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Calling of Witnesses is Tribunal's Ultimate Discretion

Zainol Rashid bin Norddin v Malaysia Building Society Berhad
(Industrial Court Award No 1162 of 2018)

| by Shariffullah Abdul Majeed and Farah Dini Zaini |

An employee who had claimed to have been unfairly dismissed by his company issued a subpoena to compel the company's president and chief executive officer (CEO) to appear as a witness and to produce certain documents. The company applied to set aside the subpoena.

It was the company's contention that although the CEO had endorsed and approved the employee's immediate dismissal, it was in fact the responsibility and decision of another officer of the company, the Vice President of its Human Capital Division, to dismiss the employee. Therefore, although the CEO had endorsed and approved the employee's dismissal through his signature, he would not be a material witness as he did not have any personal knowledge of the events that led to the dismissal of the employee.

The employee contended that he, as a party to the proceedings, was entitled to select and decide the order of his witnesses and that the company should not be allowed to interfere with this right. The employee also alleged that the company's application to set aside the subpoena was intended to suppress the production of the requested documents.

The Industrial Court, in setting aside the subpoena, held that:

- (i) The CEO would not have been able to produce any material evidence before the Court as he had no personal knowledge of the details leading to the employee's dismissal and was solely acting on the recommendation of the company's Vice President of Human Capital Division;
- (ii) All relevant documents which formed the basis of the employee's dismissal had been filed by both parties and were available to the Court. In fact, many of these documents were

produced by the employee himself; and

(iii) Although it was the prerogative of the employee as a party to the legal proceeding to decide on the order and identity of his witnesses, it is trite law that the tribunal has the ultimate discretion whether or not any evidence is material.

The employer was represented by partner Shariffullah Abdul Majeed and associate Ahmad Addlan Nabil of [Lee Hishammuddin Allen & Gledhill](#).

The Industrial Court award may be viewed [here](#).

Shariffullah Abdul Majeed and **Farah Dini Zaini** (Pupil-in-Chambers)

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