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DRESSED UP OR GENUINELY FIXED? MAPPING THE LAW ON FIXED-TERM CONTRACTS AFTER AHMAD ZAHRI

MONTH :
August 2026

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A look at recent Malaysian case law on when a fixed-term employment contract will be treated as genuine, and when it will be found to be permanent employment in disguise.

1. Few clauses in a Malaysian employment contract attract as much litigation as the words **"fixed term."** Employers may enter into fixed-term arrangements for entirely legitimate reasons, including project-based hiring, succession planning for senior roles, post-retirement re-engagement, or to provide flexibility to review the employment relationship at a defined point in time. However, the courts have long been alert to the possibility that a fixed-term label may be used to disguise what is, in substance, permanent employment, allowing an employer to allow the contract to expire rather than terminate the employee and face a claim for dismissal without just cause or excuse.

2. The leading principle remains that propounded by the Federal Court in ***Ahmad Zahri bin Mirza Ahmad v Y.B. Menteri Kesihatan Malaysia & Anor [2021] 5 MLJ 58***. Since then, a steady stream of decisions has tested and refined the application of the ***Ahmad Zahri*** framework across a wide range of factual circumstances. This article examines the post-***Ahmad Zahri*** cases to map where the line currently stands, and what these developments mean in practice for businesses structuring or relying on fixed-term employment arrangements in Malaysia.

A. THE AHMAD ZAHRI FRAMEWORK

3. In determining whether a fixed-term contract is genuine or merely a permanent appointment in disguise, the courts continue to apply the three considerations identified in ***Ahmad*** Zahri namely:

   (i) the parties' intention at the time of contracting;

   (ii) the employer's conduct throughout the employment relationship; and

   (iii) the nature of the employer's business and the work performed by the employee.

4. None of these considerations is determinative on its own. Rather, the cases following **Ahmad Zahri** demonstrate that the courts undertake a holistic assessment of the employment relationship, having regard to a recurring set of indicators, including:

(i) whether renewal was automatic or subject to a fresh application;

(ii) whether there were breaks in service between successive contracts;

(iii) whether benefits, increments, and other terms of employment accrued in a manner ordinarily associated with permanent employees; and

(iv) whether the underlying work was genuinely temporary, seasonal, or project-based, as opposed to forming part of the employer's ongoing operational requirements.

B. WHERE SERIAL, AUTOMATIC RENEWAL DEFEATS THE FIXED-TERM LABEL

5. A recurring theme across the post-***Ahmad Zahri*** authorities is that fixed-term contracts which are renewed continuously, automatically, and without any requirement for the employee to undergo a fresh appointment process may be vulnerable to being recharacterised as permanent employment. This is particularly so where there are no breaks in service and where the employee's career progression, including salary increments, promotions, and benefits, resembles that of a permanent employee.

(i) *Azrell bin Mohamad v National Aerospace & Defence Industries Sdn Bhd & Anor [2025] 10 MLJ 95*

6. In ***Azrell bin Mohamad***, the claimant was employed as General Finance Manager and subsequently promoted to Senior General Finance Manager under successive one-year contracts over a period of seven years. During that period, he received promotions, salary increments, and increased annual leave entitlements. Shortly before the expiry of his final contract, the employer extended the contract by only one month before bringing the employment relationship to an end.

7. Applying the principles in ***Ahmad Zahri***, the High Court held that the employment relationship was permanent in substance, noting, amongst others, that the contracts

had been renewed consistently over seven years without the claimant having to reapply, and that the work performed was neither project-based nor seasonal, but the type of work that a permanent employee would do:

> *"The contract of employment was not a genuine fixed term contract but there is an employment on a permanent basis dressed up as several fixed term contracts."*

(ii) *A Gilbert D'Cruz v Sapuraacergy Sdn Bhd & Anor [2021] 6 MLJ 649*

8. The Court of Appeal reached a similar conclusion in ***A Gilbert D'Cruz***. The appellant was employed as a Personnel Coordinator under successive one-year fixed-term contracts which were renewed repeatedly between 2008 and 2015. Some renewals were for shorter periods, others for longer periods, and several were backdated. The employer eventually informed the appellant that his contract would simply be allowed to expire.

9. The Court of Appeal set aside the High Court's decision and reinstated the Industrial Court's award. The Court held that the employment contracts had been renewed continuously and consecutively from 2008 to 2015, that the Respondent had renewed the contracts automatically, and that, although the renewals were not uniform in duration, they were backdated and had the effect of creating continuous employment. The Court also placed weight on the appellant's unrebutted evidence that he remained continuously involved in the company's projects, and that his continued service for 45 months without any written contract was itself indicative of a permanent employment relationship

> *"Based on the facts and circumstances of this case and applying the law as enunciated in Ahmad Zahri's case, we are of the view that the appellant is a permanent employee of the first respondent."*

(iii) *Furniweb Manufacturing Sdn Bhd v Mahkamah Perusahaan Malaysia & Anor [2025] MLJU 2663*

10. In ***Furniweb Manufacturing***, the claimant was appointed as General Director in 2011 and was based in Vietnam. His contract was repeatedly extended without any

interruption in service. His remuneration was paid partly in Ringgit by Furniweb and partly in US dollars by a related Vietnamese company. When the contract was allowed to lapse in 2018, the Industrial Court's decision which was upheld by the High Court, held that the consecutive renewals, the company's automatic initiation of renewals, salary increments upon renewal, and the non-temporary nature of the work were significant factors indicating a permanent employment relationship.

