

21 November 2019

By Employment Law & Administrative Law Practice Group

In the recent case of **Hosny Bin Yunus v Malayan Banking Berhad** (Award No. 2965 of 2019), the Industrial Court upheld the dismissal of Hosny Bin Yunus (“the Claimant”) by Malayan Banking Berhad (“the Bank”). The Claimant was dismissed from the Bank’s services for the misconduct of sexual harassment.

The Industrial Court ruled that in sexual harassment cases, the test is not whether the Claimant did not intend to harass but whether the attention was unwelcome. The Industrial Court also ruled that the Bank was not obliged to follow the findings of the domestic inquiry and was entitled to come to its own findings.

### **Facts**

A verbal complaint was made by an employee of the Bank that the Claimant had sexually harassed her.

Preliminary investigations were thereafter conducted and in the course of these investigations, incidents of the Claimant harassing other employees came to light.

The matter was subsequently escalated to the Bank’s Group Industrial Relations, Risk & Governance. Upon review of the investigation findings, a show cause letter was issued to the Claimant. As the Claimant’s explanation was found to be unsatisfactory, the Bank issued a Notice of Domestic Disciplinary Inquiry, convened and held a domestic inquiry for the Claimant.

An interesting feature of this case is that the domestic inquiry empanelled to hear the charges of misconduct against the Claimant found him not guilty of the charges levelled against him. Notwithstanding this, the Bank’s Group Staff Committee took the view that there was sufficient evidence to conclusively establish that the Claimant was guilty of all the charges. The Bank then dismissed the Claimant.

### **Decision of the Industrial Court**

On the Bank’s decision to dismiss the Claimant despite the domestic inquiry panel finding him not guilty of the charges levelled against him, the Industrial Court affirmed that an employer is not bound by the findings or recommendations of a domestic inquiry panel.

Another noteworthy feature of this case is that all the complainants except for one complainant withdrew their allegations stating that they felt that the Claimant was joking. In other words, none of them felt sexually harassed.

For further information regarding employment and administrative law, please contact:

**Sivabalah Nadarajah**  
sivabalah@shearndelamore.com

**Vijayan Venugopal**  
vijayan@shearndelamore.com

**Raymond TC Low**  
raymond@shearndelamore.com

**Suganthi Singam**  
suganthi@shearndelamore.com

7th Floor  
Wisma Hamzah – Kwong Hing  
No.1, Leboh Ampang  
50100 Kuala Lumpur, Malaysia  
T: +603 2027 2727  
F: +603 2078 5625  
E: info@shearndelamore.com  
W: www.shearndelamore.com

21 November 2019

By Employment Law & Administrative Law Practice Group

The Court noted that the reason given by the complainants for retracting their complaints against the Claimant was not that the acts complained of did not happen, but only because they thought he had been joking.

The Court stated that the acts did take place and, having evaluated the totality of the evidence before it, found that six out of the seven charges levelled against the Claimant duly proved. The Court ruled that the test is whether the attention was unwelcome and not whether the Claimant did not intend to harass.

In relation to the issue of proportionality of punishment, although the Claimant has worked in the Bank for 27 years, the Court stated that it cannot ignore the fact that several acts of misconduct had been committed by the Claimant and that several victims fell prey to the Claimant's acts of sexual harassment. The Court held that the sexual harassment was perpetrated on fellow employees whose working environment had been rendered uncondusive by the Claimant.

Based on the totality of the foregoing factors, the Court took the view that the Bank did what other similarly circumstanced reasonable employer would have done and upheld the Claimant's termination of employment.

***Malayan Banking Berhad was represented by [N. Sivabalah](#) and [Jamie Goh](#), from our [Employment and Administrative Law Practice Group](#).***

For further information regarding employment and administrative law, please contact:

**Sivabalah Nadarajah**  
sivabalah@shearndelamore.com

**Vijayan Venugopal**  
vijayan@shearndelamore.com

**Raymond TC Low**  
raymond@shearndelamore.com

**Suganthi Singam**  
suganthi@shearndelamore.com

7th Floor  
Wisma Hamzah – Kwong Hing  
No.1, Leboh Ampang  
50100 Kuala Lumpur, Malaysia  
T: +603 2027 2727  
F: +603 2078 5625  
E: [info@shearndelamore.com](mailto:info@shearndelamore.com)  
W: [www.shearndelamore.com](http://www.shearndelamore.com)