

PROFILE

**Consultant****Employment & Administrative Law****Shearn Delamore & Co., Kuala Lumpur, Malaysia**

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Qualifications

LL.B (Hons), University of Malaya

Advocate & Solicitor, High Court of Malaya

Languages

English, Malay

SIVABALAH NADARAJAH

ABOUT SIVABALAH

Sivabalah has rich experience with trade union disputes, collective bargaining, contracts of service, employment issues, industrial actions, judicial reviews, law on dismissals, employment law aspects of mergers and acquisitions, minimum wage, occupational health and safety legislation, reorganisations and retrenchment, statutory benefits, and union recognition. He has appeared extensively in the High Court, the Court of Appeal, the Federal Court and then the Supreme Court principally for judicial review applications and appeals.

The Employment Law Alliance (ELA), the world's largest network of labour, employment and immigration attorneys, honoured Sivabalah with the "Sheldon N. Sandler Award" in 2020.

EXPERIENCE

N. Sivabalah represented employers in many landmark decisions in the fields of Employment, Administrative & Constitutional Law. The following are a few of these decisions: -

- **PP v. Syarikat Tekala Sdn Bhd [2007] 6 CLJ 43**

This was a prosecution by the Employees' Provident Fund (EPF) under Section 68 of the Act. It was successfully argued before the Court of Appeal that the EPF had no jurisdiction to commence and conduct criminal proceedings without the sanction of the Public Prosecutor. The Court of Appeal also ruled that Section 68 of the Act was ultra vires the Federal Constitution.

- **Wong Yuen Hock v. Syarikat Hong Leong Assurance Sdn Bhd & another [1995] 2 MLJ 753**

Appeared for the Company. The Federal Court ruled that notwithstanding an express provision in the employee's contract to hold a domestic inquiry, the failure to hold a domestic inquiry did not render a dismissal automatically unfair.

- **Hong Leong Equipment Sdn Bhd v. Liew Fook Chuan & Anor [1996] 1 MLJ 481**

This is a landmark decision in the field of administrative law and judicial review where the Court of Appeal broadened the scope of challenge of an exercise of discretion by the Minister under the Industrial Relations Act. Sivabalah appeared for the Company.

- **Ranjit Kaur S Gopal Singh v. Hotel Excelsior (M) Sdn Bhd [2010] 8 CLJ 629**

He successfully defended the setting aside of an Industrial Court's decision in the Federal Court. The Federal Court ruled that the parties were bound by their pleadings in the Industrial Court and this extended to not only setting out facts but also arguments.

- **Dr James Alfred v Koperasi Serbaguna Santa Bhd [2001] 3 CLJ 541**

Appeared for the Company before the Federal Court which upheld the overturning of the long-standing practice of the Industrial Court to award full back wages, without taking into account the subsequent gainful employment of the dismissed employee. The Industrial Relations Act was amended to give effect to this ruling.

- **JT International Tobacco Sdn Bhd v. Lau Thow Sin [2006] 4 MLJ 251**

Appeared for the Company. The High Court ruled that although the Industrial Court had the power to award full back wages until the last day of hearing, it should not depart from the practice of limiting back wages to a maximum of 24 months unless there was sound reason for doing so. The Act was amended to limit the award of back wages to 24 months.

- **British American Tobacco (M) Bhd Employees Union v. Director General of Trade Unions, Malaysia & others [2011] 7 CLJ 478**

Successfully argued for the Company that In-house unions could only act for employees in one company and not all the companies in a group.

- **Sarawak Shell Berhad v. Ismail Sahat & Ors [2002] 2 ILR 371**

The Company departed from the established retrenchment principle of Last In First Out and used its own selection criteria in retrenching employees. The Industrial Court upheld the Company's use of its own selection criteria. Sivabalah appeared for the Company.

- **Supermix Concrete (M) Sdn Bhd v. Teoh Boon Beng [1987] 1 ILR 274**

Section 20 of the Industrial Relations Act, 1967 previously provided that an employee, claiming that his dismissal was without just cause and excuse had to lodge his representations within one month of the dismissal. The employee was given notice of termination and had lodged his representations before the notice had expired. Successfully argued that the representation was premature and the Industrial Court had no jurisdiction to hear the matter. The Supreme Court upheld this decision and this led to the amendment of Section 20 of the Act to allow representations during the notice-period.

- **Beatrice Fernandez v Sistem Penerbangan Malaysia & Anor [2004] 4 CLJ 403**

Represented Malaysian Airlines System where the Court of Appeal ruled that the dismissal of a stewardess on the grounds of her pregnancy was not unconstitutional.

ACCOLADES

Benchmark Litigation Asia-Pacific

Commercial and Transactions, Dispute Resolution and Labor and Employment - Litigation Star (2019 and 2020)

Commercial and Transactions and Labor and Employment - Litigation Star (2021 - 2025)

- *"He is reliable, accessible, responsive and knowledgeable in the field of employment and industrial relations."* - Benchmark Litigation Asia-Pacific 2021

Chambers Asia-Pacific

Employment and Industrial Relations - Band 1 (2010 - 2025)

- He is described as *"a walking dictionary on industrial relations"* by a client. - Chambers Asia-Pacific 2024
- Clients describe him as *"a top-class business partner who is strategic in thinking and clear in advising on operational matters impacting us. He constantly provides past data, market nuances and possible trajectories in helping clients make decisions."* - Chambers Asia-Pacific 2023
- A client is of opinion that *"He is one of the best in the country with top expertise."* - Chambers Asia-Pacific 2024
- He is known as *"the best industrial relations lawyer any client can have."* - Chambers Asia-Pacific 2023
- A client comments that *"he is so experienced and quite legendary" in the employment and industrial relations space in Malaysia.* - Chambers Asia-Pacific 2022
- A client describes him as *"a very, very sound lawyer who is experienced and knows the field inside out."* - Chambers Asia-Pacific 2021
- Clients report that he possesses *"in-depth knowledge of employment law"* and offers *"an easy approach, providing practical solutions."* - Chambers Asia-Pacific 2019
- Described by sources as a *"key player in the market,"* he acted for Bank Muamalat in a case brought by NUBE, which sought an injunction over the branch transfer of three employees." - Chambers Asia-Pacific 2018
- Clients describe him as *"very humble - one of the leading lawyers, offering very sound and practical advice."* - Chambers Asia-Pacific 2017
- He is commended by clients for his *"sound, prudent advice"* and is *"very well respected"* among his peers. - Chambers Asia-Pacific 2016
- Clients report: *"He has been in this field for a long time and has acted for multinationals - that experience is very useful."* - Chambers Asia-Pacific 2015

- "Top-notch lawyer" Sivabalah Nadarajah is the firm's leading employment and industrial relations expert. He is admired by clients for his wealth of experience and for his quick and decisive ability *"to put his legal advice within the context of our business."* - Chambers Asia-Pacific 2014
- He heads the firm's employment group and sources observe that they have *"nothing but the greatest things to say about him."* - Chambers Asia-Pacific 2013

The Legal 500 Asia-Pacific

Labour and Employment - Hall of Fame (2023 - 2025); Leading Individual (2019 - 2022); Recommended Lawyer (2016 - 2018)

APPOINTMENTS/MEMBERSHIPS

- Member, Malaysian Bar
- Member, International Bar Association (IBA)
- Firm Representative, Employment Law Alliance (ELA)
- Former Board Member and Former Chairman of the ELA's APAC Regional Committee

PUBLICATION

- Law and Practice of Employment Law in Malaysia - Sweet and Maxwell, 2022 [contributor]