ABE HATOME (M) SDN. BHD., NEGERI SEMBILAN v. CHAN KUAN HONG

INDUSTRIAL RELATIONS DEPARTMENT
CHAIRMAN: TAN KIM SIONG
CASE NO: 4/4-339/96 (5 JULY 1996)
10 DECEMBER 1996

***DISMISSAL**: Constructive dismissal - Whether just cause or excuse - Section 20(3) of Industrial Relations Act 1967*

***INDUSTRIAL COURT**: Preliminary objection - Statement of reply filed out of time - Whether company precluded from hearing - Prejudice to claimant - Inability to give instructions to effectively rebut averments - Failure to take cognisance of reminder by Court - Duty bound to inform Court of any problems*

***INDUSTRIAL COURT**: Preliminary objection - Implication that statement of case be filed after receipt of bundle of documents - Power of Court to proceed without pleadings - Absence of provision to preclude reference to pleading - Sections 29(d) & 30(5) of Industrial Relations Act 1967 - Rule 9(3)(d) of Industrial Court Rules 1967*

When the case came up for mention, the Court directed that the statement of case be filed by 14 September 1996 and reply thereto by 14 October 1996.

The claimant complied with the Court's directive and filed its pleading on 11 September 1996, but the company failed to comply to the Court's directive until 2 December 1996.

At the outset of the hearing, the claimant made a preliminary objection to the company's pleading as it was filed out of time.

The claimant submitted that the company should be precluded from the proceedings, as the delay in filing the statement of reply had caused prejudice to him. This had resulted in his inability to properly traverse the company's statement of reply.

It was further pointed out that if it had not been for the delay of the company or its solicitors, there would have been an expeditious determination of the case.

The company, however, submitted that r. 9(3)(d) of the Industrial Court Rules was mandatory, and if the statement of case is submitted without the bundle of documents, the company ought to be allowed, by implication, to file its pleading after receipt of the bundle of documents. It would be unjust, to require the company to submit the statement of reply if they have been served with a statement of case without the relevant bundle of documents.

Moreover, it was suggested the Court could proceed with the hearing without a statement of reply. It was also cited there are no provisions in the rules of the Industrial Court that pleadings filed out of time would entitle the Court to preclude the same being used or referred to at the hearing.

The Industrial Tribunal was also informed that the Industrial Relations Act 1967 fosters the settlement of diputes, and there cannot be effectual adjudication by the exclusion of a party from being allowed to be present in the case and adduce evidence.

Held:

[1] If the inability of the company to file the pleading was due to the non-availability of documents, the company was duty bound to inform the Industrial Tribunal of the difficulty because the corporate body was clearly defying the specific orders of the Court.

[2] The Court is fully aware that it can proceed with a case and hand down an award even if there is no pleading as is provided for under s. 29(d) of the Industrial Relations Act 1967.

[3] Although the Industrial Court is not a Court of law, it propounds no principles of law and need not concern itself with technicalities and legal form. Nonetheless, it should not be construed that it can dispense with the procedure of pleading and practice.

[4] The procedure of hearing without a statement of case or reply in appropriate circumstances is sometimes adopted when it is expedient and necessary for the matter before the Court. In this instant case, this Court is surely empowered with a discretion under s. 29(d) of the Industrial Relations Act 1967 to proceed to hear the dispute in the absence of a statement of reply. The Court has, however, refrained from dispensing with the company's pleading.

[5] The claimant has elected to raise a preliminary issue for determining on the exclusion of the company's pleading for filing it out of time and in defiance of the specific orders of the Court. The company was legally represented by an advocate and solicitor, who was professionally bound to file the necessary pleading within the prescribed time. It is the company's legal adviser who neglected to file the relevant papers, and a legally represented litigant should not be penalised for the sins of his solicitors.

[6] For reasons given above and the powers of the Court under s. 30(5) of the Industrial Relations Act 1967 the preliminary objection is overruled in accordance with equity and good conscience.

