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Delay Fatal to Claim of Constructive Dismissal

Abdul Sidik bin Abdul Hamid v Perusahaan Otomobil Nasional Sdn Bhd & Anor
(Kuala Lumpur High Court Application for Judicial Review No WA-25-518-11/2019)

Last Thursday (17 December 2020), the High Court upheld the Industrial Court's findings, among others, that undue delay in responding to the alleged breaches of contract by the employer is fatal to a claim based on constructive dismissal.

The employee, who joined Proton Edar Sdn Bhd as the General Manager of its sales division, was transferred to Perusahaan Otomobil Nasional Sdn Bhd as the General Manager of Marketing, which was also his last held position, pursuant to a restructuring exercise arising from the takeover of the Proton Holdings Berhad group of companies by DRB-Hicom Berhad.

By a letter dated 10 December 2012 to the company, the employee claimed he had been constructively dismissed, citing that following his transfer, he was effectively placed in "cold storage" as he was, among others, no longer called in for meetings, no longer involved in projects in relation to Proton Edar as well as not being provided with a secretary.

In finding that there was no merit to the employee's case, the High Court reaffirmed the Industrial Court's findings as follows:

(a) By virtue of the transfer clause in the employee's contract, the company had the right to exercise its discretion over his transfer. The employee's transfer did not affect his salary, status and benefits and therefore did not amount to a breach of a fundamental term of the employee's employment contract;

(b) At the material time, several other employees of the company were also transferred following the company's acquisition by DRB-Hicom Berhad. Based on the

admission from the employee regarding the acquisition, the transfer wholly shows that the company had not breached any terms and conditions of the employee's employment contract;

(c) The employee's non-involvement in Projek 188K and the merger between EON-EDAR was plainly because he had been transferred from Proton Edar to Perusahaan Otomobil Nasional, and, as such, these matters were no longer under the purview of the employee;

(d) The employee never raised his requirement for support staff with his Head of Department and, as such, the company took the position that the employee did not have a need for one at the material time;

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

(f) By his own admission, during the time he was allegedly placed in "cold storage", the employee was merely reading books in his office. The court found that he had therefore willingly accepted the new conditions to his contract of employment when he delayed for 2½ months before claiming that he was allegedly constructively dismissed.

The company was represented by partner Shariffullah Majeed, and associate Nurul Aisyah Hassan, of **Lee Hishammuddin Allen & Gledhill**.

The Industrial Court award may be viewed here.

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