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### **Navigating Relocation Requests: Denial Does Not Constitute Grounds for Constructive Dismissal**

*Sheikh Amer Bin Hussein v Pengurusan Air Selangor Sdn Bhd (Award No.: 425 of 2024)*

A former employee (“**Employee**”) brought a claim of constructive dismissal against Pengurusan Air Selangor Sdn Bhd (“**Company**”) in the Industrial Court. The court found in favour of the Company.

#### **Brief Facts**

The Employee was transferred to the Company’s headquarters for operational reasons. A few months after reporting to work at the headquarters, he requested a transfer to a different location. He claimed that the increased travel time and distance aggravated an existing health condition, stemming from a back injury sustained many years prior. His request for a transfer to a different location was denied due to a lack of vacancies, and the Employee subsequently resigned. In his resignation letter, he marked a memorable departure from service with the Company by stating “*Saya juga ingin mengucapkan ribuan terima kasih di atas kerjasama sepanjang saya berkhidmat degan Syarikat ini.*”

Before the Industrial Court, the Employee argued that his resignation was a result of the Company’s refusal to accommodate his health condition and the hardship caused

by having to work at the Company's headquarters. He contended that these actions by the Company gave rise to grounds for constructive dismissal.

### **Decision of the Industrial Court**

The Industrial Court, finding in favour of the Company, rejected the Employee's argument that the Company's decision to deny his transfer request to a different location constituted a breach of contract or constructive dismissal.

The Industrial Court considered the following:

- (a) As an employer, the Company had the authority to transfer employees. The Employee's employment contract clearly stated that he was subject to transfers.
- (b) During his tenure of employment with the Company, the Employee had accepted various transfers, and the Company had previously accommodated his appeals against transfer orders.
- (c) Mere transfer decisions do not constitute constructive dismissal unless done in bad faith, which was not the Employee's position. He acknowledged that his expertise and experience were needed at the Company's headquarters. The transfer would also be beneficial to his career development. Accepting the Employee's argument would unduly restrict the Company's ability to manage its operations effectively.
- (d) The Company's actions, which were tantamount to a fundamental breach of the terms and conditions of the Employee's employment, should have been expressly documented in the Employee's resignation letter, especially considering that the Employee was in a managerial position, and not a 'rank-and-file' employee. The absence of any mention of constructive dismissal by the Employee was fatal to the Employee's case.
- (e) The Employee's resignation letter, including the observation of his notice period and expressions of gratitude, suggested a tone of maturity and conciliation rather than resentment. The language used indicated a voluntary resignation.

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- (f) The Employee's resignation was also motivated by other personal circumstances, such as the need to take care of his unwell wife.
- (g) The Employee should have taken immediate steps to resign if the Company's actions were fundamental breaches that warranting a claim of constructive dismissal. The fact that he tendered a letter of resignation with redolent of respect and continue working through his three-month notice period undermines his claim.

**Commentary**

With the introduction of the right to apply for flexible working arrangements under the Employment Act 1955, there is likely to be a surge in employee requests to alter their place of work, particularly in companies with multiple branches. Such requests may arise from various personal needs, including health considerations, convenience, and/or family obligations.

The significance of this case lies in its clarification that not all rejections of these requests equate to constructive dismissal. By examining the parameters within which employers can lawfully deny relocation requests without breaching employment contracts, this case provides crucial guidance for both employers and employees navigating the evolving landscape of workplace flexibility. Understanding these boundaries is essential for maintaining fair practices and avoiding unnecessary legal disputes.

The Award of the Industrial Court can be read [here](#).

The Company was represented by Partner Amardeep Singh Toor and Associate Ashreyna Kaur Bhatia.

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