

## **ABSTRACT**

Workplace disputes are best resolved in-house and this principle underlies dispute resolution regulations and legislation in countries such as the UK, Australia and New Zealand. Only after a failure to resolve a matter at workplace level do disputants have the option of referring their conflict to conciliation at an external tribunal in these countries. In turn, conciliation settlement rates are high, leaving only a residual need for arbitration services. Whilst Malaysia has a similar dispute resolution system to these countries, which share the same heritage of British law, its workplace dispute resolution system is fraught with problems. This thesis presents the first large scale study of workplace and tribunal level dispute resolution of claims for reinstatement in Malaysia. It addresses the key issues of why workplace disputes fail to be resolved in-house and then, why they fail to resolve at conciliation. The thesis probes into the reasons why there is a high rate of referral of claims for reinstatement which progress to arbitration, creating a severe case backlog for the Industrial Court.

The processes of conciliation, mediation and arbitration form part of the techniques of Alternative Dispute Resolution which have become increasingly popular as alternatives to litigation. They are used in Malaysia to resolve employment dispute including claims for reinstatement. Conciliation is performed by Conciliators employed by the Department of Industrial Relations Malaysia who assist the workplace parties to resolve their dispute by supervising their negotiations. They have no authority to make recommendations or determinations of the dispute. Arbitration is quasi-judicial process performed by the Industrial Court with power to impose an outcome. Access to arbitration is not automatic as it is subject to referral from the Minister of Human Resources based on the merits of the case. Unlike the situation in the UK, Australia and New Zealand, the settlement rate of conciliation has been low for many years. This has meant that a correspondingly high level of cases are referred to the Industrial Court, creating heavy judicial workloads and delays in hearing the vast backlog of cases. Despite the problems created for the court and tribunal there has been little research to date. This phenomenon has not been explored in Malaysia and very little is known about the workability of in-house dispute resolution or tribunal conciliation in resolving