of dismissal as well as understanding the issues of the disputes.

Following the issue of allegation/dismissal, versions of claimant and company contentions are given either separately or summarized as one. This move is signaled by the following noun phrase:

Case 1: The claimant's evidence is that upon his reporting for work he was assigned lorry no. 19 which was very old and not in good working condition.

The company's case as related by COW1 is that the claimant was never dismissed.

Case 2: The gist of the claimant's pleadings and evidence was that she was first appointed the hospital's finance manager on 1 May 1996, and her terms and conditions of employment provided for a probationary period of six months, reporting to COW1 the finance director.

Case 6: The claimant's case is that she denies poor performance as the basis for her dismissal action by the hospital, and on the contrary she had been victimized because it was tainted with *mala fide*.

The company's pleadings and evidence is that the claimant continued to be a probationer despite being redesignated to the position of credit control manager. So she was at all material times a probationer until her termination.

Case 8: The company's contention is that the claimant had failed to discharge her duties as an internal auditor.

The claimant was then assigned to a new job function at the Headquarters, but the claimant refused to sign her job commitment. Claimant was then terminated.

Case 9: ... the claimant claimed that his resignation letter was signed under threat or duress. The claimant further contended that he was in fact dismissed because he refused to sign a consent letter for a salary reduction of 25%. The company however claimed that the claimant had voluntarily signed the option letter to retire and was paid an *ex gratia* payment of RM17,600.

Case 10: The claimant's evidence at the domestic inquiry was that he was too busy to have his dinner and asked the van driver, Balamurugan to buy food for him.

The company pointed out the claimant gave a different version in answer to the show cause letter.

Noun phrase such as claimant's evidence/testimony/case/pleadings or company's case/claim/evidence/contentions are used to signal these optional moves. Only five out of ten cases have this move.

6.7.3 Move 4 – Step 3 Providing the Evidence to Support or Dispute the Allegation

This is an important step in move 4 as the Chairman of the Court will decide on the case based on the evidence given. It is also the most difficult section of the case to read and understand as it has to be convincing in supporting or disputing the allegation(s). However, as with any legal case, in deciding on a case there is a need to support the decision with reference to previous precedent or using the basis of previous precedent

to arrive at the decision known as *ratio decidendi*. In the ILR a similar procedure is followed before arriving at the decision or judgment of the course.

This move is signaled by a few common phrases for example:

Case 1: The court holds that the claimant had been dismissed by the company's camp manager when he uttered the words "Lu boleh pulang".

Case 2: The function of the Industrial Court on a reference being made to it under s. 20 of the Act has been explicitly stated by the Federal Court in the case of Milan Auto Sdn. 8hd. v. Wong Seh Yen [1995] 4 CLJ 449 as follows.....

A fortiori **the issues before the court** are as follows:

In the circumstances, **the court makes** a finding that the claimant was dismissed with just cause and excuse.

Case 3: The duty of this court was to determine whether the claimant's dismissal was with just cause or excuse.

Case 4: After considering the evidence of both parties **the court finds** that the workers did hold a demonstration in front of the company's gate in the morning.

It is also **the court's finding** that the company contributed towards the claimants' absence for the first part of the day by closing the main gate (although the side gate was open) and not letting the claimants' have their punch cards.

The court therefore holds that the company cannot succeed on s. 15(2) of the Employment Act as the claimants had not been absent for more than two consecutive working days.

In a summary **the court holds** that the claimants have not broken their contract of service by being absent for only two consecutive working days. However the court holds that they were on an illegal strike.

Case 5: In the circumstances **this court holds** that the dismissal of the claimant by the company is without just cause and excuse.

Case 6: The issue before the court is whether the company on a balance of probabilities has established the non-performance of the claimant.

The court has no hesitation **to hold** that the claimant was indeed confirmed but dismissed due to bad faith and victimisation on some ulterior motives of company.

The duty of the court had been elaborated upon by the Federal Court in the earlier case of *Goon Kwee Phoy v. J & P Coats (M) Bhd.* [1981] 2 MLJ 129. Raja Azlan Shah C3 (Malaya) (as he then was) at p. 136 stated as follows:

On the review of the evidence as a whole, **the court finds** that there may have been discussions, comments or dissatisfaction expressed by the claimant's superior, the finance director, but they are not sufficient to specifically and finally warn the claimant to the effect that if she failed to improve within a specified or given period, she will have to go.