Case(s) referred to:

R. Rama Chandran v. Industrial Court of Malaysia & Anor. [1997] 1 CLJ 147

Legislation referred to:

Industrial Relations Act 1967, ss. 29(d)30(5)

Other source(s) referred to:

Mallal's Supreme Court Practice

Counsel:

For the claimant - K.F. Chan; M/s. Chan Roszimah & Co.

For the company - Leow Shin Fong; M/s. Ariffin & Partners

AWARD NO. 111 OF 1997

[11 MARCH 1997]

The dispute is over the alleged constructive dismissal of the claimant by the company on 5 March 1996.

On 14 August 1996 when the case came up for hearing the claimant was represented by his solicitor K.F. Chan and the Court directed that the claimant should file his statement of case by 14 September 1996. The company was directed to file its statement in reply by 14 October 1996. The claimant had duly complied with the Court's directive and filed its pleadings on 11 September 1996 but the company had neglected to file its pleading as directed. A reminder was sent to the company on 29 October 1996 informing the company and to treat the matter with urgency. The company, through its solicitors, M/s. Ariffin & Partners, ignored the Court's directive and only filed its reply in the Registry of the Industrial Court on 2 December 1996 with a one sentence letter "Dengan ini kami kemukakan tiga (3) salinan kenyataan jawapan untuk tindakan tuan". There was a delay of more than two months by the company in filing the pleading despite reminder from the Court. There was no request for extension of time to file the statement in reply out of time as should have done in this case.

To show how impertinently the learned Counsel had treated the Court it is relevant to put on record that when the case was first mentioned in open Court the company was represented by its personnel officer Jamaluddin Yusof when the directive of the Court to file the parties' respective pleadings was given. It is also on record as early as 7 August 1996, a legal practitioner from the firm Ariff & Partners was appointed by permission of the Court to act for the company. However when the case was mentioned on 14 August 1996, the solicitor representing the company was absent. No reason was given to the Court. There was no correspondence from the company's solicitors to the Court as to why Counsel for the company absented themself. On 29 October 1996 the Court took the initiative to write to the solicitors for the company on the delay in the company's pleadings. There was again no response from the company's solicitors to the Court's reminder and no action was taken to expedite the filing of the reply until 2 December 1996 when the Court received a one sentence letter enclosing the reply. The solicitors for the company did not even have the courtesy to express regret of their neglect or ask for abridgement of time for the inordinate and substantial delay. It is difficult to understand why the solicitors representing the company had adopted such a disrespectful attitude towards the Court.

At the commencement of the hearing the claimant through his solicitors M/s. Chan Roszimah & Co. raised a preliminary objection pertaining to the admissibility of the company's statement in reply on the ground of delay. It is the claimant's submission that the statement in reply should be precluded from the proceedings on the following grounds:

(1) the company through its solicitors had failed to file the statement in reply within one (1) month from 14/9/96 despite this Court having made a specific order that the company file the statement in reply on or before 14/10/96 and having informed the company's representative, Encik Jamaluddin, who was present in Court on the mention date (i.e. 14/8/96) to do so. The claimant submit that such action on the part of the company clearly demonstrate a total disrespect of an order of this Court.

(2) the company either by itself or through its solicitors had failed to obtain leave to file the statement in reply (but chose to file the statement in reply instead without the leave of this Court) despite having been informed, *vide* the Court's letter dated 29/10/96 to the company, that it (the company) had failed to file the same on or before 14/10/96.

(3) that this Court had (refer to Form J dated 14/9/96) informed the company's solicitors, subsequent to the Mention date, to file the statement in reply on or before 14/10/96. In this respect, there had been a total ignorance of not only the notice given in Form J and a demonstration of a total disrespect of the specific order made therein.

there had been a substantial delay of 49 days on the part of the company to file the statement in reply (i.e. from 15/10/96 to 2/12/96).

