



## When Does A Transfer Order Breach An Employment Contract?

1 July 2026

For more information, please contact:

**Rajeswari Karupiah**  
rajeswari@rdslawpartners.com

**Muhamad Sharulnizam**  
sharul@rdslawpartners.com

### Introduction

The recent High Court decision in *Mohd Sofian bin Amirudin v Bank Simpanan Nasional* [2026] MLJU 1479 serves as an important reminder that an employer's contractual right to transfer employees is not unlimited. Even where an employment contract confers broad transfer powers, the exercise of those powers must remain consistent with the contract and cannot fundamentally alter the employee's position or responsibilities.

Beyond clarifying the limits of transfer clauses, the decision also considers the distinction between genuine fixed-term employment and permanent employment and highlights the significant differences between remedies available under the common law and those under the Industrial Relations Act 1967 (IRA 1967). Because Bank Simpanan Nasional (BSN) falls within the scope of Section 52(1) of the IRA 1967, the plaintiff was confined to pursuing a civil claim for breach of contract rather than a claim for unfair dismissal before the Industrial Court.

### Background

The plaintiff had been employed by BSN for approximately twelve years under a series of seven successive fixed-term contracts. At the material time, he held the position of Head of Cards Business & CRM (Senior Vice President, Grade E7), with his latest contract due to expire on 31 December 2021.

Following disciplinary proceedings in August 2021, the plaintiff received a warning and was subsequently transferred to a newly established Special Project Unit (SPU). He contended that the transfer effectively stripped him of his senior management

responsibilities and amounted to a fundamental breach of contract, entitling him to treat himself as constructively dismissed.

BSN denied the allegation and maintained that the transfer was authorised under the employment contract. When the plaintiff refused to report to the SPU, the Bank terminated his employment and counterclaimed for three months' salary in lieu of notice.

### **The High Court's Decision**

The High Court considered four principal issues:

- whether the transfer fell within the employer's contractual powers;
- whether the plaintiff was genuinely employed under fixed-term contracts or was, in substance, a permanent employee;
- the appropriate measure of damages; and
- whether the Bank could recover salary in lieu of notice.

### **A Transfer Clause Does Not Give An Employer Unlimited Powers**

The central issue before the High Court was whether the plaintiff's transfer to the SPU was authorised by the employment contract.

BSN relied on contractual provisions permitting it to transfer employees across departments and to assign duties to a lower grade, provided the employee's salary remained unchanged. The High Court accepted that employers enjoy considerable managerial discretion in deploying employees. However, the court emphasised that contractual transfer clauses are not absolute and must be exercised within their contractual limits.

On the facts, the court found that the transfer exceeded those limits. The SPU was not an established department, division or branch contemplated by the employment contract. Instead, it was a newly created unit with no clearly defined functions, organisational structure or key performance indicators.

More significantly, the plaintiff was removed from his role as Head of Department, where he supervised approximately 170 employees and placed into a unit with substantially diminished responsibilities. Although his remuneration remained unchanged, the court held that the transfer effectively stripped him of his substantive managerial role.

The fact that the SPU did not appear in the Bank's formal organisational structure and was subsequently dissolved further reinforced the court's conclusion that the transfer was not a legitimate exercise of the employer's contractual powers.

The decision demonstrates that courts will examine the substance of a transfer rather than simply its form. Preserving an employee's salary alone will not necessarily validate a transfer where the employee's authority, responsibilities and status have been materially reduced.

### **Genuine Fixed-Term Contracts Remain Enforceable**

The plaintiff also argued that his employment had become permanent after serving continuously under seven successive fixed-term contracts over approximately twelve years.

The High Court rejected this contention. It found that each contract contained clear commencement and expiry dates, was accepted without objection and contained no provision for automatic renewal. The court therefore concluded that the parties had entered into genuine fixed-term contracts rather than a permanent employment relationship disguised as fixed-term employment.

This decision should, however, be contrasted with the Federal Court's decision in *Ahmad Zahri Mirza Abdul Hamid v AIMS Cyberjaya Sdn Bhd* [2020] 3 ILR 233, where successive renewals were found, in substance, to constitute permanent employment.

Read together, these two decisions reaffirm that courts will look beyond contractual labels and examine the reality of the employment relationship. Repeated renewals alone will not convert fixed-term employment into permanent employment unless the surrounding circumstances indicate that the fixed-term arrangements merely disguise an indefinite employment relationship.

### **Different Forums, Different Remedies**

Although the plaintiff characterised the dispute as constructive dismissal, the High Court emphasised that the case was properly analysed as a claim for breach of contract.

This distinction was significant. Unlike the Industrial Court, which may award reinstatement, back wages and compensation in lieu of reinstatement, the civil courts are confined to awarding contractual damages.

As the plaintiff's fixed-term contract had approximately four months remaining, the court awarded RM161,200, representing salary and contractual benefits for the balance of the contract period. Claims for future earnings until retirement, reputational loss and general damages were rejected as being irrecoverable under the common law.

The case illustrates that the forum in which employment disputes are litigated may materially affect both litigation strategy and the remedies ultimately available.

## An Employer In Breach Cannot Enforce The Notice Clause

The High Court also dismissed BSN's counterclaim for salary in lieu of notice. It held that an employer who has committed a repudiatory breach of contract cannot insist that the employee continue to comply with contractual obligations triggered by that very breach.

Accordingly, once the employer's conduct entitled the employee to treat the contract as discharged, the employer could no longer rely on the contractual notice provision to recover salary in lieu of notice.

## Practical Lessons For Employers

The decision offers several important lessons for employers.

First, contractual transfer clauses should not be regarded as unlimited managerial powers. Employers should ensure that any transfer remains consistent with the employee's contractual position and does not fundamentally diminish the employee's authority, responsibilities or status.

Secondly, while successive fixed-term contracts remain permissible, employers should ensure that there is a genuine commercial justification for maintaining a fixed-term arrangement rather than an ongoing employment relationship.

This ruling is a timely reminder that contractual powers are not without limits. While employment contracts may confer broad rights to transfer employees, those powers must be exercised consistently with the substance of the contract and the practical realities of the employment relationship. A transfer that fundamentally alters an employee's role or strips the employee of meaningful responsibilities may amount to a repudiatory breach of contract, notwithstanding that salary and benefits remain unchanged.

Ultimately, the decision reinforces a broader principle of employment law: courts will look beyond contractual wording to examine how contractual powers are exercised in practice. For employers, careful drafting remains important but equally important is ensuring that managerial decisions remain faithful to the contractual bargain that the parties originally agreed.

[www.rdslawpartners.com](http://www.rdslawpartners.com)

This publication is for educational and informational purposes only and is not intended and should not be construed as legal advice.

### KUALA LUMPUR

Level 16, Menara 1 Dutamas No. 1, Jalan Dutamas 1,  
Solaris Dutamas, 50480 Kuala Lumpur  
T: +603 6209 5400  
F: +603 6209 5411  
[enquiry@rdslawpartners.com](mailto:enquiry@rdslawpartners.com)

### PENANG

Suite S-21E & F21st Floor, Menara Northam,  
No. 55, Jalan Sultan Ahmad Shah, 10050  
Penang  
T: +604 370 1122  
F: +604 370 5678  
[generalpg@rdslawpartners.com](mailto:generalpg@rdslawpartners.com)

### JOHOR BAHRU

8-35, Menara Delima Satu, Jalan Forest City 1,  
Pulau Satu, 81550 Gelang Patah, Johor Bahru  
T: +607 585 6414  
F: +607 509 7614  
[generaljb@rdslawpartners.com](mailto:generaljb@rdslawpartners.com)