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Employment & Industrial Relations



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Justifying Non-Confirmation of an Experienced Bank Officer

Ezrul Nizam Mohamad Mungawan v MBSB Bank Berhad
(Industrial Court Award No 451 of 2022)

Prior to his non-confirmation in the Bank's employment, the claimant in this case last held the position of Sourcing Manager under probation attached to the Bank's Strategic Sourcing Section, Property Management Department, Operations Division. In his employment application form for the position of Sourcing Manager, the claimant represented to the Bank that he had 10 years of managerial experience in the banking industry.

In view of the extensive experience and competence represented by the claimant in his employment application form, and upon interviewing and briefing him on the job scope of the position of Sourcing Manager and the Bank's expectations, he was offered the said position with a contractual probationary period of six months.

In the course of his probationary period, the claimant was issued a Warning Letter and a Final Warning Letter over several incidents of misconduct which violated the Bank's rules and regulations. In addition to disciplinary issues, it was also brought to the management's attention that the claimant's performance throughout his probationary period had been unsatisfactory despite being given multiple reminders and counselling on his shortcomings.

Thus, upon the completion of his six months' probationary period, the claimant was notified that he would not be confirmed in his position on the basis of his unsatisfactory level of performance throughout his probationary period. The claimant

contended that he had merely carried out the tasks assigned to him without being given any specific job scope throughout his probationary period and that his job performance was not properly assessed prior to his non-confirmation.

In finding that the claimant's non-confirmation had been a genuine exercise of the Bank's prerogative and dismissing the claimant's claim for unfair dismissal, the Industrial Court held and found, among others, that:

- (a) The claimant's contention that he was not given any specific job scope was nothing but an afterthought as he had clearly admitted when cross-examined that the functions and expectations of a Sourcing Manager were in fact discussed with him during his job interview;
- (b) Besides, never at any time did the claimant ever seek clarification from the management or even his superior in relation to his job functions. In any event, given that the claimant had 10 years of managerial experience in the banking industry, he naturally knew the demands of his job and the Bank's expectations of him as highlighted during the interview;
- (c) The claimant even admitted that his vast experience in the banking industry corresponds with his functions and job scope as the Sourcing Manager;
- (d) Further, there can be no doubt that the claimant knew at all times that his performance was an issue with the Bank. This is evident from the various correspondence between him and his superior at the material time, as well as the discussions held throughout his probationary period;
- (e) Thus, the claimant's averment that he was not given any verbal warning by his superior in respect of his poor performance is simply misleading in view of the undisputed correspondence and discussions between him and his superior;
- (f) Based on the claimant's disciplinary record throughout his probationary period, it is undeniable that he possessed a negative work attitude as evident from the Warning Letter and Final Warning Letter issued to him in relation to the incidents of misconduct; and
- (g) The Bank had complied with fair procedure expected of a reasonable employer in the manner in which the claimant's work had been supervised and assessed.

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The Industrial Court's decision in this case reiterates the principle applicable to underperforming senior-level employees, as highlighted in the oft-quoted case of *James Waltham Holy Cross Urban District Council* [1973] ICR 398, that those employed in senior management may, by the nature of their jobs, be fully aware of what is required of them and are fully capable of judging for themselves whether they are achieving that requirement.

Therefore, the need for senior managers to be warned of their performance and be given the opportunity to improve is much less apparent. It is necessary to point out that even if it was true that the claimant was not properly assessed, he had failed to raise any objection against his appraisals and assessment, giving the impression that he had accepted them.

As an experienced senior-level employee, he had elected not to place any of his allegations on record despite having the opportunity to do so, thus confirming that his contentions were nothing more than an afterthought. Therefore, this case is a prime example where an employer successfully proved that the probationer's attitude and aptitude warranted his non-confirmation in permanent employment.

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

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

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