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EMPLOYMENT & INDUSTRIAL RELATIONS

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SENIOR ROLE, HEAVIER DUTY: DISMISSAL OF A FINANCE HEAD UPHELD ON APPEAL

by Hoi Jack S'ng, Amardeep Singh Toor & Wong Lien Taa

MAHENDRAN A/L MARIMUTHU V SILTERRA MALAYSIA SDN BHD
(HIGH COURT OF MALAYA AT PENANG, CIVIL APPEAL NO. PA-16A-5-02/2025)
(ON APPEAL FROM INDUSTRIAL COURT AWARD NO. 164 OF 2025)

The High Court upheld the dismissal of a Vice President of Finance for serious misconduct. This decision is useful on a question common to most senior management disputes, how much room a senior officer has to depart from company policy.

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Brief Facts

The employee was the Vice President of Finance and head of the Finance Department. After a forensic investigation, he was dismissed for six acts of misconduct. In short, he had:

(a) instructed the reversal of financial provisions set aside for merchandise returns and staff unpaid leave. The revised provisions for both items were below the minimum required by the Company's Standard Provision Policy ("**Provision Policy**");

(b) adjusted the financial provisions to meet the company's earnings before interest, taxes, depreciation and amortisation ("**EBITDA**") targets, affecting its yearly financial reporting; and

(c) purchased unbudgeted wafer pods without Board approval, contrary to the Company's Discretionary Authority Limits ("**DAL**").

The Industrial Court found the allegations to be proven and held the dismissal to be with just cause or excuse. It found that:

(a) as the most senior person in the department, he could not shift blame to others. He was the one responsible for good governance and for stopping improper practices;

(b) meeting the EBITDA target was no justification for departing from the Provision Policy;

(c) he owed the Company a duty to act with care and in its interests, but breached its policies instead;

(d) manipulating the provisions was a serious breach. Coming from the department's most senior officer, it destroyed the trust the company had placed in him; and

(e) the DAL required Board approval for all unbudgeted spending, which he bypassed without valid reason.

Appeal

The employee appealed. The High Court dismissed the appeal. It held, among other things, that:

(a) his senior role demanded a higher standard of care, integrity and compliance. Any departure from financial controls had to be scrutinised closely, especially where it concerned the accuracy of the Company's financial accounts;

(b) the reversals were made on his instructions without the approval needed to depart from the Provision Policy. They had the effect of boosting the Company's results and he admitted the provisions had been reviewed with the EBITDA targets in mind;

(c) he authorised the purchase of the pods without Board approval despite being told by the legal department that approval was required. As a senior officer, he had to ensure the approval limits were observed, particularly for unbudgeted spending; and

(d) he concealed from the Board that the wafer pods had already been purchased.

Seniority and position cuts both ways. The higher the role, the higher the standard the Court will apply. The standard is heightened for a senior officer in the finance function. The holder of that office is expected to be beyond reproach.

This decision also reinforces that a forensic audit is also not a defence on its own. The Industrial Court will still examine whether the company's policy was followed with the correct approvals obtained.

The Company was represented by Partners, **Hoi Jack S'ng** and **Amardeep Singh Toor**, with Senior Associate, **Wong Lien Taa**.

Scan the QR code below to see the Award.

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