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Breaching the Boundary: Violation of Subordinate's Modesty

Akmal Hidayat bin Zamhari v BHIC Marine Technology Academy Sdn Bhd (Industrial Court Award No 480 of 2019)

The claimant was an assistant manager when his services were terminated. He instructed one of his female subordinates to accompany him to Langkawi, Kedah, for business meetings. The claimant gave the impression that another female colleague would also join the meetings. At the very last minute, the claimant informed his subordinate that the female colleague would not be joining them after all.

After their meetings ended, the claimant checked himself and his subordinate into a hotel for the night. On the way to their rooms, the claimant ignored his subordinate's request to hand over the key to her room, and persuaded her to enter what later turned out to be his room. His subordinate entered, thinking that it was probably an apartment that contained several other rooms.

When she realised the situation was not as she thought, she tried to leave the room, but was prevented by the claimant. The claimant then made sexual advances and assaulted her. She managed to escape and inform a colleague and made a police report.

The claimant's employment with the company was terminated on the basis that he had sexually harassed and tried to violate the modesty of his subordinate. His subordinate's evidence was corroborated by her colleague, who testified that the claimant had on previous occasions importuned his subordinate with sexual innuendos.

The claimant admitted that he was bound by the terms and conditions of his employment, which required him to ensure that he would not commit any sexually related offences which were detrimental to the interests of the company.

In dismissing his claim for unlawful dismissal, the Industrial Court held that:

- (a) The claimant had, prior to the trip, planned to violate the modesty of his subordinate;
- (b) It was the responsibility of the claimant to ensure the safety of his subordinates and to not take advantage of subordinate

employees by doing immoral acts;

- (c) The claimant's misconduct towards his subordinate was unreasonable and unacceptable;
- (d) The claimant's good record of service with the company did not justify his misconduct;
- (e) The claimant's misconduct had left the company unable to repose the necessary trust and confidence in the claimant as an employee; and
- (f) Given the serious nature of the misconduct, the decision to terminate the claimant was justified.

The company was represented by partner Shariffullah Abdul Majeed of [Lee Hishammuddin Allen & Gledhill](#).

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

Shariffullah Abdul Majeed and **Rahul Thomas Dennis** (Pupil-in-Chambers)

If you have any queries, please contact team partner [Shariffullah Abdul Majeed](#) (sha@lh-ag.com).

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