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### **Senior Management Not Immune to Transfers Within Subsidiaries**

*Abdul Sidik bin Abdul Hamid v Perusahaan Otomobil Nasional Sdn Bhd* (Industrial Court Award No 2305 of 2019)

The claimant began employment as the General Manager of the sales division for Proton Edar Sdn Bhd. In view of the business requirements of Proton Holdings Berhad pursuant to the takeover by DRB-Hicom Berhad, the claimant was transferred to Perusahaan Otomobil Nasional Sdn Bhd as the General Manager of Marketing, which was also his last held position.

According to the claimant, upon the transfer, he was, among others, no longer called in for meetings and was not allowed to carry on with the projects in relation to Proton Edar as well as not being provided with a secretary.

By a letter dated 10 December 2012 to the company, the claimant averred that the former had breached the fundamental terms and conditions of his employment and considered himself to have been constructively dismissed.

In dismissing his claim for constructive dismissal, the Industrial Court held, among other things, that:

- (a) By virtue of the transfer clause in the claimant's contract, the company had the right to exercise its discretion over his transfer. The claimant's transfer did not affect his salary, status and benefits and therefore did not amount to a breach of a fundamental term of the claimant's employment contract;
- (b) At the material time, a number of other employees of the company were also transferred following the company's acquisition by DRH-Hicom. Based on the admission from the claimant regarding the acquisition, the transfer wholly shows that the company had not breached any terms and conditions of the claimant's employment contract;
- (c) The claimant's non-involvement in the Projek 188K and the merger between EON-EDAR was plainly because he had been transferred from Proton Edar to Perusahaan Otomobil Nasional, and these matters were not under the purview of the former;
- (d) The claimant never raised his requirement for support staff from

his Head of Department and, as such, the company took the position that the claimant did not have a need for one at the material time;

(e) The burden was on the claimant to prove he had been victimised by the company, which he had failed to do;

(f) Time is of the essence when an employee claims that the company has breached terms and conditions of the employment contract and he should resign immediately. As the claimant failed to do so, the court found that he had willingly accepted the new conditions to his contract of employment.

The company was represented by partners [Dato' Thavalingam Thavarajah](#) and Shariffullah Majeed of [Lee Hishammuddin Allen & Gledhill](#).

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

**Shariffullah Majeed** and **Keshava Rajasekaran** (Pupil-in-Chambers)

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

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