Case 7: The duty of the court had been elaborated upon by the Federal Court in the earlier case of *Goon Kwee Phoy v. J & P Coats (M) Bhd.* [1981] 2 MLJ 129. Raja Azlan Shah CJ (Malaya) (as he then was) at p. 136 stated as follows:

On the review of the evidence as a whole, **the court finds** that there may have been discussions, comments or dissatisfaction expressed by the claimant's superior, the finance director, but they are not sufficient to specifically and finally warn the claimant to the effect that if she failed to improve within a specified or given period, she will have to go.

Case 8: The only issue is whether the claimant had been dismissed with or without just cause or excuse. In ascertaining whether the dismissal was with or without just cause or excuse, this court **has to consider** the following.....

Case 9: This court has **no reason to doubt** the evidence of the factory manager, COW4, who saw the claimant and the van driver sleeping inside the van with the windows up and engine on. After perusing through all the evidence and circumstances of the case, **the court holds** that the claimant had signed the early retirement letter voluntarily.

The court finds credible the company's explanation that the VSS was only one month's salary higher than what the claimant had received.

Case 10: The court accepts the evidence of COW4 and **holds** that the claimant was found sleeping while on duty.

This court also holds that the claimant has also misused the company's utility when he was found sleeping inside the van with the engine and air-conditioner on.

The words 'finds', 'holds' and 'accepts' are used to show that the Court arrives at a decision based on the evidence presented in the case. Based on the examples above, these two words are signals that a decision is going to be derived either 1. based totally on the evidence presented or 2. through reference to previous cases and laws or 3. deriving from ratio-decidenti.

6.7.3.1 Move 4 Step 3a – Reference to Previous Cases and Laws to Support the Chairman's Argument

Reference to previous cases and laws are often made by the Chairman in arriving at a decision. This reference is important to support the Chairman's argument for or against the case. All twenty cases contained references to previous cases and laws and the common linguistic features used here are the words 'in the case of', a prepositional phrase, name of the case or proper noun. Examples are given below:

Case 1:

The Chairman makes a reference to one case, *General Containers v. Yip Siew Ling* (Award No. 418 of 1994) to support his argument for the oncoming decision. In his argument the Chairman said that,

in the case of *General Containers v. Yip Siew Ling*, the court has taken to the words uttered by the employer or its authorized officers as word of dismissal.....

The words '**in the case**' is used to signal the reference.

Case 2:

In the case of poor performance, the Industrial Court has to assure that the employer has establish the grounds for dismissal. It is then followed by a reference to a case. For example:

In the case of *Rooftech Sdn. Bhd. v. Holiday Inn, Penang* [1996] 2 ILR 818, the court observed.....

In *Samsuddin Mat Amin v. Austral Enterprise Bhd.* Award No. 47 of 1974, the learned Chairman had this to say.....

In *United Oriental Assurance Sdn. Bhd. v. Kamala Rangithan Selladuray* [1992] 2 ILR 280, the Industrial Court citing *James v. Waltham Holy Cross* [1973] 1 CR 378 stated as follows.....

Besides the words '**in the case of**', the Chairman also cites the name of the case, **In Samsuddin Mat Amin** etc to support his arguments as shown in the example of Case 2.

Case 3 :

Case 3 is an ex parte hearing. In deciding on the decision of the case, the Chairman too refers to another case of a similar nature, for example,

The Court of Appeal **in the case of** *Koperasi Serbaguna Sanya Bhd., Sabah v. Dr. James Alfred, Sabah, & Anor.* [2000] 3 CLJ 758.

Case 4:

As mentioned in Chapter 5, Case 4 is an interesting case. The claimant and the company pleadings were on the dismissal charges however the Court has taken upon itself to act according to equity, good conscience and the merits of the case without regard to technicalities and legal form in view of the strike as an irreparable harm to the company. A number of cases were cited to support the Chairman's arguments among them,

"In United Seino Transportation (M) Sdn. Bhd. v. Ahmad Khodziri Hj Mohd Zain & Ors [1994] 2 ILR 1117, *"National Union Of Hotel, Bar & Restaurant Workers v. Palm Beach Hotel Sdn. Bhd. Penang"* Award No. 49/1974, *"Securicor (M) Sdn. Bhd. v. Kesatuan Pekerja pekerja Securicor (M) Sdn. Bhd"*. - Award No. 156 of 1985, *"Wong Mook v. Wong Yin & Ors* "[1948] 14 IVILJ 41 and a High Court case on illegal strike between *"National Union Of Hotel, Bar & Restaurant Workers v. Hotel Malaya Sdn. Bhd"*. [1987] 2 MLJ 350.

