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No Lien to Position, Reporting Line or Privileges

Azura binti Norden v Small Medium Enterprise Development Bank Malaysia Berhad
(Industrial Court Award No 94 of 2021)

The Industrial Court recently dismissed the constructive dismissal claim of an employee, upon finding that her complaints of the Bank's purported breaches of her employment contract were in fact without merit and she had left of her own volition.

Following the Bank's implementation of its Transformation Programme and subsequent restructuring exercise, the employee's department was scaled down to a section and the employee was re-designated from Head of Department to Head of Section. Further in line with the Bank's reorganisation, the employee's reporting line had changed and she and several other employees of similar and higher rank were relocated from a private room to a general workstation.

More than one month after her effective re-designation, the employee walked out of her employment, alleging that she was effectively demoted, humiliated and victimised by the Bank's actions. The employee also complained that the Bank intended to drive her out of employment by "depriving" her of a subordinate, giving her a rating of "**1.00**" for her performance in 2018 and consequently placing her on a Performance Improvement Plan (**PIP**).

The Industrial Court, in deciding that the employee had failed to prove she had been constructively dismissed, held as follows:

- (a) The Transformation Programme and the restructuring exercise that ensued were done *bona fide*, a fact unequivocally conceded to by the employee during cross-examination;
- (b) There was not an iota of evidence to show that the employee's portfolio had diminished following her re-

designation as Head of Section nor that she had protested about changes in her job functions. The employee instead delayed for more than one month before she walked out claiming she had been constructively dismissed;

- (c) An employee holds no lien to a reporting line and the employee's grievance in the change of her reporting line did not entitle her to claim constructive dismissal;
- (d) The employee was clearly not victimised since she was not the only one who was relocated to a general workstation and it is trite that "humiliation" is not a ground for claiming constructive dismissal;
- (e) Having a subordinate is a privilege and not a right, in the absence of such express terms in a contract of employment; and
- (f) Placing the employee on PIP was not a manifestation of punishment by the Bank and not a breach that went to the root of the employee's contract.

The Bank 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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