(4) that the Company's attempt to explain the reason for the delay (i.e. the company's representative who attended Court on 14/8/96) did not communicate the requirement to file the statement in reply to its solicitors on or before 14/10/96) is not valid because the company's solicitors were given permission by this Court on 8 August 1996 to act by the company's solicitors should have attended Court instead of the company's representative. The company by sending its representative instead of its own peril. Further this Court had (please refer to Form J dated 14/9/96) informed the company's solicitors, subsequent to the Mention date, to file the statement in reply on or before 14/10/196. The company through its solicitors by filing late the statement in reply have caused prejudice to the claimant in that the claimant's solicitors was not able to take proper instructions from the claimant and prepare the claimant's case effectively to rebut the averments herein when in fact the Court had fixed the hearing date to be on 9 & 10/12/96 (i.e. only 7 days to prepare the claimant's case). The claimant submits that this Court cannot consider the issue of "no prejudice will be caused to the claimant", if raised by the company, as the company, as at the hearing of the Company's Preliminary Objection, had not filed an application to Court to abridge time.

(5) that the trial of this case should have continued on 10/12/96 had it not been the company and/or its solicitors delay. By reason's) as aforesaid, there have been an unnecessary wastage of time, delay and postponement of the case which had it not been the fault of the company and/or its solicitors would have led to an expeditious determination of the claimant's case against the company.

(6) the Industrial Court Rules 1967 ('the Rules') have clearly set out the time frame upon which each litigant had to follow. In this case, this Court had in no uncertain terms stated in its Form J dated 14/9/96, which was addressed to the company solicitors, that the company had to file the statement in reply on or before 14/10/96 and on the Mention date, informed the company through it's representative, Encik Jamaluddin, to file the statement in reply on or before 14/10/96 which the company and/or through its solicitors did not.

It is the submission of company through its learned Counsel Leow Shin Fong that:

> Rule 9(3)(d) stipulated that the statement of case shall contain "as an appendix or attachment, a bundle of all relevant documents relating to the case."

The words in r. 9(3)(d) above are mandatory and if the statement of case is allowed to be submitted without the bundle of documents, then the company must necessarily be allowed, by implication, to submit the statement in reply after receipt of the bundle of documents. It would be unjust to require the company to submit the statement in reply if it has not been served with a full statement of case with the bundle. Moreover the Court could proceed with the hearing without the statement in reply. Further, there are no provisions in the rules to provide that a statement of case or statement in reply, if filed out of time will entitle the Court to preclude the same being used or referred to at the hearing by the Court.

Finally, it is the submission of the company that one of the purposes of the Industrial Relations Act 1967 is the settlement of disputes and a matter cannot be settled by the exclusion of a party from being allowed to present his case and to adduce evidence.

As a starting point it must be emphasized that this Court had made a specific order on 14 August 1996 in open Court in the presence of the parties that the statement of case and reply were to be filed by 14 September 1996 and 14 October 1996 respectively. The bundles of documents, if any, were to be filed one month before the date of hearing i.e. by 8 November 1996. In the face of the Court's specific orders the learned Counsel for the company has tried to justify his failure to file the pleadings by propounding on the

Industrial Court Rules and Procedure. It is impractical to insist that the bundles of documents should be filed at the time the pleadings were filed. It is the practice of this Court consistently that the bundles of documents of the parties are to be filed one month before the date of hearing.

If the inability of the company to file its pleadings was due to the non-availability of documents it is duty-bound to inform the Court of its difficulty because it was clearly defying this Court's specific orders in not doing so. Its legal adviser had even ignored the Court's reminder to file the company's pleadings on the extended time by 29 October 1996. The company's solicitors did not communicate with the Court at all the reason for non-compliance despite reminder. It simply ignored the Court and it was contemptuous.

This Court is fully aware it can proceed with a case and hand down an award even if there is no pleading at all as it is provided under s. 29(d) of the Industrial Relations Act 1967.

> Section 29
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> > (d) hear and determine the matter before it not withstanding the failure of any party to submit any written statement whether of case or reply to the Court within such time as may be prescribed by the President or in the absence of any party to the proceedings who has been served with a notice or summons to appear;

Although the Industrial Court is not a Court of law, it propounds no principles of law and need not concern itself with technicalities and legal form, it should not however be construed that it can dispense with the procedure of pleadings and practice.

