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Employer's Option to Renew Fixed-Term Contracts

Wan Zainuddin Wan Muda v Small Medium Enterprise Development Bank Malaysia Berhad
(Industrial Court Award No 1130 of 2021)

The Industrial Court recently held that where the option to renew an employee's fixed-term contract upon expiry lies with the employer, then it is the sole discretion of the employer to elect to exercise that option.

The claimant, who was a permanent employee of the Bank, was offered a fixed-term contract as a Director of its Human Capital Management Division. He was later re-designated as the Acting Group Chief Human Capital Officer. The fixed-term contract stipulated that it would be for two years (from 2 October 2017 to 1 October 2019), with an option for the Bank to renew the agreement for another year, subject to the employee's performance and the Bank's needs. The provision for the extension of the contract was also to be at the election of the Bank and not the employee's.

Towards the end of the fixed-term contract, it was determined that the employee's performance for the year 2018 did not meet expectations. The Bank's Nomination and Compensation Committee (**NCC**) also recommended that a new candidate be identified as the Group Chief Human Capital Officer. The employee's fixed-term contract was thus not renewed upon its expiry on 1 October 2019.

At the outset of the trial, the employee conceded that his employment with the Bank was under a genuine fixed-term contract. His only grouse was that the Bank had decided not to exercise its option to renew the contract for another year, as he claimed that his performance was up to the standard required and that the Bank was still in need of a Group Chief Human Capital Officer.

In finding that there was in fact no dismissal of the claimant, the Industrial Court held, among others, that:

- (a) Although the employee complained that his performance

appraisal for 2018 was not properly done and thus he should not have been considered a poor performer, he never objected to the said “irregularities”. In any event, any alleged “irregularities” would have no bearing on a case where there was a genuine fixed-term contract;

- (b) As the employee was merely holding the position of “Acting” Group Chief Human Capital Officer, it means that he was holding that position for someone else in the interim. A new candidate was appointed as Group Chief Human Capital Officer pursuant to the NCC’s recommendation and the employee’s position thus ceased to exist;
- (c) An option to renew fixed-term employment is at the sole discretion of the employer and does not in any way constitute a definite promise; and
- (d) Where there is a genuine fixed-term contract, the question of dismissal does not arise and the employee’s tenure with the Bank had come to a natural end due to effluxion of time.

In construing the terms of any fixed-term contract, the intention of the parties must first be determined. It is clear in this case that the employee, as an experienced human resource practitioner, knew and agreed to the terms of his fixed-term employment. The chairman of the Industrial Court also remarked that despite there being an option for extension of the fixed-term contract, it could not be denied that the parties clearly intended for the Bank to have sole discretion on deciding whether to extend the contract.

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

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

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