

Employer's Right To Transfer: When Does A Transfer Order Amount To Constructive Dismissal?

2 October 2026

For more information, please contact:

Rajeswari Karupiah
rajeswari@rdslawpartners.com

Muhamad Sharulnizam
sharul@rdslawpartners.com

In the recent Industrial Court Award in *Nurafiera binti Mohamad Rafee v Pos Malaysia Berhad*, Award No. 892 of 2026, the Industrial Court dismissed a constructive dismissal claim brought by a former employee against Pos Malaysia Berhad.

The Company (Pos Malaysia Berhad) was successfully represented by Muhamad Sharulnizam bin Mohd Roni, a Senior Associate with the firm's Employment & Industrial Relations Practice, where he submitted that the transfer of the Claimant (Nurafiera binti Mohamed Rafee) was a lawful and legitimate exercise of management prerogative.

The claimant, who was employed as a clerk and stationed at the Taman Dagang Post Office, Kuala Lumpur, was transferred to the General Post Office at Dayabumi, Kuala Lumpur due to the Company's operational needs. Before the transfer took effect, the Claimant was involved in a workplace accident and was placed on medical leave. She objected to the transfer, alleging bad faith, victimisation, inconvenience and hardship due to her medical condition.

The Company denied these allegations and maintained that the transfer had been planned before the accident, was supported by genuine business needs and was not targeted at the Claimant. The Company had also postponed the Claimant's reporting date until her full recovery and informed her that her appeal would be considered.

Despite this, the Claimant treated herself as constructively dismissed. The Industrial Court rejected the claim and found that there was no fundamental breach of the Claimant's contract of

employment. Instead, the court held that the Claimant had, in actual fact, abandoned her employment.

The award raises several important industrial relations considerations on the employer's right of transfer.

The Freedom To Exercise The Right Of Transfer?

The award confirms that the right to transfer employees forms part of management prerogative, especially where the right is supported by the contract of employment and/or collective agreement. However, the employer must still be able to show that the transfer was made bona fide and for legitimate business or operational reasons.

In this case, the court found no inconsistency between the contractual clause and the Collective Agreement. The court held:

"There are no contradictions or inconsistencies between Article 31 and Clause 3 of the Claimant's contract of employment which covers transfer of employees of the Company. This Article 31 acknowledges the Company's prerogative in the transfer exercise what more the Company's transfer exercise which involves a distance of 180 kilometre radius. The Claimant's transfer was hardly anywhere near the 180 kilometre radius as the transfer of the Claimant was all within Kuala Lumpur."

The court also accepted that the transfer was supported by genuine business needs. The Company required experienced employees who were conversant in English and Bahasa Malaysia to be stationed at the General Post Office, and the Claimant was one of eight employees selected for transfer. The court held:

"This Court having examined the documentary proof and the evidence of COW1 and COW2 is of the view that the Company had a genuine business need for the Claimant's transfer together with 7 other employees to General Post Office situated at Dayabumi Kuala Lumpur and this transfer exercise was all within the vicinity in Kuala Lumpur."

This reinforces the principle that a transfer order will generally be defensible where it is supported by clear contractual terms, genuine operational reasons, and evidence showing that it was not made arbitrarily or in bad faith.

Can An Employee Question A Transfer Order?

An employee may raise concerns or appeal against a transfer. However, an employee cannot treat every transfer order as unlawful merely because it causes inconvenience, additional commuting costs or disruption to personal arrangements.

In this case, the Claimant's objections were mainly premised on inconvenience, family arrangements, and additional commuting issues. The court found that these reasons did not invalidate the transfer order. More importantly, the Claimant failed to prove that the transfer was made in bad faith or with malicious intent. The court observed:

"The Claimant, based on her evidence is unable to show any bad faith or malicious intent by the Company to victimise her by the transfer exercise planned by the Company. Based on the Claimant letters of protest, all this Court can glean is the Claimant's unwillingness to accept the legitimate transfer which is a lawful order as it would inconvenience her daily routine and the likelihood of some additional cost in commuting to her intended new workplace and nothing more."