In *Mallal's Supreme Court Practice*, it is stated as follows:

> Object of Pleadings: The principal objects of pleadings are firstly, to define the issues of fact and questions of law to be decided between the parties; secondly, to give to each of them distinct notice of the case intended to be set up by the other and thus to prevent either party from being taken by surprise at the trial, and thirdly, to provide a brief summary of the case of each party, which is readily available for reference, and from which the nature of the claim and defence may be easily apprehended, and constitute a permanent record of the questions raised in the action, and of issues decided therein, so as to prevent future litigation upon matters already adjudicated upon between the litigants: *Wong See Lunge v. Saraswathy Ammal* [1957] MLJ 141 C.A. at p. 142. Parties are bound by their pleadings: *Chong Kok Hwa v. Taisho Marine & Fire Insurance Co. Ltd.* MLJ 244.
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> Function of Pleadings: The function of pleadings is to give fair notice of the case which has to be met so that the opposing party may direct his evidence to the issue disclosed by them: *Esso Petroleum Co. Ltd. v. Southport Corpn.* [1956] A.C. 218 per Lord Normand at p. 238. They are not simply for the benefit of the parties but also primarily for the assistance of the Court by defining with precision the issues of fact and questions of law to be decided between the parties: see *Pinson v. Llyods & National Provisional Foreign Bank Ltd.* [1941] 2 K.B. 72, 83. They provided a brief summary of the case of each party, and from which the nature of the claim and defence may be easily apprehended, and to constitute a permanent record of the questions raised in the action, and of the issued decided therein, so as to prevent future litigation upon matters already adjudicated upon between the litigants. See also the speech of Lord Radcliffe in *Esso Petroleum Co. Ltd.* case, *supra*, at p. 241 and Editorial Note in [1956] MLJ V; *Wong See Lunge v. Saraswathy Ammal, supra*, and *Wong Eng v. Chock Mun Chong & Ors.* [1963] MLJ 204.

In *Rama Chandran's Appeal [1997] 1 CLJ 147*; 1 AMR 433, the Chief Justice of Malaya has said this:

> It is trite law that a party is bound by its pleadings. The Industrial Court must scrutinise the pleadings and identify the issues, take evidence, hear the parties' arguments and finally pronounce its judgment having strict regard to the issues. It is true that the Industrial Court is not bound by all the technicalities of a civil Court (s. 30 of the Industrial Relations Act 1967) but it must follow the same general pattern. The object of pleadings is to determine what are the issues and to narrow the area of conflict. The Industrial Court cannot ignore the pleadings and treat them as mere pedantry or formalism, because if it does so, it may lose sight of the issues, admit evidence irrelevant to the issues or reject evidence relevant to the issues and come to the wrong conclusion. The Industrial Court must all the times keep itself alert to the issues and attend to matters it is bound to consider.

The procedure of hearing without the statement of case or reply in appropriate circumstances is sometimes adopted when it is expedient and necessary for the expeditious determination of the matter before the Industrial Court. In this instant case, this Court is surely empowered with a discretion under s. 29(d) of the Industrial Relations Act 1967 to proceed to hear the dispute in the absence of the statement in

reply. The Court has, however, refrained from doing so. Firstly the learned Counsel for the claimant has elected to raise a preliminary issue for determination on the exclusion of the company's pleadings for out of time and in defiance of the specific orders of the Court. Secondly, the company was legally represented by an advocate and solicitor who was professionally bound to file the necessary pleadings within the prescribed time. It is the company's legal adviser who neglected to file the relevant papers. In my view a litigant legally represented should not be made to suffer the sins of his solicitors.

Bearing in mind the object of ministerial reference is to give the aggrieved parties an opportunity of being fairly and properly heard, any party deprived of pleadings would be at a disadvantage. I would like to accord the company with the right of a fair and proper hearing in this dispute. For the reasons I have given and the powers under s. 30(5) of the Industrial Relations Act 1967, 1 disallow the claimant's preliminary objection in accordance with equity and good conscience, I order that a date be fixed for hearing of the merits of the case.