



Industrial Court Rules LIFO is Not Applicable to a Retrenchment Involving Skilled Employees

Dear valued clients and friends,

We are pleased to bring you the latest update from our [Employment and Administrative Law Practice Group](#).

In two recent Awards of the Industrial Court involving the retrenchment of 7 Claimants, **Mizman Bin Ngadinan & Others v City Facilities Management Sdn Bhd (Award 989 of 2020)** and **Roslan Bin Mohd Tahir & Others v City Facilities Management Sdn Bhd (Award 990 of 2020)**, the Industrial Court found that the LIFO principle was inapplicable where the selection criteria and process adopted by the Company involving specialised skills sets and the competency of the employees was upheld.

The Claimants were originally employed by GCH Retail (Malaysia) Sdn Bhd but were then absorbed into the Company which was established in 2015. The Company at the time provided maintenance, engineering, support, cleaning and ancillary services to its sole customer, GCH Retail (Malaysia) Sdn Bhd.

In July 2016, arising out of the financial challenges and impact faced by the retail industry which had a corresponding impact on their sole customer, the Company restructured the Multi Skilled Technicians ("MST") Division to cater to the changes in its operational needs.

In this period when a global comparison was undertaken, the operations in Malaysia were found to be heavily overrun with a ratio of 157 employees to cater towards 200 stores whereas in Australia the ratio was 1:4 and in Britain 1:5.

Although the Company had intended for 15 employees to be retrenched, this was subsequently reduced to 12 employees which included all Claimants. Seven of the 12 employees who were retrenched pursued their claims before the Industrial Court.

The restructuring and ensuing retrenchment exercise was confined to the MST Division only as it was the highest resource centre operationally and financially. Given the reduction in the volume of operations and need to reduce escalating costs to ensure the efficiency and viability of operations, the Company undertook the exercise applying its own selection criteria comprising of the qualifications, skills sets and efficiency of the employees to be retained. Having examined the criteria adopted by the Company and the rationale extended in the selection process, the retrenchment of all Claimants was upheld.

The Company was represented in the instant matter by [Suganthi Singam](#), who is a Partner in our [Employment and Administrative Law Practice Group](#) and the Head of the [Immigration Practice Group](#).

Written by:



Ms. [Suganthi Singam](#)
Partner, [Employment and Administrative Law Practice Group](#)
Head, [Immigration Practice Group](#)
Tel: +603 2027 2829
suganthi@shearndelamore.com

COPYRIGHT © 2020 SHEARN DELAMORE & Co. ALL RIGHTS RESERVED.

THIS UPDATE IS ISSUED FOR THE INFORMATION OF THE CLIENTS OF THE FIRM AND COVERS LEGAL ISSUES IN A GENERAL WAY. THE CONTENTS ARE NOT INTENDED TO CONSTITUTE ANY ADVICE ON ANY SPECIFIC MATTER AND SHOULD NOT BE RELIED UPON AS A SUBSTITUTE FOR DETAILED LEGAL ADVICE ON SPECIFIC MATTERS OR TRANSACTIONS.

YOU MAY AMEND YOUR BUSINESS CONTACT INFORMATION OR UNSUBSCRIBE FROM OUR MAILERS AT ANY TIME. TO UNSUBSCRIBE, EMAIL US AT KM@SHEARNDELAMORE.COM, WITH THE WORD "UNSUBSCRIBE" IN THE SUBJECT FIELD. PLEASE ALLOW US ONE MONTH TO EFFECT THE CHANGE.