

LABUAN MEDICAL CENTRE SDN BHD

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v.

ROSEMARY CHEW SEOK LENG

INDUSTRIAL COURT, KUALA LUMPUR

AMELIA TEE HONG GEOK ABDULLAH

AWARD NO. 295 OF 2003 [CASE NO: 4/4-648/02]

12 APRIL 2003

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DISMISSAL: *Termination of services - Whether there was a dismissal - Whether company's reasons for dismissal proven - Whether dismissal with just cause and excuse*

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Summary of facts

The claimant, who was employed as a hospital administrator by the company with effect from 1 June 2001, was verbally informed at a meeting dated 11 June 2001 by one Dr. Sathiya that she was dismissed. The claimant requested from Dr. Sathiya a written letter of termination and reasons for her dismissal. From 11 June 2001 to 21 June 2001, the company did not issue any letter of termination. On 22 June 2001, Dr. Sathiya served on the claimant a written letter which stated "as discussed earlier and as agreed by your good self and the company, we hereby enclose a cheque for amount of RM5,000 as full and final settlement of your services with the company with immediate effect". Upon receipt of the letter, the claimant immediately replied to the company denying the contents of the letter and returning the cheque. She was later served with a written letter of termination of employment and directed to leave her living accommodations within 24 hours. She was forced to move into a hotel and thus had to incur expenses for her accommodation, and she also had to pay her own airfare back to Kuala Lumpur. The claimant contended that she had worked full time from 11 June 2001 to 22 June 2001 without remuneration.

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Issues

The issues that arose for determination were whether: (1) there was a dismissal; (2) the reasons given by the company for the claimant's dismissal were, on a balance of probabilities, proven; (3) whether the dismissal was with just cause or excuse.

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Held:

[1] It was clear from the claimant's evidence that she had been dismissed. There was an oral dismissal by Dr. Sathiya on 11 June 2001 giving the claimant one month's notice although she was given the option of packing

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a her bags and leaving the very next day. The claimant continued working as her demand for a letter of dismissal and the grounds for her dismissal were not forthcoming. When an attempt was made on 22 June 2001 to cloak the termination under the guise of a mutual agreement, the claimant duly returned the company's cheque for RM5,000. Even if the verbal dismissal was discounted, the letter of termination left no room for doubting that there was a dismissal. (p 147 g-h)

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c [2] On the facts, it was crystal clear that the company's contention that the claimant had stopped coming to work after 11 June 2001 could not hold water as the claimant did in fact work and attend meetings and report on the work that she had done. The company, by its failure to call any witnesses at the hearing, had also failed to establish the allegations set out in its statement of reply. On a balance of probabilities, the company failed to prove that the claimant was dismissed with just cause and excuse. (p 150 g)

d [3] In light of the strained relationship between the claimant and Dr. Ho (the director of the company) and the fact that it was inherently possible that a hospital administrator would already have been appointed by the company to replace the claimant, reinstatement would not be the appropriate remedy in this case. The claimant to be awarded compensation consisting of the remuneration which she would have earned from 1 June 2001 to 12 March 2003 (the last day of hearing) amounting to RM105,000. (pp 150 h & 151 d)

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[Unjust dismissal.]

f **Case(s) referred to:**
Goon Kwee Phoy v. J & P Coats (M) Bhd [1981] 2 MLJ 129
Milan Auto Sdn Bhd v. Wong Seh Yen [1995] 4 CLJ 449

Legislation referred to:
Industrial Relations Act 1967, s. 20

g *For the claimant - Steven CF Wong; M/s Arifin & Partners*
For the company - Halmiwati Abdul Wahab; M/s Rakhbir Singh & Co

AWARD
(NO. 295 OF 2003)

h The dispute between the claimant and the company arose out of the dismissal of the claimant by the company.