The citing of references to support arguments is done by referring to the name of case which consist of nouns or to be more specific proper nouns.

Case 5:

This case is based on the evidence of the claimant. The company did not contend to the dismissal. Decision in this case is derived totally from the evidence presented by the claimant. Thus, the used of the words:

In the circumstances this court holds that the dismissal of the claimant by the company is without just cause and excuse.

Case 6:

The company's main allegations of inefficiency, poor performance or incompetence have been totally discredited or not proven at all, let alone on the mandatory procedures in *Ireka or Rooftech*, but for substance in fact.

Case 7:

The Chairman arrives at a decision after hearing the submissions by the claimant. The employer did not even challenge the claimant's evidence. The decision of the Chairman is signaled by the Chairman's view of the evidence and the whole case,

After considering **the evidence in its totality, the court is of the considered view** that the company has failed to prove its case on a balance of probabilities. The company's failure to adduce formal evidence to substantiate its allegations coupled with its refusal through COW1 to cross examine the claimant leads to the irresistible conclusion that the company has conceded to the claimant's claim that he had been dismissed without just cause and excuse in violation of the principles of natural justice.

Case 8:

In the *Industrial Disputes Law in Malaysia* by CP Mills, 2nd edn, where the general principles appears **in the case of** *Lim Sim Tiang v. Palm Beach Hotel Sdn. Bhd.*, stated at p. 74: After considering the evidence in its totality, the court is of the considered view that the company has failed to prove its case on a balance of probabilities.

Case 9:

In case nine, the reference to cases are obvious by the Chairman when he relates to three court cases including the High Court cases as well:

.....in *Welted Knitwear Industries Sdn Bhd v. Law Kour Toy*, where the court quoted a passage from *TaTa Robinson Fraser Co Ltd v. Labour Court* [1989] 11 LLJ 443:.....

In *Harris Solid State (M) Sdn Bhd v. Bruno Gentil Perera & Ors* [1996] 4 CLJ 747 his lordship Gopal Sri Ram JCA at p. 766 had this to say.....

Case 10:

The Chairman's decision in Case 10 is based on the evidence presented by the employer,

On the evidence before this court it is obvious the claimant was not telling the truth about the sleeping incident.

Seven out of the ten cases analyzed in this study had reference to previous cases and laws to support the Chairman's arguments before arriving at a decision. Common linguistics features are phrases such as "In the case of..." or as direct references to the

case itself as in, “*Welted Knitwear Industries Sdn Bhd v. Law Kour Toy*”.... The Chairman of the Court cites previous cases and decisions arrived at to support his forthcoming arguments or decisions.

6.7.3.2 Move 4 Step 3b – Deriving ratio-decidenti

Besides references to previous cases to support the Chairman’s argument, the Chairman also uses ratio-decidenti to decide on the case. In the ten cases analyzed for linguistic analysis only one case had applied this rule of ratio-decidenti:

Case 2:

“Be that as it may, it would appear that for those who are employed in senior management level as the claimant was in this case there is less of a need for warning or to give opportunities to improve. **In *United Oriental Assurance Sdn. Bhd. v. Kamala Rangithan Selladuray* [1992] 2 ILR 280, the Industrial Court citing *James v. Waltham Holy Cross* [1973] 1 CR 378 stated as follows:**

Those employed in senior management level may by the very nature of their jobs be fully aware of what is required of them and are fully capable of judging for themselves whether they are achieving that requirement. In such circumstances the need for warning and an opportunity for improvement are less apparent.

It is abundantly clear bearing in mind the claimant's senior position in the company that he had been adequately warned and was given sufficient time to improve but notwithstanding that he failed to sufficiently improve his performance. **In the circumstances**, the court makes a finding that the claimant was dismissed with just cause and excuse.

