



# COURTROOM INSIGHTS

27 JANUARY 2025

## **Unfair Dismissal Transfer**

### **SAHARUNZAMAN BARUN V. PERODUA SALES SDN BHD & ANOR AND OTHER APPEALS COURT OF APPEAL**

*Constructive Dismissal: Examining the Impact of Employee Non-Compliance with Prerogative Transfer*

**by Siow Chan Wai, Shawn & Samantha Koh Zi En**

# INTRODUCTION

The case of **Saharunzaman Barun v Perodua Sales Sdn Bhd & Anor And Other Appeals [2025] 2 CLJ 887** examines a significant legal issue of unfair dismissal through transfer under the **Industrial Relations Act 1967 (IRA 1967)**.

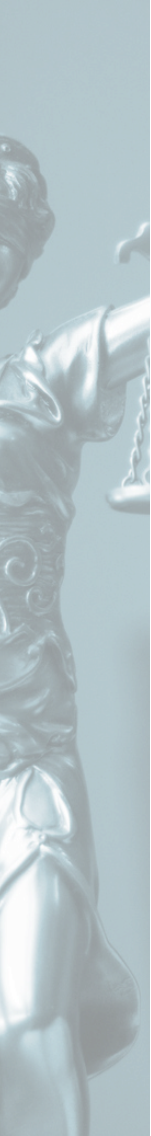
The **key issue** is :

- whether an employer's managerial prerogative to transfer employees **must** be exercised in good faith and,
- whether such transfers can amount to constructive dismissal when used to pressure employees into resignation.

## KEY TAKEAWAYS

The Court of Appeal reaffirmed that while employers have the managerial prerogative to transfer employees, such decisions **must** be reasonable and exercised in good faith. A transfer that fundamentally alters an employee's contract or is imposed with mala fide intent **may** amount to constructive dismissal. Employers **cannot** restructure or outsource jobs to circumvent employee rights or enforce transfers without proper justification. Ultimately, the court upheld the Industrial Court's decision, ruling that the transfer was unreasonable, done in bad faith, and amounted to constructive dismissal.

# BRIEF FACTS

- 
- The three appellants were long-serving employees of **Perodua Sales Sdn. Bhd ("Perodua")**. They were subsequently informed that **Nagoya Automobile Malaysia ("NAM")** had taken over operations at their work locations.
  - Following this, the employees were offered employment with NAM, subject to certain conditions. They were required to resign from Perodua before accepting the offer, and their employment with NAM would be on a fixed-term contract for a duration of two (2) years. Upon the expiry of the fixed-term contract, they would be required to reapply for employment with Perodua, with no assurance or guarantee of re-employment.
  - The employees refused the offer, citing their right to remain with Perodua.
  - In response, Perodua then transferred them to distant locations (Kota Kinabalu, Kuching, and Kuala Terengganu) with only three (3) days' notice.
  - They requested reconsideration and a transfer to nearby branches, but their requests were denied.
  - When they failed to report to their new postings, Perodua issued show-cause notices, alleging for insubordination.
  - The appellants claimed constructive dismissal and subsequently brought the case before the Industrial Court.

# KEY LEGAL QUESTIONS

---

## 1.

Did the employer's actions amount to a fundamental breach of the employment contract?

## 2.

Was the employees left with no reasonable alternative but to resign, fulfilling the test for constructive dismissal?

---

## 3.

Can a fundamental breach be inferred from actions, even without an explicit statement from the employer?

## 4.

Were the changes imposed within the employer's managerial prerogative, or did they unfairly disadvantage the employee?

---

# COURT RULINGS & REASONING

---

## **Industrial Court Decision :**

- The court ruled in **favour of the Claimants** ("Employees"), finding that he was constructively dismissed by the Company ("Employer").
  - It was held that unilateral changes to the Employees' role amounted to a fundamental breach of contract, justifying resignation.
  - The court held that the changes significantly altered employment terms without consent, leaving no choice but to resign.
  - Thus, the Court awarded compensation and back wages to the Employees.
- 







---

## **High Court Decision :**

- On appeal, the Court overturned the ruling, holding that the changes fell within the Employer's managerial prerogative.
- The High Court found no evidence that the new role was significantly inferior, and the Employees' failure to raise formal objections implied acceptance of the changes.
- Thus, the Court held that the Claimant resigned voluntarily and was not constructively dismissed.

---

## **Court of Appeal Decision :**

- The Court reinstated the **Industrial Court's decision, ruling in favor of the Employees.**



## **Court of Appeal Decision :**

- The Court emphasized that:
    - (i) A fundamental breach need **not** be an explicit statement from the employer; it can be inferred from actions that substantially alter the employee's job scope.
    - (ii) The changes significantly impacted the Claimant's employment contract, amounting to a breach.
    - (iii) The Claimant had no choice but to resign, as the employer's actions rendered his continued employment untenable.
  - Thus, the Court upheld the Industrial Court's award of compensation and back wages.
-

# IMPACT ANALYSIS

The Court of Appeal's decision in this case has significant implications for both employees and employers in Malaysia, particularly in cases involving constructive dismissal through transfer. The ruling clarifies that managerial prerogative **must** be exercised in good faith and that unilateral, unreasonable changes to employment terms **may** amount to **constructive dismissal**.

---

## **Employees:**

- (i) Employees now have legal grounds to challenge unreasonable job transfers or changes to employment terms.
- (ii) Employers **cannot** pressure employees to resign by imposing unreasonable conditions.
- (iii) Employees are more empowered to seek legal recourse for constructive dismissal and claim compensation.

## **Employers:**

- (i) Unilateral changes to employment conditions without justification may lead to constructive dismissal claims.
- (ii) Requires fair and transparent restructuring to avoid breaching employment contracts.
- (iii) Employers should engage in proactive dispute resolution and provide clear employment terms to avoid legal disputes



## Contributors

**SIOW CHAN WAI, SHAWN**  
(Partner)

✉ shawn@ykwong.com.my

**KOH ZI EN, SAMANTHA**  
(Pupil-in-Chambers)

✉ samkze@ykwong.com.my

## GET IN TOUCH



03-2141 0172



[www.ykwong.com.my/](http://www.ykwong.com.my/)



16-03, Menara EcoWorld  
Bukit Bintang City Centre  
No. 2, Jalan Hang Tuah  
55100 Kuala Lumpur

*For further legal advice on employment law issues and dispute resolution, please contact us, **Y Kong Wong & Partners.***