i The case was first mentioned on 22 August 2002. The claimant was represented by JY Lo from M/s Arifin & Partners whilst the company was represented by Ho Huat Soon, a director of the company. On the next mention

date on 24 October 2002 the court fixed the case for hearing from 12 March 2002 – 13 March 2002 as the parties had filed the statement of case and statement in reply. *a*

On 12 March 2003 the case was called for hearing in the presence of Steven Wong from M/s Arifin & Partners for the claimant and Halmiwati Abdul Wahab from M/s Rakhbir Singh & Co for the company. The court was informed that Ho Huat Soon, the sole witness for the company had not turned up and the case was stood down to await his arrival. When there was still no sign of the company's witness at 10.40am, the court adjourned the case to the afternoon to enable counsel for the company to get in touch with the company and the witness. *b*
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When the case was re-called at 2.15pm the court was informed that the company's witness was still not present. When asked by the court whether the company knew that the case was set down for hearing that day, Halmiwati replied in the affirmative. She further enlightened the court that the missing witness, Ho Huat Soon (the same Ho Huat Soon who represented the company on the first mention date) had been in Kuala Lumpur since Monday (two days earlier) for the case. Counsel had tried unsuccessfully to contact him *via* his handphone but the handphone had been switched off. The court was also informed that the said Ho knew that he was the sole witness for the company. *d*
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The court notes that ample latitude had been given to the company's witness to attend court. The court further notes that Ho had attended court on the first mention date and as such there was no question of his not knowing the location of the court. Counsel for the company had also indicated that the said witness had arrived in Kuala Lumpur since Monday to attend the hearing. *f*

In the foregoing circumstances, no advantage would be gained by adjourning the case further. Since the company was unable to call any witnesses and since the claimant was present and ready to proceed with her case, the court thus directed the claimant to proceed to adduce evidence in support of her case. *g*

The Claimant's Evidence

The claimant's evidence is that she was employed by the company as a hospital administrator with effect from 1 June 2001. The terms and conditions of her employment are as exhibited in CLE1. Claimant states that the handwritten remarks in para. 5 of CLE1 were written by her after she had discussed those terms with Ho *via* telephone. According to claimant, Ho had told claimant to *h*

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a put it in and to fax it over to him so that he could get the terms and conditions amended. The claimant duly faxed to Ho her acceptance but the original copy of the said acceptance was handed over personally to Ho when claimant reported for work.

b In evidence claimant states that on her first day at work in the company, she found that there was no proper system of administration in the company. Appropriate licences from the relevant authorities had yet to be obtained and there was only a skeletal staff employed. She immediately set to work to implement a system of administration in the company and to obtain the necessary licences. In the course of her work, following claimant's assessment

c that a soft opening of the company's medical centre on 19 June 2001 was not possible, the relationship between the claimant on the one hand and Ho Huat Soon and Sathiyanthan (Sathiya) on the other, began to deteriorate.

The following appears to be the sequence of events that followed:

d (a) At a meeting held on 11 June 2001, when claimant made certain suggestions for remedial action to be implemented by the company for the safety and health of future patients, Sathiya told the claimant to "shut up" and not to tell him that what to do with his department.

e (b) At the same meeting on 11 June 2001 Sathiya verbally informed claimant that her employment was terminated and that claimant was given one month's notice to leave the company's employment although she could pack her bags and leave the very next day.

f (c) Claimant requested Sathiya for a written letter of termination and reasons for her dismissal. From 11 June 2001 until 21 June 2001 the company did not issue any letter of termination.

(d) On 21 June 2001 Ho humiliated claimant by verbally downgrading her to the position of matron.

g (e) On 22 June 2001 Sathiya served on the claimant a written letter - CLE3 - which states, *inter alia*, that:

As discussed earlier and as agreed by your goodself and the company, we hereby enclose a cheque for amount of RM5000/- (Cheque No. 032437) as full and final settlement of your services with the company with immediate effect.

h (f) Upon receipt of CLE3 claimant immediately replied to the company denying the contents of CLE3 and returning the cheque.

