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4 JUNE 2019

Channelling the Company's Proceeds to Personal Account by the Employee

Norhaziah Binti Ismail v Proton Edar Sdn Bhd
(Industrial Court Award No 833 of 2019)

The claimant, a Customer Service Representative, commenced her employment with the company in June 2006. By a Notice of Secondment issued by the company on April 2012, the claimant was seconded to Lotus, Group Marketing, Branding & Motorsports as Admin Assistant II reporting to Head, Lotus Car Malaysia.

The company and Lotus provide, among other services, car insurance services. The company retains 10% of the insurance premium paid by customers as commission and transfers the remainder to the selected insurance underwriters.

It was discovered that the claimant had remitted the 10% commissions belonging to the company into her own personal account. The claimant also used her personal cheque to replace cash payments received from customers for insurance premium/renewal. This was against the company's prescribed policies, procedures and norm.

In her reply to the show cause letter issued against her by the company, the claimant mentioned that she received the cash payments directly from the customers. However, when cross-examined, she testified that she received the cash payments from her superior and conceded that her superior's instruction was in breach of the company's explicit policy and procedure. The claimant also averred that she was no longer bound by the company's Standard Operating Procedure (SOP) when she was seconded to Lotus.

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

- (a) The claimant's contention that she was not bound by the company's SOP by virtue of her secondment to Lotus was without any merit. As an employee of seven years' experience with the company, she was fully aware that it was the explicit terms of employment to not breach her fiduciary duty to the company and to adhere to all the management's instructions and implemented procedures;

- (b) Compliance with an unlawful instruction, knowing that it is unlawful, would not constitute a defence. The claimant conceded that she knew that the instructions by her superior were wrong, but still complied with them instead of reporting it to the management; and
- (c) The punishment of dismissal was proportionate with the claimant's misconduct of blatantly ignoring the company's SOP and guidelines placed to safeguard the company and its interest.

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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Published by the Employment Practice Group

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