

LHAG Insights

Employment & Industrial Relations



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Legitimate Revocation of Privileges Not a Ground to Walk Out

Azura Norden v Small Medium Enterprise Development Bank Malaysia Berhad
(Kuala Lumpur High Court Application for Judicial Review No WA-25-171-05/2021)

Last Wednesday (23 March 2022), the High Court affirmed the Industrial Court's findings, among others, that a *bona fide* exercise of an employer's managerial prerogative is not a ground for constructive dismissal.

In 2019, the Bank had undertaken a transformation programme, i.e., a restructuring exercise across the board, and this resulted in redesignating a department headed by the employee to a section. Consequently, the employee's reporting line changed and in line with the transformation exercise, she and several other employees of similar and higher rank were relocated from private rooms to a general workstation.

The employee also complained that the Bank intended to drive her out of employment by "depriving" her of a subordinate, giving her a rating of "1.00" for her performance in 2018 and consequently placing her on a Performance Improvement Plan (**PIP**). The employee walked out of her employment, alleging that she was effectively demoted, humiliated and victimised by the Bank's actions.

In finding that there was no merit to the employee's case, the High Court reaffirmed the Industrial Court's findings as follows:

- (a) The restructuring exercise was done in good faith, a fact unequivocally conceded to by the employee during cross-examination and therefore it was untenable for the employee to claim the exercise was engineered to drive her out of employment. This was an important point to consider, as the court may have found there was merit to the employee's

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claim, if the evidence had shown the restructuring exercise was merely a sham;

- (b) There was not an iota of evidence to show that the employee's portfolio had diminished following the redesignation of her department to a section, to support her claim that she had been demoted. Furthermore, the employee's job grade did not change, and she continued to enjoy the same remuneration and contractual benefits;
- (c) The employee was clearly not victimised since she was not the only one who was relocated to a general workstation or placed on PIP;
- (d) The privilege she previously enjoyed of having a private room and a subordinate were not contractual entitlements and therefore, it cannot be said that the Bank had breached the fundamental terms of her employment contract; and
- (e) Placing the employee on PIP was not meant as victimisation but rather, to guide her to improve her work performance.

This is an example of a case where an employer's goodwill of extending non-contractual privileges such as private rooms should not be misconstrued as a right to which an employee holds a lien to. It follows that the revocation of such privileges does not draw the conclusion that an employee has been demoted. It is also worth noting that this case is distinguishable from others where an employer targets a single employee under the pretext of a reorganisation and no evidence to show for its legitimacy. For a claim of constructive dismissal to succeed, an employee must demonstrate that the employer has evinced an intention to no longer be bound by their contract of employment. The High Court ruled that the employee in this case had failed to do so.

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

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

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