The use of the words ‘abundantly clear’ and ‘in the circumstances’ relate to the case mentioned in the quote. Applying ratio-decidenti is not significant compared to reference to previous cases and law, thus, no common linguistic features can be identified from this sub-move.

6.7.4 Move 4 – Step 4 Pronouncing Judgment/Giving of Award

This is the last move and is usually signaled by the word ‘**Accordingly**’ and the Court ‘**holds/finds**’. The words are illustrated in all the twenty cases found. In cases of unjustified dismissals, the judgment is followed by an award. The award can be in term of reinstatement and backwages or salary compensation. In handing out awards, **the Court orders** the company to either reinstate or compensate their previous workers as shown in the examples below:

Case 1:

The court holds that the claimant had been dismissed by the company. Such dismissal was without just cause and excuse. The court does not think that reinstatement is the appropriate remedy in the circumstances of this case and **shall award** the claimant compensation consisting of backwages and a further sum of one month's salary as compensation in lieu of reinstatement. The court **orders** the company to pay the sum of RM25,000 to the claimant, such sum to be paid within 30 days of this award.

Case 2:

It is abundantly clear bearing in mind the claimant's senior position in the company that he had been adequately warned and was given sufficient time to improve but notwithstanding that he failed to sufficiently improve his performance. In the circumstances, **the court makes a finding** that the claimant was dismissed with just cause and excuse.

Accordingly his claim is hereby dismissed.

Case 3:

The court hereby orders the Home to pay the claimant as follows:

- (a) backwages amounting to RM7,000; and
- (b) compensation in lieu of reinstatement amounting to RM1,167.

The said total sum of RM8,167 **shall** be paid to the claimant through her solicitors within 60 days of being served with the award.

(This is an ex parte hearing. Since the employer was not there to rebut the claimant's dismissal; the Court finds in favour of the claimant and orders the employer (The Home) to pay the claimant as indicated above)

Case 4:

In a summary **the court holds** that the claimants have not broken their contract of service by being absent for only two consecutive working days. However **the court holds** that they were on an illegal strike. Although the company did not plead that the claimants were dismissed for taking part in an illegal strike the court acting under s. 30(5) of the Act holds that it is contrary to equity and good conscience and the substantial merits of the case to order the reinstatement of the claimants. **The court holds** that the dismissals were with just cause.

Case 5:

In the circumstances **this court holds** that the dismissal of the claimant by the company is without just cause and excuse.

Reinstatement may not be the right remedy in this case. Therefore **this court orders** backwages and compensation in lieu of reinstatement.

- (i) Backwages: RM2,350 x 1 year 1 month and 15 days (from the date of dismissal to the last date of hearing)

= RM31,725

- (ii) Compensation in lieu of reinstatement. One month's pay for every completed year of service. The claimant joined the employment of the company on 4 February 1998.

= RM2,350 x 1 = RM2,350

Total: RM34,075

The above said sum is to be paid to the claimant's solicitors within one month from the date of this award.

Case 6:

The court has no hesitation to hold that the claimant was indeed confirmed but dismissed due to bad faith and victimisation on some ulterior motives of company.

The court will order that she be reinstated without loss of benefit of any kind whatsoever, and:

- (1) Be paid the full backwages from date of dismissal to the date she resumes work at the Assunta Hospital.
- (2) Be paid all benefits, adjustment of salaries, increments, bonus, incentives and entitlement, as if she had never been dismissed.
- (3) The claimant is ordered to report for duty to the human resource manager/appropriate authority of Assunta Hospital within or on the expiry of one month of the award.
- (4) The Assunta Hospital will make appropriate arrangements of office facilities on the claimant's resumption of duties, and to make payments of all dues arising out of this order to the claimant within thirty days of the claimant's resumption of duties.

Case 7:

After considering the evidence in its totality, **the court is of the considered view** that the company has failed to prove its case on a balance of probabilities. The company's failure to adduce formal evidence to substantiate its allegations coupled with its refusal through COW1 to cross examine the claimant leads to the irresistible conclusion that the company has conceded to the claimant's claim that he had been dismissed without just cause and excuse in violation of the principles of natural justice. In view of this **the court finds in favour of** the claimant and **holds** that he was dismissed without just cause or excuse.