The court was also critical of the Claimant's decision to claim constructive dismissal before waiting for the outcome of her appeal. The Company had already postponed her reporting date until full recovery and informed her that her appeal would be considered. Nevertheless, the Claimant issued her constructive dismissal letter six days later. The court ruled:

"All of this conduct of the Company clearly shows that the Company, far from victimising the Claimant, was in fact sensitive to her complaints but the Claimant was extremely hasty and accusatory in nature."

Accordingly, while an employee is entitled to raise genuine concerns, a mere preference to remain at the existing workplace is insufficient. There must be evidence that the transfer was unlawful, *mala fide*, punitive, discriminatory or in breach of the employment contract.

The Test For Reasonableness

The Claimant relied heavily on the Court of Appeal decision in *Shahruzaman Barun v Perodua Sales Sdn. Bhd & Others* [2025] 1 ILR 449 to argue that the Company had breached the fundamental terms of her contract. However, the court held that reliance on *Shahruzaman Barun* was misplaced. The court held:

"The facts in the present case and Shahruzaman Barun (supra) are poles apart and as such making any reference to Shahruzaman Barun (supra) in support of the present case must necessarily be a futile attempt."

In *Shahruzaman Barun*, the transfer arose in the context of a corporate restructuring exercise, where the employees were required to resign from their permanent employment and accept a 2-year fixed-term contract with another entity. When they refused, they were transferred to faraway locations, namely Kota Kinabalu, Kuching and Kuala Terengganu, within a very short period of 3 days. On those facts, the transfer was found to be *mala fide* and in breach of the contract.

The facts in the present case were materially different. The Claimant's transfer was an internal transfer within Kuala Lumpur, was planned before her workplace injury, involved other employees as part of a wider operational exercise and was supported by genuine business needs. The Company had also postponed the transfer until the Claimant's full recovery and informed her that her appeal would be considered.

The Court also reaffirmed that in a constructive dismissal claim, the applicable test is not whether the employer's conduct was merely unreasonable, but whether the employer had committed a fundamental breach going to the root of the contract. The court explained:

"However as the Claimant has alleged constructive dismissal, the legal test that this Court is bound to adhere to is not a test of unreasonable conduct of the Company but whether the Company has breached any of the fundamental terms that goes to the root of the Claimant's contract of employment or whether the Company has evinced an intention not to be bound by any of the essential terms of the Claimant's contract of employment which is anchored on a contract test."

This confirms that the reasonableness of a transfer is not assessed in isolation. The Court's focus remains on whether the employer's conduct crossed the legal threshold for constructive dismissal.

Does Medical Condition Take Away The Employer's Prerogative?

This award also confirms that an employee's medical condition does not automatically remove the employer's prerogative to transfer. The relevant question is whether the transfer was made because of the medical condition or whether the employer acted in bad faith or failed to consider the employee's circumstances.

In this case, the court found that the transfer had been planned in December 2022, before the Claimant's workplace accident in February 2023. Therefore, the allegation that the transfer was connected to her injury or medical leave had no basis. The court held:

"This Court is of further view that the transfer exercise was planned in December 2022 wherein the Claimant was first to be transferred to the General Post Office situated at Dayabumi Kuala Lumpur on the 16.01.2023 which however was postponed to 13.03.2023. Thus the allegation of the Claimant that the transfer exercise was planned at the time the Claimant was on sick leave and undergoing physiotherapy has no basis."

The court further found that the Company had acted sensitively after becoming aware of the Claimant's condition:

"The Company upon knowledge of the Claimant's injury and sick leave immediately postponed the transfer until the Claimant's full recovery."

The Company even notified the Claimant that her appeal against the transfer will be considered and that she will be notified later.”

Therefore, while medical circumstances should be considered carefully, they do not automatically invalidate a transfer order. Employers should, however, assess the medical evidence, consider whether postponement or accommodation is appropriate, and communicate clearly with the employee.

Conclusion

The ruling in *Nurafiera Binti Mohamad Rafee v Pos Malaysia Berhad* reaffirms that an employer's right to transfer remains a recognised management prerogative, provided it is exercised bona fide, in accordance with the contract of employment and/or collective agreement and supported by genuine operational reasons.

This decision also makes clear that inconvenience, dissatisfaction, or personal hardship alone will not render a transfer unlawful. In a constructive dismissal claim, the employee must still prove a fundamental breach going to the root of the employment contract.

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

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

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