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On 25 June 2001 both Ho and Sathiya appeared at claimant's living accommodations and served on claimant a written letter of termination of employment - CLE6. Ho further directed that claimant was to leave the premises within 24 hours. *a*

Since claimant was evicted, she was forced to move into a hotel and thus had to incur expenses for her accommodation. She had to pay her own airfare back to Kuala Lumpur. She was also not paid for her employment from 1 June 2001 – 25 June 2001. *b*

Claimant stated that she was working full time from 11 June 2001 - 22 June 2001. She attended various meetings as evidenced by various minutes of meetings tendered as exhibits, namely, CLE11, CLE12, CLE13 and CLE14. During these meetings Ho or Sathiya or both of them were present. *c*

The Law

As stated by Mohd Azmi FCJ in the case of *Milan Auto Sdn Bhd v. Wong Seh Yen* [1995] 4 CLJ 449, the function of the Industrial Court in dismissal cases on a reference under s. 20 of the Industrial Relations Act 1967 is twofold, namely: *d*

... first, to determine whether the misconduct complained of by the employer has been established, and secondly, whether the proven misconduct constitutes just cause or excuse for the dismissal. *e*

Thus the two questions which the court has to ask itself are:

- (i) was there a dismissal; and
- (ii) if the answer to (i) is in the affirmative, was the dismissal with or without just cause or excuse. *f*

In this case it is clear from the evidence of the claimant that the claimant had been dismissed. There was an oral dismissal by Sathiya on 11 June 2001 giving the claimant one month's notice although she was given the option of packing her bags and leaving the very next day. Claimant demanded a letter of termination and the grounds for her dismissal. As no letter was forthcoming claimant continued working. When an attempt was made on 22 June 2001 to cloak the termination under the guise of mutual agreement, claimant duly returned the company's cheque for RM5000. Even if the verbal dismissal is discounted, the letter of termination - CLE6 - leaves no room for doubting that there was a dismissal. The letter of termination reads as follows: *g*

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a 25th June 2001

Dear Rosemary Chew,

Re: Termination Letter

b With reference to the above and your request, we hereby forward this letter to yourself. We hereby terminate your services with immediate effect. We wish all the best in future undertaking.

Thank you,

Yours sincerely

c For Labuan Medical Centre

Sgd.

Ho Huat Soon

d Managing Director.

Further the company in its statement in reply does not dispute the termination although it contends that the termination was lawful. As such this court finds that there was a dismissal of the claimant by the company with effect from 25 June 2001.

e The next issue is whether the dismissal was with or without just cause.

In the case of *Goon Kwee Phoy v. J & P Coats (M) Bhd* [1981] 2 MLJ 129 His Lordship Raja Azlan Shah, CJ (Malaya) (as he was then) had this to say:

f Where representations are made and are referred to the Industrial Court for enquiry, it is the duty of that court to determine whether the termination is with or without just cause or excuse. If the employer chooses to give a reason for the action taken by him, the duty of the Industrial Court will be to enquire whether that excuse or reason has or has not been made out. If it finds as a fact that it has not been proved, then the inevitable conclusion must be that the termination or dismissal was without just cause or excuse. The proper enquiry of the court is the reason advanced by it and that court or the High Court cannot go into another reason not relied on by the employer or find one for it.

g In this case although the company had filed a statement in reply, it had failed to produce any witnesses to prove its contention that the dismissal was with just cause or excuse. Nevertheless the court will look at the statement in reply as well as the evidence adduced from the claimant through cross-examination to determine the following:

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- (i) the reasons given by the company for the dismissal of the claimant; and *a*
(ii) whether these reasons been proven on the balance of probabilities.

In paras. 9 and 10 of the statement in reply, the company pleads as follows:

9. The Company states that the Claimant had worked for only 11 days from *b*
1.6.2001 up to 11.6.2001 and thereafter had not turned up for work with the
Company.