In the instant case, **the court is of the opinion** that reinstatement is no longer appropriate as on the testimony of COW1, the company has already ceased business operations in Malaysia. An award of compensation for loss of employment will be more justifiable. The claimant is also entitled to backwages from the date of dismissal to the last date of hearing to a maximum of 24 months.

Case 8:

From what had been enumerated above and acting according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal form, **this court holds** that the claimant's dismissal was properly done and as such her claim that she was dismissed without just cause or excuse is therefore dismissed.

Dismissal justified.

Case 9:

After perusing through all the evidence and circumstances of the case, **the court holds** that the claimant had signed the early retirement letter voluntarily. The claimant had failed to satisfy this court that he was forced or induced into signing the said letter. **The court also found** as a fact that the claimant had failed to discharge the burden of proving that his acceptance of the early retirement was involuntary.

Case 10:

The court accepts the evidence of COW4 and **holds** that the claimant was found sleeping while on duty. **This court also holds** that the claimant has also misused the company's utility when he was found sleeping inside the van with the engine and air-conditioner on. **The court upholds** the claimant's dismissal and his claim is dismissed.

It is very clear that in handing out the judgment/decision of the Court, the Chairman/President reiterates the reasons for the decisions. As can be seen from the examples above, the judgment given is based on the evidence of the case.

The modal 'shall' is used in ordering the Company to reinstate or compensate workers. 'Shall' is used to indicate the obligation of the company towards the claimant and not as the future tense.

In handing of the awards, the Chairman sometimes refer to awards that have been handed in previous cases. This is shown in cases no. 3 and no.7 of the analysis where one particular case, *Koperasi Serbaguna Sanya Bhd. (Sabah) v. Dr. James Alfred (Sabah) & Anor.* is used in deciding the amount of backwages to be awarded. The examples are as follows:

Case 3:

In regard to an award for compensation in lieu of an order of reinstatement, Dato' Gopal Sri Ram JCA stated in **Sanya's case** that the assessment is highly subjective and discretionary. **The principles that are to be applied to such an award should be more or less the same as those governing an award of damages for personal injury.** The court awards the claimant one month's salary for every year of service (from date of joining to last date of hearing) as compensation in lieu or reinstatement i.e.: RM1,400 x (10 /12) = RM1,167.

Case 7:

As for the remedy for unjustified dismissal, the Court of Appeal in the case of *Koperasi Serbaguna Sanya Bhd. (Sabah) v. Dr. James Alfred (Sabah) & Anor* [2000] 3 CLJ 758 has held at p. 766:

In industrial law, the usual remedy for unjustified dismissal is an order of reinstatement. It is only in rare cases that reinstatement is refused. For example, as here, where the relationship between the parties has broken down so badly that it would not be conducive to industrial harmony to return the workman to his place of work. **In such a case, the Industrial Court may award monetary compensation. Such an award is usually in two parts. First, there is the usual award for the arrears of wages, or backwages, as it is sometimes called.** It is to compensate the workman for the period that he has been unemployed because of the unjustified act of dismissal. Second, there is an award of compensation *in lieu* of reinstatement.

In the instant case, the court is of the opinion that reinstatement is no longer appropriate as on the testimony of COW1, the company has already ceased business operations in Malaysia. **An award of compensation** for loss of employment will be more justifiable.

6.8 Binomial and Multinomial Expressions

Gustafsson (1975, 1984) states that binomial and multinomial expressions are typically associated with legislative texts. The same is found in the ILR cases. The use of binomials and multinomial expressions are quite widespread in the cases starting from Move 2 to Move 4 of the texts. Examples of some of the binomial expressions common throughout the three moves are:

Table 22 : Binomials and Multinomial Expressions in ILR

1. or	eg. forced or induced , threat or duress, dismissed without just cause or excuse, repeated his offence or failed to take heed , with or without just cause or excuse, warnings or counseling, production or administrative staff, discussions, unfortunately or fortunately, comments or suggestions, joined or commenced, a specified or given period, , witnesses or documents, support or corroborate and mistakes or carelessness.
2. and	eg. rambling and confusing, cogent and convincing , produced and tendered convincing and compelling, adequate and reasonable, machinery and equipment, oral and documentary, stocks and vouchers ,equity and good conscience, specifically and finally, briefed, counseled and warned, and inefficiencies, incompetence and unsatisfactory.
3. but	eg. confirmed but dismissed
4. either...or	eg. either to accept a pay reduction or voluntary retirement
5. on one hand... on the other hand	eg. on one hand she blamed the company's.... but on the other hand , she submitted....