(iv) *Mohd Sofian bin Amirudin v Bank Simpanan Nasional [2026] 9 MLJ 549 — a contrasting outcome*

11. Notwithstanding the cases above, the duration of employment and the number of renewals are not, by themselves, determinative. In Mohd Sofian bin Amirudin, although the claimant had served for 12 years under seven successive fixed-term contracts, the High Court held that the contracts remained genuine.

12. The distinguishing factors were significant. None of the contracts provided for an automatic renewal clause, the claimant accepted in evidence that renewal was entirely at the bank's discretion, and the bank maintained a consistent and documented policy of appointing senior management above a specified grade on fixed-term contracts.

13. The decision illustrates that the court's inquiry remains focused on whether the fixed-term arrangement reflects the parties' genuine intention and the reality of the employment relationship, rather than simply the length of service or number of renewals.

> *"none of the seven contracts contained an automatic renewal clause."*

C. SENIOR EXECUTIVE APPOINTMENTS: MORE ROOM FOR A GENUINE FIXED TERM

14. A further pattern emerges from cases involving senior management appointments. Courts have recognised that fixed-term arrangements may serve a legitimate purpose where they arise from a distinct appointment process, particularly where the employee has moved from an earlier permanent role, the appointment is subject to formal governance approval (such as approval by a board or remuneration committee), the contract contains a defined expiry date without automatic renewal, and there has been a clear break in the employment relationship.

15. In such circumstances, the courts have acknowledged that employers may legitimately require greater flexibility when appointing senior executives, provided that the contractual arrangement reflects a genuine fixed-term appointment rather than a permanent role disguised by successive contracts.

(i) ***Rozainah bt Awang v Mahkamah Perusahaan Malaysia & Anor [2022] MLJU 921***

16. In ***Rozainah bt Awang***, the applicant resigned from her permanent position before being appointed as VP Finance under a series of fixed-term contracts of varying durations (three years, followed by two years and then one year). There was also an eight-day break between the first and second VP Finance contracts.

17. The High Court distinguished ***Ahmad Zahri***, holding that the applicant's resignation had brought her previous permanent employment to an end. The VP Finance position constituted a separate appointment, with each renewal requiring approval from the Nomination and Remuneration Committee and the Board. This demonstrates that the renewals were not automatic as in ***Ahmad Zahri*** but were subject to the Company's policy of appointing senior management personnel on fixed-term contracts as there was a process of approval involving the recommendation by the NRC and the Board's deliberation. In those circumstances, the Court accepted that senior management appointments may legitimately be structured on fixed-term contracts to provide employers with appropriate business flexibility.

(ii) ***Ajeet Singh Ahluwalia v Kuasa Nusajaya Sdn Bhd [2024] MLJU 3596***

18. In ***Ajeet Singh Ahluwalia***, the claimant was appointed as Deputy CEO under a three-year fixed-term contract, with a possible one-year extension. Instead of exercising the extension option, the employer offered the claimant a fresh three-year fixed-term contract, which was subsequently not renewed upon expiry.

19. The High Court held that the non-renewal did not amount to a dismissal without just cause or excuse. The Court noted that both contracts contained clear commencement and expiry dates, the first contract expressly excluded any automatic or deemed extension, and the claimant, as a senior executive, would have understood the legal effect of the contractual terms. The Court further observed that the public policy

favoured upholding the sanctity of fixed-term contracts, particularly for senior executive positions where succession planning and organisational restructuring are critical considerations and cautioned that treating fixed-term contracts as contracts of indefinite duration merely because an employee remains involved in ongoing business initiatives would undermine the certainty and purpose of such arrangements.

> *"The natural expiry of a fixed-term contract does not constitute dismissal or termination. The relationship simply comes to an end through effluxion of time."*

D. GROUP STRUCTURES, NOVATION, AND THE SUBSTANCE OF THE EMPLOYMENT RELATIONSHIP

20. More recent line of authorities illustrate that the ***Ahmad Zahri*** analysis is equally applicable where employment is transferred between related companies within a corporate group.

(i) *Sean Su Wei Jiang v PM Link Sdn Bhd & Anor [2026] MLJU 303*

21. The claimant's employment was transferred from a Singapore group company to the respondent pursuant to a novation arrangement. Thereafter, his fixed-term contract was successively renewed five times without any break in service or requirement for him to reapply, while he continued working on the same project pending his anticipated transfer back to Singapore. When the respondent ultimately declined to renew the contract, the claimant filed an unfair dismissal claim at the Industrial Court. The Industrial Court held that the claimant was employed on a genuine fixed term contract.