The Company in the premise avers that it was justified in terminating the
Claimant as the Claimant had failed to offer any reasonable explanation
to account for her absence from work. *c*

As such it would appear that the only reason on record in the statement in
reply for the claimant's termination is that the claimant had stopped coming
to work after 11 June 2001 and had not offered any reasons for her absence.

Has this reason for the dismissal been established by the company on the *d*
balance of probabilities? The answer is a resounding "No". Apart from the
oral evidence of the claimant that she was working from 1 June 2001 -
21 June 2001, there is also the supporting documentary evidence of CLE12,
CLE13 and CLE14 which shows that not only did claimant work after *e*
11 June 2001 but that she was tasked with duties and responsibilities
commensurate with her position as a hospital administrator. A detailed
examination of these documents reveals as follows:

- (a) CLE.12 - These are the minutes of the meeting of the executive *f*
board held on 13 June 2001 at 5.30pm. These minutes
show that the claimant was present. So also was Sathiya.
The minutes show that claimant was tasked with numerous
duties, and these include:

- monitoring the sending out of purchase orders which were *g*
to be centralised;
- negotiating the price, terms & conditions for the supply of *h*
Reagent;
- reporting on the status of the female doctor for O & G;
- taking action on staff appraisals in order to have *i*
systematic evaluation for the staff.

- (b) CLE.13 - These are the minutes of the meeting of the executive *i*
board held on 16 June 2001 at 5.45pm. Claimant was
present as well as both Ho and Sathiya. The minutes show
that:

- a* · Claimant had drafted guidelines to re purchase order and stock control;
- Action to be taken by claimant in negotiating with supplier on price, terms & conditions was on-going;
- b* · Claimant was to check with the sales representative from Nestle and get results from the female doctor for O & G;
- Action to be taken by claimant while staff appraisal was on- going.
- c* (c) CLE.14 - These are the minutes of the meeting of the steering committee held on 20 June 2001. Claimant was present. Ho and Sathiya were also present. The minutes show that:
- d* · Claimant was tasked to make some changes to the Purchase Order and payment voucher format in the Guidelines that she had drafted;
- Claimant had reported that all the female doctors that she had contacted were all paediatricians and not O&G specialists;
- e* · Claimant handed a few female paediatricians' phone numbers to Ho for follow up action;
- Claimant's actions to staff appraisal was on-going.
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From a study of these minutes it is crystal clear that the company's contention that the claimant had stopped coming to work after 11 June 2001 cannot hold water. The claimant did in fact work and attend meetings and report on the work that she had done. The company, by its failure to call any witness at the hearing, had also failed to establish the allegations set out in the statement in reply.

Based on the above reasons this court finds that the company has failed to prove on the balance of probabilities that the claimant was dismissed with just cause and excuse.

- h* In light of the strained relationship between the claimant and Ho (the director of the company) as evidenced by CLE14 which contains an entry that claimant had complained to the chairman of the meeting that "neither Ho nor Sathiya had spoken to her since the last meeting when Ho walked out of the meeting",

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and in light of the fact that time has elapsed since June 2001 wherein it is inherently possible that a hospital administrator to replace the claimant would already have been appointed by the company, the court is of the view that reinstatement would not be the appropriate remedy in this case. *a*

The claimant was employed on a monthly salary of RM5000 for a fixed contractual period of three years. She was unable to obtain other employment after her dismissal. The manner of her dismissal and her unceremonious eviction from the living accommodation provided for her only reflects the high-handedness of the company's management. In light of the circumstances the court is of the view that justice will prevail if the claimant is awarded compensation consisting of the remuneration which claimant would have earned from 1 June 2001 until 12 June 2003 (the last day of the hearing). *b*

The court thus orders that the company to pay the claimant the sum of RM5000 x 21 = RM105,000 as compensation. The said sum is to be paid to the claimant, through her solicitors, M/s Arifin & Partners, within 60 days from the date of this award, subject to deduction for income tax and Employee Provident Fund contributions, if any. *c*

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