It is obvious that the use of binomial and multinomial expressions are typical of legal texts since its function is to be all inclusive. This device is also an effective linguistic tool that makes the statements/texts in ILR as precise and as well as all inclusive.

6.9 Sentence Length

Another common feature of the ILR is the sentence length. ILR just like any legal cases have above than average sentence length. In the cases analyzed some of the sentences are between forty to seventy words which is above average compared to 27.6 words in a typical sentence in written scientific English (Barber, 1962). Examples are as follows:

1. The first time such similar words were uttered to the claimant on the day when the claimant's vehicle broke down on the company's logging road can objectively be understood to mean that the claimant was to return to the camp and not that he had been dismissed. (Case 1, 47 words)
2. The company further submits that after the show cause letter as a result of the persisting problem of lack of manpower, the company conducted the domestic inquiry of 5 September 1998 which found that the claimant did not give an acceptable explanation as to his incompetency while attending to the Titan assignment.(Case 2, 52 words)
3. All it did after the mass absenteeism on first two days that could look like condonation was in allowing the claimants into the company's compound on the third day for negotiation between them and director of Industrial Relations and later to be left alone in the factory without doing any work. (Case 4, 51 words)
4. On the review of the evidence as a whole, the court finds that there may have been discussions, comments or dissatisfaction expressed by the claimant's superior, the finance director, but they are not sufficient to specifically and finally warn the claimant to the effect that if she failed to improve within a specified or given period, she will have to go.(Case 6, 61 words)
5. From what had been enumerated above and acting according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal form, this court holds that the claimant's dismissal was properly done and as such her claim that she was dismissed without just cause or excuse is therefore dismissed.(Case 8, 54 words)
6. An employer may reorganise his commercial undertaking for any legitimate reason, such as promoting better economic viability, but he must not do so for a collateral purpose, for example, to victimise his workman for their legitimate participation in union activities whether the particular exercise of managerial power was a exercised *bona fide* or for collateral reasons is a question of fact that necessarily falls to be decided upon the peculiar circumstances of each case.(Case 9, 74 words)

It is not surprising to find ILR to have longer and complex sentences similar to other texts of legal genre. In fact in a study done by Vlachopoulos (quoted in Gibbons, 2004) on the section of English lease consists of, ‘ an almost unpunctuated sentence of around 187 words’ .

6.10 Verbs and Tenses

In the analysis of the ILR, certain moves can be easily identified by the use of verbs in them. Move 2 and Move 4 can be easily distinguished because the verbs of contention and verbs of arguments are used significantly throughout these two moves. As shown earlier in the common linguistic features of move 2, this linguistic features are featured prominently in Move 4 Giving of Award move in Steps 2 and 3. Some of the examples are:

1. The claimant **alleged** that on 10 May 1998 he was **dismissed** by the company. The company on the other hand says that the claimant had left the job on his own accord.
2. In his submission the claimant **denies** that he had not performed his specific task up to the minimum expectation of the company. The company **contends** that the letter of 29 June 1998 was to remind the claimant of the specific purpose of his posting to Pasir Gudang i.e. the running of the Titan assignment and the problem of shortfall of guards.
3. The claimants did not **deny** they were absent on 4 and 5 May. In their pleadings they "various unresolved work problem with the company".
4. The evidence of the claimant was never **challenged** by the company.

5. The company **contends** contents that because of the claimant's inefficiencies, incompetence and unsatisfactory work performance, the claimant had not been confirmed in her appointment as a probationer and was therefore asked to leave.
6. The claimant's **contention** is that she gave a weekly report to the company about the branch.

Since ILR is a report, the past tense appears to be the main tense in all the cases. However, in the Giving of the Award move or when the Chairman announces his decision(judgment) the tense changes to present tense as indicated in the examples for Move 4 Step 4 Giving of Award.

