

INDUSTRIAL COURT OF MALAYSIA

CASE NO: 18/4-352/2008

TEOH CHYE LYN

V.

ALLSTAFF OUTSOURCING SDN. BHD.

AWARD NO: 577 OF 2010

Before : **Y.A. RAJENDRAN NAYAGAM
CHAIRMAN (Sitting Alone)**

Venue : Industrial Court Malaysia, Penang

Date of Reference : 5th March 2008

Dates of Mention : 28th May 2008; 7th July 2008; 7th August 2008;
8th September 2008; 16th February 2009;
28th September 2009.

Dates of Hearing : 29th September 2009

Dates of Oral Submission : 11th March 2010

Representation : Mr. P. Thannarasu of Messrs Subramaniam Shanmugam &
Associates
for the Claimant

Mr. Leow Tat Fah of Messrs TF Leow & Associates
for the Company

Reference:

This is a reference made under Section 20(3) of the Industrial Relations Act, 1967 arising out of the dismissal of Teoh Chye Lyn (“the Claimant”) by Allstaff Outsourcing Sdn. Bhd. (“the Company”).

AWARD

1. This is a Ministerial reference to the Industrial Court under section 20(3) of the Industrial Relations Act 1967 made on 5th March 2008 for an award in respect of the dismissal of Teoh Chye Lyn (“the Claimant”) by Allstaff Outsourcing Sdn. Bhd. (“the Company”).

2. **Brief Facts**

The Claimant holds a Degree in Communications from Universiti Utara Malaysia. In June 2006, the Company employed the claimant as a Production Scheduler on a fixed term contract for one year. The Claimant was assigned to another Company named Agilent Technologies. At Agilent she reported to Kuik Sian Ling (COW1), her immediate superior. The Company had received complaints from Agilent Technologies over the Claimant's poor work performance and her absence from her work place on several occasions.

As a result, the Company's Accounts Manager Samantha Teoh (COW2) had a meeting with the Claimant, pertaining to Agilent's concerns. In the course of discussion, the claimant had informed COW2 that she had gone for a few interviews and had received a job offer. The Company then prepared a resignation letter and the Claimant signed it.

It is now contended by the Claimant that she was forced to resign, which is denied by the Company. Hence, the issue is whether the Claimant was dismissed?

3. **Whether the claimant was dismissed?**

In a reference under section 20, the first thing the court has to do, according to ***Wong Chee Hong v Cathay Organisation (M) Sdn. Bhd [1988] 1CLJ45*** is to determine whether there was a dismissal. Once it has been determined that there has been a dismissal, it is only then the issue of just cause or excuse will arise.

(i) **Claimant's case**

On 31st October 2007 the claimant met with her superior COW1. He wanted to know why she kept leaving the workplace around lunch time and she told him that she had to attend to personal matters. Subsequently, on 2nd November 2007 she was directed by COW1 to see Samantha (COW2) at the company. On the same day at about 10.00am she met with COW2, who informed her that COW1 wanted her to resign immediately. She said that she was shocked to hear this and asked COW2 for advice. COW2 responded by saying that she had no choice but to resign. COW2 then produced a type-written resignation letter and told her to sign it. The Claimant contended that she had no choice in the matter but to sign the letter, as she could not go back to Agilent to work. The Claimant's contention was that she did not resign voluntarily and that she wanted to continue to work with the Company.

(ii) **Company's case**

COW1, the Claimant's immediate superior stated that the Claimant's performance was poor and had shown no interest in the job assigned to her. He also found that the Claimant had left her workplace for long periods, without his permission. He stated that this had started sometime in October 2007. After observing the Claimant's continued poor work performance, on 26th October 2007 COW1 reported the Claimant's poor performance and disciplinary issues to the Company for action to be taken. The complaints by COW1 were received COW2. When COW2 had a meeting with the claimant on 2nd November 2007, the Claimant told her that she had "no chemistry" to work with COW1 and that she had gone for some job interviews and had obtained an offer of employment from another Company. COW2 stated that when she heard this, she was convinced that the Claimant wanted to resign from the Company. As such, she raised the issue of resignation with the Claimant and that the Claimant volunteered to resign. She admitted that she did encourage the Claimant to resign but did not force her to do so. She then prepared the resignation letter for the Claimant's signature. The

Claimant signed the letter and the Company waived the need to give one month's notice and the Claimant was paid one month severance pay. At the time of resignation, the Claimant's contract had a remaining term of 7 months and 19 days.

In order to support their case, the Company also produced extracts from the Claimant's blog known as Angel's World. This has been admitted by the Claimant. In her blog, the Claimant had written about her feelings regarding her employment with the Company. In it she stated that she had wanted to leave the Company, long before the contract came up for renewal and admitted that she went for job interviews as she had already decided to go away. She had also expressed her gratitude to her boss for paying her a month's severance pay, which she could now enjoy before starting on her new job.

4. **Analysis**

The undisputed fact of this case is that the Claimant has not been happy working with COW1 and has been job hunting, without the knowledge of the Company and had secured a firm job offer. Her intention to leave the Company was made very clear in her blog. The question that remained was the timing of her leaving the Company. The opportunity came when COW1 had referred her to COW2 regarding her poor performance and frequent absence from her workplace. In her meeting with COW2, she revealed the her job offer which she had secured and in the circumstances COW2 had encouraged her to resign. As stated in her blog, she had no intention of staying on in a place, where she was unhappy and this is reflected in her writing, when she said **"if I started to go for interview, that means I already decided to go away. If he wanted me to say that I wanted to stay and I like to stay, I tell you, I'm sorry, I don't like to lie."** In these circumstances, it is the finding of the court that the Claimant gladly tendered her resignation to the Company, to take on her new employment.

5. **Finding**

For the reasons stated, it is the finding of this court that the Claimant had not been dismissed.

6. **Order**

Accordingly, the claim is hereby dismissed.

HANDED DOWN AND DATED THIS 3RD DAY OF MAY 2010.

Signed

(RAJENDRAN NAYAGAM)

CHAIRMAN

INDUSTRIAL COURT