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Managerial Prerogative to Transfer Vitiating Only by Proof of Mala Fide

Hamidah Bivi Binti Mohamed Sultan v Motosikal dan Enjin Nasional Sdn Bhd (Industrial Court Award No 1416 of 2019)

The claimant last held the position of Human Capital Manager of the company. In October 2014, she was informed that as part of the company's rationalisation exercise — which, among other things, included organisational restructuring — she would be transferred to EMOS HQ, Shah Alam, as the Head of Administration and Sales Operations effective December 2014. About two weeks before the transfer was to take effect, the company also issued a Memorandum of Announcement to all staff to announce the transfer of four key personnel, including the claimant.

The claimant protested against the transfer on the grounds that her transfer was made in bad faith and that the company was in breach of fundamental terms of her contract of employment when transferring and redesignating her position. Subsequently, she made two appeals against the company's decision to transfer her, both of which were dismissed. The claimant then averred that she was no longer bound by the contract of employment and considered herself constructively dismissed by the company effective December 2014.

The Industrial Court dismissed her claim for unfair dismissal and held, *inter alia*, that:

- (a) The claimant's contract of employment contained a transfer clause. Therefore, the company had a right to transfer her from one department or division to another within the company, or to serve in any company within the DRB-HICOM group of companies within Malaysia or overseas;
- (b) The claimant was aware that she was in breach of fundamental terms and conditions of her contract of employment when she refused to comply with the company's decision to transfer her;
- (c) The claimant delayed the termination of her contract of employment, *i.e.* only after both her appeals against the company's decision to transfer her were dismissed;
- (d) The claimant had failed to establish bad faith on the part of the

company in its decision to transfer her. Her transfer was necessary and was in line with the company's rationalisation exercise which, *inter alia*, included organisational restructuring;

(e) The terms and conditions of service of the company remained unchanged by the transfer; and

(f) The claimant failed to discharge the burden of proof on the balance of probabilities to prove that she was victimised or put at a disadvantage by the transfer.

The company was represented by partner Shariffullah Abdul Majeed of [Lee Hishammuddin Allen & Gledhill](#).

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

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