



Shariffullah Majeed
Partner
Employment
T: +603 6208 5881
E: sha@lh-ag.com



Nurul Aisyah Hassan
Associate
Employment
T: +603 6208 5885
E: nah@lh-ag.com

19 MARCH 2020

Employer Evaluation Not a Ground for Constructive Dismissal Claim

Nur Ezlina binti Ismail v UMW Toyota Motor Sdn Bhd
(Industrial Court Award No 569 of 2020)

An employee's claim for constructive dismissal was dismissed by the Industrial Court upon finding, among other things, that the company's actions in transferring the employee to another department and placing her on a Performance Improvement Plan (PIP) and Attendance Monitoring Programme (AMP) were not fundamental breaches to her contract of employment.

The employee commenced employment with the company as a Human Resource Executive, but was then transferred to the Customer Services Operation Division following a company-wide restructuring exercise. She contended that her transfer was allegedly due to her poor attendance in 2017, when she had taken extended unpaid leave due to pregnancy complications and maternity leave.

The company consequently placed her on the PIP following her lower rating of "IV" upon evaluating her contribution and productivity for the year 2017. After reviewing her health condition, the company decided to place her on the AMP in order to monitor her attendance.

More than a month after being notified of her being placed on the AMP, the employee claimed that the company's cumulative actions as described above amounted to a repudiation of her contract of employment.

The Industrial Court, in deciding that the employee had failed to prove she had been constructively dismissed, held as follows:

- The employee's transfer was not contrary to her terms of employment, was not made to harass or victimise her and did not involve any change in her conditions of service;
- The company was justified in giving the employee a lower rating for the year 2017 as it is only logical that her performance would not be on par with a person who did not utilise as many days of leave within the same period of assessment;

- Placing the employee on PIP and AMP were disciplinary measures which the company was entitled to take as provided for in its Disciplinary Guidebook & Policy;
- The company was entitled to place the employee on the AMP as it had proven that there were various types of leave that she had taken apart from maternity and unpaid leave due to the complications from her pregnancy; and
- The doctrine of last straw, the last straw being the placement of the employee on the AMP, could not be relied on by the employee to justify her claim of constructive dismissal as this was not a fundamental breach of her contract of employment.

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

The company was represented by partner Shariffullah Majeed and associate Nurul Aisyah Hassan of [Lee Hishammuddin Allen & Gledhill](#).

Nurul Aisyah Hassan (nah@lh-ag.com)

If you have any queries, please contact the author or her team partner [Shariffullah Majeed](#) (sha@lh-ag.com).

Lee Hishammuddin Allen & Gledhill

Level 6, Menara 1 Dutamas
Solaris Dutamas
No. 1, Jalan Dutamas 1
50480 Kuala Lumpur
Malaysia

T +603 6208 5888
F +603 6201 0122/0136
E enquiry@lh-ag.com
W www.lh-ag.com

Published by the Employment Practice

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