

# LHAG Insights



Employment & Industrial Relations



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### Avoidance Of Conflict Of Interest: An Inflexible Rule

*Ghazali Abdullah v FGV Plantations (Malaysia) Sdn Bhd*  
(Industrial Court Award No. 32 of 2023)

It is well established in a plethora of Industrial Court authorities that an employee must avoid any conflict of interests or even potential conflict of interests with his or her employer. Should a conflict of interest or the possibility of one arise, an employee owes a duty to disclose the same to his or her employer. This duty to disclose is critical in order to safeguard the interests of the employer so that the management is fully aware of the transactions by employees acting on behalf of the company.

In the instant case, the Claimant last held a senior position of trust as the Company's Senior Manager in its technical department. Around September 2018, the Claimant was involved in the Tender Process Committee of a housing development project ("**Housing Project**"). His role therein was to, among others, monitor and supervise the Housing Project. In October 2018, the Company conducted an open tender on the Housing Project and invited experienced contractors registered with the Company to submit their tenders.

It was discovered via one of the tender documents submitted by Jajaran Permata Sdn Bhd ("**JPSB**"), that the Claimant who was at the material time involved with the Tender Process Committee of the Housing Project, was also at the same time, employed as a Senior Engineer in JPSB. Subsequent to this discovery, the Claimant was accordingly removed from the Tender Process Committee of the Housing Project and an investigation into his involvement in JPSB was commenced.

In line with good industrial relations practice and to facilitate further investigations into the matter, the Company highlighted to the Claimant via a show cause letter of his violation of the FGV's Code of Conduct and Policy which expressly states among others, that it is obligatory for employees to disclose to the Company any contractual or non-contractual interests, whether directly or indirectly in another organisation. In his explanation to the Company, the Claimant admitted that:

- (a) He had merely permitted his friend (one of the Directors of JPSB) to use his Degree in Civil Engineering for the "***purpose of the registration***" of JPSB with the Construction Industry Development Board;
- (b) The last time JPSB had contributed into his EPF account was in October 2017 and the contributions were not consistent; and
- (c) He had never informed the Company of his involvement as JPSB's Senior Engineer since 2013 as he was merely helping his friend.

Being dissatisfied with the Claimant's explanation, a domestic inquiry was convened and the Claimant was found guilty of all the charges preferred against him. The management decided that the only punishment that could be imposed, noting the gravity of the misconduct by the Claimant and his senior position of trust as the Senior Manager, was dismissal as it could no longer repose the necessary trust and confidence in the Claimant for him to continue in employment.

In his claim for unfair dismissal against the Company, the Claimant alleged, among others, that the Company did not suffer any losses due to his acts and that there was no conflict since he was not a decision maker or in any position to influence the decision maker in the selection of the contractor for the Housing Project. Nonetheless, the Industrial Court held that the Company was justified in dismissing the Claimant and found among others, that:

- (a) It was imperative that the Claimant made full disclosure of his involvement with JPSB from the very beginning to the management and obtain the latter's approval for:
  - (i) Him to be appointed as JPSB's Senior Engineer whilst being in the Company's employment;
  - (ii) Permitting his friend, to use his Degree in Civil Engineering for the "***purpose of the registration***" of JPSB with CIDB; and

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(iii) Receiving the remuneration from JPSB as its Senior Engineer whilst simultaneously being gainfully employed with the Company as its Senior Manager.

(b) Even when JPSB submitted their tender on the Housing Project during the time the Claimant was a member of the Tender Process Committee, the latter in breach of the Company's Code of Business Conduct and Ethics, still failed to disclose and inform the management of his involvement in JPSB.

(c) It also cannot be disputed that as a member of the Tender Process Committee, the Claimant was indeed in a position to either directly or indirectly influence the selection of the contractor for the Housing Project, which was clearly a position of conflict in breach of the Company's Code of Business Conduct and Ethics.

(d) Although the Claimant clearly admitted in his explanation to the show cause letter that he was aware that the last time EPF contributions were made to into his account by JPSB was in 2017, he had contradicted his statement therein and testified in Court that he was unaware of the EPF contributions being made into his account.

The Industrial Court's decision in this case reiterates the inflexible rule of the court of equity that a person in a fiduciary position is not allowed to put himself in a position where his personal interests and his duties conflict. Further, actual losses need not be proven conclusively by way of evidence in a conflict-of-interest situation and possible detriment or loss to the employer is sufficient.

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

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

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