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Employees Not Entitled to Consultation Before Retrenchment

Habsah binti Othman & Anor v AirAsia Berhad
(Industrial Court Award No 2708 of 2018)

| by Sebastian Tay Hanxin |

Due to the need to improve its efficiency, the Company implemented a group-wide reorganisation which involved a reduction in headcount, while retaining only the best performing employees. In identifying the employees for retrenchment, the Company took into account their performance in the preceding year instead of selecting them solely based on the Last In, First Out (LIFO) principle.

The reorganisation led to the retrenchment of 15 employees, two of whom claimed to have been unfairly dismissed. They alleged that they were neither consulted ahead of the retrenchment exercise nor informed of the selection criteria.

In holding that the Company had acted on the basis of a genuine redundancy, the Industrial Court decided that:

- There is no legal requirement that the Company must consult its employees prior to a reorganisation;
- There is no legal basis for the employees to claim that they should have been alerted that the Company was departing from the LIFO principle in favour of a selection process based on performance; and
- Since the purpose of the reorganisation was to improve efficiency, employees who perform well only when their position is threatened should be regarded as poor performers no less.

The Company was represented by partner Dato' Thavalingam C Thavarajah and associate Sebastian Tay Hanxin of [Lee Hishammuddin Allen & Gledhill](#).

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

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