

**DALAM MAHKAMAH PERUSAHAAN MALAYSIA
CAWANGAN PERAK
KES NO. 10/4-1576/23
DI ANTARA
ROHANA BINTI YUSOF
DAN
AMANAH IKHTIAR MALAYSIA**

This Industrial Court award from the Malaysia Industrial Court (Perak Branch) concerns a case of alleged **constructive dismissal** by Rohana Binti Yusof (the Claimant) against her employer, Amanah Ikhtiar Malaysia (the Company). The Court dismissed the claim. Here are the key points:

Background

- The Claimant was employed by Amanah Ikhtiar Malaysia (AIM) since 1991, most recently as a **Branch Manager** in Ipoh.
- On 8 September 2022, she was **orally informed** of a transfer to the position of **State Executive Officer** at the Perak State Office, effective 3 October 2022.
- Several memos and correction memos were issued regarding the transfer, **最终** transferring her to the Kinta Branch as a State Executive Officer.
- The Claimant argued that the transfer was a **demotion**, done in **bad faith** (*mala fide*), and was a form of **victimisation** due to complaints from the workers' union (KEPAIM).
- She claimed she was given **no meaningful work**, was **isolated**, and was **not allowed to go to the field**.
- On 1 March 2023, she submitted a letter claiming **constructive dismissal**.

The Claimant's Case (PYM)

- Alleged the transfer was a **punitive demotion** triggered by unsubstantiated complaints from KEPAIM.
- Claimed she was **not given any tasks**, excluded from official events, and worked in a less favourable environment (open cubicle vs. private room).
- Argued that the transfer violated the **fundamental terms** of her employment contract.
- Sought **reinstatement** to her previous position or, alternatively, **compensation**.

The Company's Case (Pihak Syarikat)

- Argued that the transfer was a **legitimate exercise of managerial prerogative** based on **operational needs**.
- Cited Clause 2.10 of the Staff Service Scheme, which allows the company to transfer staff anywhere.

- Stated that the new position was of the **same grade (E2)** and **salary**, with no loss of seniority or benefits.
- Denied any victimisation or bad faith, and asserted that the Claimant **voluntarily resigned**.

Key Legal Principles Applied by the Court

1. **Constructive Dismissal Test ("Contract Test")**: The employer must have committed a **fundamental breach** of the employment contract going to its root (citing *Western Excavating v. Sharp* and *Wong Chee Hong v. Cathay Organisation*).
2. **Management Prerogative**: An employer has the right to transfer employees based on operational needs, provided it is done **bona fide** (in good faith) and not with improper motive (citing *William Jacks & Co., Ladang Holyrood*, and *CIMB Bank Bhd.* cases).
3. **Burden of Proof**: The **burden lies on the employee** to prove constructive dismissal on a **balance of probabilities** (civil standard).
4. **Delay in Resignation**: An employee must resign **soon after the breach**. A delay of several months can be seen as **affirming the varied contract** (citing *Kamarulzamil Kamarulbaharin* and *Matrix Global Education*).

Court's Findings & Decision

- **No Fundamental Breach**: The Court found **no evidence** that the Company breached the employment contract. The transfer was a **lateral move** within the same grade (E2) and salary. The loss of certain allowances (e.g., petrol) was due to the change in job function, not a contractual breach, and the Claimant was still eligible to claim travel expenses.
- **Transfer was Bona Fide**: The transfer was due to **genuine operational needs**, not punishment. The Company considered the Claimant's request to be stationed nearer to her residence (Kinta).
- **Work was Assigned**: Contrary to the Claimant's assertion, evidence showed she **was given tasks and responsibilities** in her new role and had even claimed travel expenses for official duties.
- **No Victimisation or Mala Fide**: The Claimant **failed to prove** that the transfer was actuated by bad faith, victimisation, or was connected to any union complaints. The Company testified that no disciplinary issues were found against her.
- **Excessive Delay**: The Claimant worked in the new role for **over four months** before resigning. This delay was **fatal to her claim** of constructive dismissal, as it suggested she had **accepted the new terms** of her employment.
- **Voluntary Resignation**: The Court concluded the Claimant **voluntarily resigned** of her own accord after feeling dissatisfied, and was **not constructively dismissed**.

Final Order

- The Claimant's case was **dismissed**.
- The Court found **no constructive dismissal** had occurred.
- **No order** for reinstatement or compensation was made.

In essence, the Court ruled that the employer acted within its rights to transfer the employee based on operational needs, the transfer did not amount to a demotion or breach of contract, and the employee's long delay before resigning undermined her claim of constructive dismissal.