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Suspension of Government Projects Valid Ground for Retrenchment

Mohd Rozi bin Othman v Suria Strategic Energy Resources Sdn Bhd (consolidated with 21 other cases)
(Industrial Court Award No 691 of 2020)

The company was set up in 2016 as a wholly owned subsidiary of Minister of Finance, Inc, specifically to undertake the Multi-Product Pipeline and the Trans-Sabah Gas Pipeline projects (**the Projects**) which had been approved by the then government.

Following the 14th General Election in May 2018, it was discovered that 87.7% of the total project value amounting to a staggering RM8.25 billion had been paid, while only 13% of the work had been completed. The company was investigated by the Malaysian Anti-Corruption Commission due to its links with Strategic Resources Corporation that had been implicated in the 1MDB scandal. During the investigation, all staff were placed on garden leave and Grant Thornton Malaysia (**GTM**) was engaged to manage the company's financial and administrative functions.

In July 2018, the government suspended the Projects *indefinitely*. Due to the uncertainty of the future of the Projects, the company served notices of retrenchment to *all* its employees, ranging from the former CEO and group president to his driver. Only a month later, the government decided to terminate the Projects altogether.

Thirty-one aggrieved employees filed a claim for unfair dismissal under the Industrial Relations Act 1967 and disputed their retrenchment. While nine employees subsequently withdrew their claims, the remaining 22 contended that their services were still required by the company for "*project closure work*" and further alleged that GTM had taken over their jobs.

The former Deputy Secretary-General for Investment under the Treasury, Ministry of Finance, testified during the hearing that the decision to terminate the Projects was made by the government. However, a partner of GTM explained that their engagement was

only administrative and simply to scale down the company's operations and headcount since there were no other projects following the termination of the Projects.

The Industrial Court ruled, among others, as follows:

- The employees were redundant due to the indefinite suspension and subsequent cancellation of the Projects. The Industrial Court noted that the cancellation of the Projects took place during the employees' notice period;
- GTM's role was only administrative and, further, it did not have the technical capabilities to carry out the operations relating to the Projects;
- The last in, first out (LIFO) principle was not applicable as all the employees were retrenched; and
- An employer is not obligated to transfer an employee to other companies to avoid retrenchment or to consult or warn an employee prior to the retrenchment.

As the only two ongoing projects at the material time had been suspended indefinitely and subsequently cancelled altogether, the Industrial Court found that the employees' dismissal was for just cause and excuse.

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

The case has been reported on in [The Star Online](#) and [Free Malaysia Today](#).

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

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