

LHAG Insights

Industrial Relations & Employment



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Court Rules Planned Closure of Business Legitimate Ground for Discharge

Yusoff Othman & 5 Ors v Felda Engineering Services Sdn Bhd (Industrial Court Awards No.:773, 774, 775, 776, 777 & 778 of 2022)

Recently, the Industrial Court has dismissed the unfair dismissal claims of employees who were discharged as a consequence of a planned closure of a company. In 2018, FGV Holdings Berhad (“**FGV**”), the parent company of Felda Engineering Services Sdn Bhd (“**company**”), had implemented a restructuring exercise which involved divesting its non-core and non-performing assets. One of the non-core businesses identified to be divested was the company, which was an engineering support arm of FGV.

Despite efforts made by FGV to have the company be acquired by other affiliate companies, none agreed to the acquisition. Thus, with the divestment by FGV and the fact that the company did not undertake much work outside of the FGV Group, they were left with no choice but for the company to cease its operations.

The planned cessation of the company’s operations commenced from May 2019 and its employees were discharged in stages. The employees, in claiming unfair dismissal, alleged that the company was arbitrarily identified as a non-core business of FGV and the latter’s financial predicament should not affect the company and its employees. They further complained that the company still existed and was still actively operating even after they had been discharged.

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In holding that the company had acted in good faith in discharging the employees, the Industrial Court decided that:

(a) FGV as the ultimate holding company, is entitled to identify its non-core businesses, including the company, to be divested. This decision was a genuine business requirement. As such, it was no doubt that the divestment by FGV had directly impacted the company and thus rendering its closure inevitable;

(b) The employees' claim that the company was randomly identified as a non-core business overnight in order to justify its liquidation and disposal has no merit because it is public knowledge that FGV's main business falls under three sectors namely, plantation, logistics and sugar but not engineering;

(c) There was no evidence adduced to suggest that the company was still actively doing business which required the functions of the affected employees; and

(d) The company was wholly justified in exercising its discretion on the calculation of the compensation package to the employees, given the fact that the company would no longer be operational following its planned closure.

As far as concerned, the company had made it clear to its employees that their discharge was due to its planned closure. Thus, whilst the company still existed and was not officially dormant, the Court noted that the company had presented convincing evidence that it had taken steps in line with its imminent closure, such as the sale of its assets, commencing handover of projects and vacating its business premises. It was made apparent to the Court that the discharge of employees was inevitable given that there would no longer be a business with the means or capacity to maintain any employee.

The company was represented by partner [Shariffullah Abdul Majeed](#) (sha@lh-ag.com) and associate, Nurul Aisyah Hassan (nah@lh-ag.com) of Lee Hishammuddin Allen & Gledhill.