6.11 Complex Prepositional Phrases

Apart from Move 2, complex prepositional phrases are also found in other parts of the moves. Examples of some complex prepositional phrases found in the cases are 'in support of', 'within the purview of', 'for the purpose of', 'in lieu of', 'in respect of', 'with respect to' and 'in pursuant of'.

6.12 Questions

Another interesting features of ILR is the technique of 'question' and 'answer' in Move 4 Step 3 where some of the Chairmen use this technique to bring to attention the issues of the case or in referring to previous cases and decisions to support their arguments. The strategy is peculiar in some of the cases analyzed as shown in the examples below:

Case 2:

A fortiori the issues before the court are as follows:

- (i) What are the reasons adduced by the company for the claimant's dismissal;
- (ii) Has the company proved these reasons to the court;
- (iii) In the event the company has proved the reasons to the court, nevertheless does it constitute just cause and excuse for the dismissal.

The question before the court is:

Has the company abided by the three requirements to justify the claimant's dismissal?

Case 7:

It was not in dispute in this case that the claimant had been dismissed. Neither was it an issue before this court that the claimant, as the managing director of the company, was not a workman within the meaning of s. 20 of the Act since the company had not raised the matter. The only issue is whether the claimant had been dismissed with or without just cause or excuse. In ascertaining whether the dismissal was with or without just cause or excuse, this court has to consider the following:

- (a) what are the reasons adduced by the company for the claimant's dismissal?;
- (b) has the company proved these reasons to the court?; and
- (c) if the company has proved the reasons to the court, whether they constitute just cause and excuse for the dismissal.

Case 8:

The issues before the court are:

- (i) Was the claimant careless in discharging her work at the Bukit Jambul branch.
- (ii) Did the claimant refuse to sign the new job functions assigned to her and why.

- (iii) If the above two issues are proven does it constitute a just cause or excuse for her dismissal.

This technique of using question and answer is signal by the words ‘**A fortiori the issues**’, ‘**The only issue...**’ and ‘**The issue before the court**’.

6.13 Technical, specialized and Latin words

Several words peculiar to legal texts are prevalent throughout the reports. Among them are words related to the legal contexts, special and technical words related to dismissal and words of Latin origin. Examples of words related to the legal contexts are shown in the table below:

Table 23: Words related to legal context

Words related to legal context			
alleged	thereafter	adduce	testimony
trite law	hitherto	forthwith	proposition
dispute	aforesaid	natural justice	verbatim
claimant	averred	compensation	guilty
statutory	breach of contract	evidence	stipulated
estoppel	balance of probabilities	testified	provision

Since ILR are texts on industrial relations and issues related to industrial relations, words pertaining to this area are also commonly found in the cases studied as shown in the following table:

Table 24: Special and Technical words related to dismissal

Special and Technical words related to dismissal			
dismissal	compensation	claimant	remedy
allegation	domestic inquiry (DI)	just cause or excuse	punishment
charge (s)	show cause letter	unjustified dismissal	dispute
retrenched	company (employer)	insubordination	mete out
incompetence	justified dismissal	poor performance	misconduct

Words from Latin origins are also common not only in legal cases but also in ILR. The table below lists some of the Latin words as found in the ILR.

Table 25: Latin words in ILR

Latin words in ILR			
inter alia	ratio-decidenti	in lieu of	ex gratia
bone fide	ex parte	mala fide	vide

The legal words, technical jargons and words of Latin origin that are listed above maybe incomprehensible to people who are not familiar with the legal domain and thus can cause confusion in the reading and understanding the ILR.

6.14 Summary of the Linguistics Features of the Dismissal Cases of ILR

The linguistic analysis of the ILR shows that the ILR have similar characteristics to other legal registers. These characteristics make the ILR identifiable as a legal genre. Lengthy sentences, use of frequent nouns and noun phrases, complex prepositional phrases, binomial, multinomial and use of Latin words to name a few indicate that the ILR contains certain linguistic features commonly found in legal genre.

6.15 Conclusion

This chapter has discussed the linguistic features found in each move of the dismissal cases of the ILR. It appears that the ILR shares a number of similarities with the legal cases as analyzed by Candlin and Davy (1969), Mellinkoff (1963), Bhatia (1990, 1994), Tiersma (1991), Gibbons (2004) and others to name a few. This study has attempted to identify the linguistic choices and also the patterns of this particular genre.