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Humiliation Not a Ground for Walking Out

Ng Teck Fay v Syarikat Takaful Malaysia Berhad & Anor
(Kuala Lumpur High Court Application for Judicial Review No WA-25-97-02/2019)

The High Court, on 21 November 2019, had affirmed the Industrial Court's findings, among others, that humiliation is not a ground for an employee to claim that he had been constructively dismissed by the company.

In line with the company's ongoing restructuring exercise, the Family Claims Division in which the employee held the position of Assistant General Manager (Grade 3) was divided into two portfolios: Medical Claims, administered by a Third Party Administrator; and Family Claims, Group Claims & Personal Accident Claims, which was headed by the employee. As a consequence, the employee's job scope was re-aligned as the *Medical Claims for Health Insurance Products* were excluded from the sphere of the Family Claims Division. In fact, the change in the employee's job scope and the realignment of his benefits to his job scope was agreed upon during a meeting in May 2014 between the Group Managing Director, the General Manager of the Human Resource Division and the employee.

Following the employee's new job scope, his position was re-graded from Assistant General Manager (Grade 3) to Senior Manager (Grade 4) without any change in his salary and seniority. The employee had accepted without objection the new re-grading on 23 May 2014, and proceeded to discharge his duties without any protest in relation to the re-grading on 26 May 2014. On the same day, the company's management announced the new structure of the Family Claims Division for the purpose of making it clear to all parties as to who they should refer to in relation to Family Claims. Four days later, via a letter dated 30 May 2014, the employee alleged that he had been constructively dismissed by the company with immediate effect. One of the grounds relied on in his claim for constructive dismissal was that the company's decision to announce the new structure of the Family Claims Division was humiliating to him as the re-grading of his position was also announced.

The Industrial Court held, among others, that it is trite industrial jurisprudence that the feelings of embarrassment, humiliation or disgrace are not grounds for claiming constructive dismissal.

In dismissing the employee's application for judicial review against the Industrial Court's decision, the High Court agreed that the employee had failed to prove on a balance of probabilities that the company had fundamentally breached the salient terms of his employment contract going to the root of the employment contract which entitled him to consider himself constructively dismissed by the company.

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

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

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