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By Employment Law & Administrative Law Practice Group

Recently, in the case of **Malaysian Airline System Employees' Union Peninsular Malaysia v Industrial Court Malaysia and Anor**<sup>1</sup>, we successfully defended Malaysian Airlines System Berhad ("the Company") against a judicial review application filed by Malaysia Airline System Employees' Union Peninsular Malaysia ("the Union") to quash **Industrial Court Award No 1258 of 2019**. This case involved a pertinent issue relating to the locus standi of an in-house union in bringing a trade dispute before the Industrial Court.

The matter arose from a trade dispute lodged by the Union alleging that the Company had made insufficient payments in lieu of annual leave in respect of unutilized annual leave for its cabin crew members. The trade dispute was referred to the Industrial Court for determination. The Company had with effect from 31 August 2015, ceased all business operations and pursuant to this, all employees were released by the Company. In view of this, we argued that the Union had no locus standi to bring the trade dispute before the Industrial Court. The grounds raised on behalf of the Company were as follows:-

- a) The Union was defunct as its own constitution stated that its membership was open only to employees of the Company and that any individual ceased to be a member of the Union when he ceased to be an employee of the Company. Therefore, in view of the fact that the Company had ceased its business operations and based on the Union's own constitution, the Union no longer had any members left.
- b) The provisions of the Industrial Relations Act 1967 provide that a trade dispute is brought by a union on behalf of its members. As the Union in the instant matter no longer had any members, it no longer had the requisite locus standi to bring any trade dispute before the Industrial Court.

The Industrial Court agreed with our submissions above and held that the Union no longer had the requisite locus standi in the matter.

The Union filed a judicial review application to challenge the said Industrial Court Award. The High Court found that the Industrial Court did not commit any error of law in coming to its decision and dismissed the judicial review application, with costs. Therefore, the decision of the Industrial Court on the issue of the locus standi of the Union has been upheld.

A point of interest is that another division of the High Court in a recent judicial review application involving the same parties had also considered the issue on locus standi. In that case, the High Court held that the Union had the requisite locus standi to bring the trade dispute before the Industrial Court. Despite this earlier decision, we managed to convince the High Court in the instant matter to adopt a progressive approach and not be unduly burdened by rigid doctrines.

<sup>1</sup>High Court Judicial Review Case No: WA-25-176-07/2018

<sup>2</sup>High Court Judicial Review Case No: WA-25-163-06/2018

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