



High Court Reinforces Employers' Right To Transfer Employees

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For more information, please contact:

Rajeswari Karupiah
rajeswari@rdslawpartners.com

Muhamad Sharulnizam
sharul@rdslawpartners.com

Recently, the High Court set aside the Industrial Court award which had found that an employee's dismissal was without just cause or excuse and ordered his reinstatement (albeit to a demoted position) together with back wages. The High Court held that the employee's persistent refusal to comply with a lawful and valid transfer order amounted to wilful insubordination, constituting a fundamental breach of the employment relationship that justified summary dismissal.

This ruling reaffirms the scope of an employer's management prerogative in implementing bona fide transfers and provides important guidance on the legal consequences of an employee's refusal to comply with lawful management directives. It also reinforces the principle that an employee who disputes the validity of a transfer must first comply with the employer's lawful instruction and then pursue any challenge through the appropriate legal channels.

RDS Employment Partner, Rajeswari Karupiah, together with Senior Associate, Muhamad Sharulnizam Bin Mohd Roni, successfully acted for the company, Pos Malaysia Berhad, in this appeal.

Background

The employee was employed by Pos Malaysia Berhad for approximately 25 years as a postman. In 2019, he was promoted to the position of *Posmen Kanan cum Ketua Zon* at Pusat Pos Laju (PPL) Bukit Mertajam.

In March 2021, the company exercised its contractual right to transfer the employee to PPL Bayan Lepas, where he was to continue performing the same role without any reduction in salary,

benefits, bonus entitlement or grade. The transfer was therefore a purely lateral transfer.

The employee, however, refused to report to his new workplace. Instead, he proposed that he be allowed to remain at PPL Bukit Mertajam in a lower-graded position. The company declined this request, maintaining that staff deployment and transfers fall within its management prerogative.

Despite repeated instructions, the employee continued reporting for duty at his former workplace instead of complying with the transfer order. The company subsequently issued a show cause letter and convened a show cause inquiry. During the inquiry, the employee admitted to the charge of refusing to comply with the transfer order. Following the inquiry, the company dismissed him for wilful insubordination.

The Industrial Court nevertheless held that dismissal was disproportionate. It concluded that the employee ought instead to have been demoted, consistent with his own proposal and ordered his reinstatement into a lower position together with 24 months' back wages, subject to a 30% deduction for contributory misconduct.

The company appealed to the High Court.

The High Court's Decision

The High Court allowed the appeal, finding that the Industrial Court had committed several material errors of law and fact which warranted appellate intervention.

1. Failure to Make a Definitive Finding on Misconduct

The High Court observed that the threshold issue before the Industrial Court was whether the misconduct alleged, namely wilful insubordination by refusing to comply with a lawful transfer order had been established.

Surprisingly, the Industrial Court failed to make a clear finding on this fundamental issue. Instead, the Industrial Court proceeded directly to consider whether dismissal was an appropriate punishment without first determining whether the misconduct had been proven.

The High Court held that this omission constituted a serious error. Having reviewed the evidence including the employee's own admission of guilt during the domestic inquiry, the court found that the misconduct had clearly been established on a balance of probabilities.

2. Personal Hardship Does Not Establish Mala Fide

The Industrial Court accepted the employee's contention that the transfer was tainted by mala fide and victimisation, relying on evidence that the transfer caused him inconvenience, required adjustment to a new working environment, and created financial and medical difficulties.

The High Court rejected this reasoning and emphasised that allegations of mala fide must be supported by evidence demonstrating an improper motive on the part of the employer. The mere fact that an employee experiences inconvenience or personal hardship as a result of a transfer does not render the transfer unlawful or malicious.

Importantly, the transfer involved no reduction in remuneration, benefits, seniority or status. It was therefore a bona fide lateral transfer made pursuant to the employer's management prerogative, and the factors relied upon by the Industrial Court were legally irrelevant in determining whether the transfer was tainted by bad faith.

3. Medical Grounds Were Raised Too Late

The employee also sought to justify his refusal by relying on medical reasons.

However, the High Court noted that the relevant medical certificates were produced only during the show cause inquiry. The employee had allegedly been aware of his medical condition for approximately eight months before the transfer but had never informed the company or sought any accommodation during that period.

The court held that the timing significantly undermined the credibility of the medical explanation and supported the inference that it was an afterthought rather than the genuine reason for refusing the transfer. The court further reaffirmed that personal medical concerns do not entitle an employee to unilaterally disregard a valid transfer order. The appropriate course is to raise the issue with the employer and seek accommodation rather than simply refusing to comply.

4. Employees Cannot Dictate Their Own Terms of Employment

The High Court also rejected the Industrial Court's acceptance of the employee's proposal that he should have been allowed to remain at his existing workplace in a lower-ranked position. The court emphasised that decisions relating to the deployment, assignment and transfer of employees fall squarely within the employer's management prerogative. An employee has no legal entitlement to insist on alternative arrangements or determine where and in what capacity he wishes to work.

By refusing the transfer and attempting to substitute it with his own preferred arrangement, the employee sought to dictate the terms of his employment – something which the law does not permit.

5. Continued Refusal To Obey A Lawful Direction Justifies Summary Dismissal

In reaching its conclusion, the High Court relied on the Federal Court's decision in *Pan Global Textiles Bhd Pulau Pinang v Ang Beng Teik* [2022] 1 CLJ 181 by affirming the principle that an employee who refuses to comply with a lawful and bona fide management directive commits misconduct that strikes at the very root of the employment relationship.

Where an employee believes that a transfer is wrongful, the proper course is to comply first and challenge the legality of the transfer through the appropriate legal avenues. An employee cannot lawfully refuse to obey first and seek to negotiate afterwards.

Outcome

The High Court allowed the appeal and set aside the Industrial Court's award in its entirety with costs in addition to upholding the company's decision to dismiss the employee.

Why This Matters For Employers

This decision provides valuable guidance for employers in managing transfers and disciplinary matters and reinforces several important principles of Malaysian employment law:

- **Management prerogative remains paramount**

A bona fide lateral transfer made pursuant to the employment contract or collective agreement generally does not require the employer to justify its operational reasons, provided the transfer is not tainted by mala fide, victimisation or economic prejudice.

- **Employees cannot refuse lawful transfer orders**

Employees are expected to comply with valid management directives. If they believe a transfer is unlawful, the appropriate remedy is to challenge it through legal channels after complying and not to refuse the instruction altogether.

- **Personal inconvenience is insufficient**

Travel difficulties, disruption to personal routines or the need to adapt to a new workplace do not, without more, establish bad faith or render an otherwise lawful transfer invalid.

- **Medical explanations will be closely scrutinised**

Medical or personal circumstances relied upon only after disciplinary proceedings have commenced may be examined carefully for credibility, particularly where such issues were known but never previously disclosed to the employer.

- **Long service is not a complete defence**

While an employee's length of service and disciplinary record remain relevant mitigating factors, they do not outweigh clear and admitted acts of wilful insubordination involving refusal to comply with lawful management instructions.

- **Industrial Court awards remain subject to appellate scrutiny.**

Awards that fail to make clear findings on the essential issue of whether misconduct has been established are susceptible to being set aside on judicial review or appeal.

This ruling reinforces the longstanding principle that the employment relationship is founded upon mutual trust, confidence and obedience to lawful instructions. Where an employer exercises its contractual management prerogative in good faith, employees are expected to comply and a deliberate refusal to do so may justify the ultimate sanction of dismissal.

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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