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Whistleblow Legitimately

AmlInvestment Bank Berhad v Marhaini binti Ariffin & Anor
Judicial Review Application No WA-25-397-08/2019

The High Court overturned an award of the Industrial Court, which had initially found in favour of an employee who had abused the whistleblowing policy and email facilities of the Bank by sending out emails containing inappropriate content about her superior.

The Industrial Court had in the first instance found that the employee had correctly exercised her right under the whistleblowing policy and as such, should have been protected under the said policy. The Industrial Court further held that:

“As to whether such usage was an abuse of her position in the Bank, it was for the Bank to show that the Claimant had indeed abused it to the detriment to the Bank. To write an email to the Bank’s officers, was not an act that could be construed as a misconduct.”

However, Justice Dato’ Sri Mariana binti Haji Yahya, in her oral judgment on 24 August 2020, concurred with the Bank that the award was indeed “*wholly deficient*”, as the Industrial Court had failed to take into account the employee’s own admissions to abusing the policy of the Bank to spread false and malicious rumours about her superior.

The High Court went on further to find that the employee had indeed made a disclosure under the whistleblowing policy in bad faith as she had been aware that the subject matter of her disclosure had been retracted on that very same day.

With regard to Bank’s email facilities, the High Court judge had found that the impugned award had been “*irrational*” by the Industrial Court when it had failed to take into account the

employee's own admissions to abusing the email facilities of the Bank.

The Bank was represented by partner Dato' Thavalingam Thavarajah, and associate Shivani Sothirachagan, of [Lee Hishammuddin Allen & Gledhill](#).

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

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