22. The High Court quashed the Industrial Court's award and went further, finding that the group functioned as an "essential unity", with HR and employment decisions centrally controlled:

> *"the evidence overwhelmingly points to the applicant being a permanent employee"*

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E. POST-RETIREMENT RE-ENGAGEMENT: WHEN RETIREMENT CREATES A GENUINE BREAK IN EMPLOYMENT

23. A further category emerges where an employee has retired, accepted retirement benefits, and is subsequently re-engaged under a fresh fixed-term contract. In these cases, the courts have generally regarded the retirement as bringing the earlier employment relationship to a genuine end, such that the post-retirement appointment falls to be assessed on its own terms.

(i) *Ansell Industrial & Specialty Gloves Malaysia Sdn Bhd v Lim Im Tee & Anor [2021] MLJU 2403*

24. Lim retired upon reaching the contractual retirement age and accepted her retirement benefits without protest. Thereafter, she voluntarily entered into a series of post-retirement fixed-term contracts with the employer. Upon the expiry of the final fixed-term contract, the employer offered her a consultancy arrangement on less favourable terms, which she declined. She subsequently commenced an unfair dismissal claim, alleging that she had been promised permanent post-retirement employment until the age of 60, with no loss of benefits and recognition of her years of service, and that the post-retirement fixed-term contracts were therefore not genuine. The Industrial Court upheld her claim.

25. At the judicial review, the High Court disagreed and held that the written post-retirement fixed-term contracts superseded any prior negotiations or informal discussions. The Court emphasised that Lim had retired, accepted her retirement benefits without protest, and voluntarily executed the post-retirement fixed-term contracts, thereby negating any suggestion that she had been employed on a permanent basis after retirement. Accordingly, the contracts were genuine fixed-term arrangements.

> *"the execution of the Post-Retirement Fixed-Term Contracts supersedes any term that [the parties] may have negotiated earlier."*

F. PRACTICAL TAKEAWAYS FOR EMPLOYERS

26. Taken together, these decisions do not alter the principles established in Ahmad Zahri. Rather, they illustrate how those principles are applied in practice and provide useful guidance for employers when structuring and administering fixed-term employment arrangements:

(i) **Avoid automatic renewal mechanics.** Where renewal happens without the employee applying, without any break in service, and on the employer's own initiative, courts have consistently regarded this as one of the strongest indicators. A genuine fixed-term contract should require some active step such as an application, a fresh offer, or a documented approval before each renewal.

(ii) **Preserve evidence of a real break in service.** Even a short break in service between successive contracts may assist an employer's position. Conversely, a 45-month period of continuous service without any written contract, as in D'Cruz (supra), is a powerful indicator of permanent employment.

(iii) **Be careful with increments and promotions.** Salary increases, promotions, and accruing leave entitlements that track a career trajectory are difficult to reconcile with a temporary engagement and have featured prominently in findings against employers.

(iv) **Document the business rationale for fixed terms at the senior level.** Evidenced internal policy of engaging senior management on fixed terms was decisive. An ad hoc fixed-term label applied inconsistently is far more vulnerable.

(v) **Treat post-retirement re-engagement as a distinct, cleaner category.** Courts give real weight to a documented retirement, acceptance of retirement benefits, and a fresh written fixed-term contract executed afterward — provided the employer does not later try to imply continuing permanent terms inconsistent with that paper trail.

(vi) **Mind group and novation structures.** Centralising HR and employment decisions across related companies, while moving an employee's paperwork between entities without any real change in role, invites the kind of common-employer findings seen in PM Link.

G. CONCLUSION

27. The post-*Ahmad Zahri* authorities confirm that Malaysian courts will continue to look beyond the label of a fixed-term contract to the substance of the employment relationship. At the same time, the law has not evolved into a presumption against fixed-term employment. On the contrary, several recent decisions, particularly those involving senior executive appointments and post-retirement re-engagement, demonstrate that fixed-term contracts remain a legitimate and commercially useful employment arrangement where they are supported by a genuine business rationale and implemented consistently with their stated purpose.

28. For employers, the lesson is not to avoid fixed-term contracts, but to ensure that the underlying facts support the label adopted. Renewal practices, continuity of service, remuneration and career progression, the nature of the work performed, and the manner in which the employment relationship is administered will often carry greater weight than the wording of the contract itself. Ultimately, whether a fixed-term contract is upheld as genuine will depend not on its label, but on whether it accurately reflects the reality of the parties' relationship

This article was written by our Employment & Industrial Relations Team, Rohan Arasoo Jeyabalah, Dhanyaa Shreeya and Damia Amani Binti Shaiful Bahri. It is intended as general informational purposes only and does not constitute legal advice or an expression of legal opinion, nor should it be relied as such.