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Federal Court Rejects Challenge on Law of Redundancy

Lim Chai Hock v Chevron Malaysia Limited & Anor
(Federal Court Civil Application No 08(f)-567-12/2017(W))

| by David Tan Seng Keat |

Yesterday (14 May), the Federal Court dismissed an application by a former senior manager for leave to appeal against his retrenchment, which he claimed did not accord with the prevailing test for redundancy.

The applicant had contended that, because his responsibilities and job functions continued to exist, albeit split to two lower-level roles, he could not be redundant. The two questions posed to the Federal Court were:

- (1) Where the undisputed evidence is that the job functions of the employee remained and were distributed to other employees pursuant to a reorganisation exercise, but his official position was done away with, can such an employee be said to be redundant; and
- (2) Whether the Industrial Court must distinguish between the cessation of the **job functions** and cessation of **job position** in determining whether redundancy has been proved.

In dismissing the application, the Federal Court implicitly recognised the fundamental principles underpinning the law of redundancy in Malaysia, to wit:

- (1) Retrenchment is a managerial prerogative so long as it is exercised in good faith and without a motive to victimise or punish an employee;
- (2) Whether a retrenchment exercise has been conducted in good faith is a question of fact, having regard to the specific facts and circumstances of each case;
- (3) In this respect, it was apparent on the facts that the applicant's

retrenchment had resulted from a global restructuring, which had also affected another position. Further, the applicant had been offered one of the new roles with no adverse effect to his terms and conditions of employment. He had rejected this offer, as well as a second one of fixed term employment that was made to him; and

(4) The applicant had also negotiated the severance package paid to him, and ultimately received more than RM700,000 as severance.

Taking all of the above into consideration, the Federal Court upheld the unanimous decision of the Court of Appeal and dismissed the application for leave to appeal.

The firm was represented by partner Dato' Thavalingam C Thavarajah and associate David Tan Seng Keat of [Lee Hishammuddin Allen & Gledhill](#).

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If you have any queries on the law of redundancy, please contact the author or his team partner [Dato' Thavalingam C Thavarajah](#) (tt@lh-ag.com).

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