

**IN THE INDUSTRIAL COURT OF MALAYSIA**

**CASE NO: 9(26)/1-273/09**

**BETWEEN**

**CHAN YOKE CHIN**

**AND**

**NEW DOT IMAGING SDN. BHD.**

**AWARD NO. : 954 OF 2010**

**Before** : **DATO' HAJI SULAIMAN BIN ISMAIL** - **CHAIRMAN**  
**MR.MOHD. MYDIN HAJI SULTAN** - **EMPLOYER'S PANEL**  
**MR. MOHAMAD BIN OSMAN** - **EMPLOYEE'S PANEL**

**Venue** : **INDUSTRIAL COURT OF MALAYSIA**  
**PENANG BRANCH**

**Date of Complaint** : **29<sup>th</sup> OF JUNE 2009**

**Dates of Mention** : **22<sup>nd</sup> OF JULY 2009, 2<sup>nd</sup> OF SEPTEMBER 2009,**  
**15<sup>th</sup> OF OCTOBER 2009, 23<sup>th</sup> OF DECEMBER 2009,**  
**18<sup>th</sup> OF JANUARY 2010, 2<sup>nd</sup> OF MARCH 2010,**  
**9<sup>th</sup> OF APRIL 2010, 22<sup>nd</sup> OF APRIL 2010 & 6<sup>th</sup> OF MAY 2010 .**

**Dates of Hearing** : **6<sup>th</sup> OF JULY 2010 & 20<sup>th</sup> OF JULY 2010.**

**Representation** : **Complainant present.**

Mr. Eric Cheah Woon Leng, learned Counsel from  
Messrs Hong, Cheah & CO for the Complainant.

Miss Krishna Kumari Ratnam, learned Counsel from  
Messrs Krishna & CO for the Respondent.

**COMPLAINT** :

A Complaint was lodged by **Chan Yoke Chin** ("the Complainant") on the 29<sup>th</sup> of June 2009 under Section 56(1) of the Industrial Relations Act 1967 that **New Dot Imaging Sdn. Bhd.** ("the Respondent") did not comply with Award No.: 534/2009 in Case No.:18/4-2402/04.

## **AWARD**

This is a complaint of non-compliance under Section 56(1) of the Industrial Relations Act 1967 by Chan Yoke Chin (“the Complainant”) against New Dot Imaging Sdn. Bhd. (“the Respondent”). The Complainant complained that the Respondent had failed to pay the sum of RM26,400.00 awarded to her vide Award No.: 534 of 2009 in Case No.:18/4-2402/04.

The complaint was called for hearing on 6<sup>th</sup> of July 2010. On the said hearing date, Mr. Eric Cheah Woon Leng, learned Counsel from Messrs Hong, Cheah & CO for the Complainant appeared in Court. The Complainant was absent. Miss Krishna Kumari Ratnam, the learned Counsel from Messrs Krishna & CO for the Respondent appeared in Court.

Mr. Eric Cheah informed the Court that as on 6<sup>th</sup> of July 2010 the balance of RM5,500.00 still not cleared excluding the travelling expenses to Kuala Lumpur amounting to RM800.00. The Respondent had issued a UOB Cheque No:328120 dated 5<sup>th</sup> of July 2010 amounting to RM5,500.00.

Miss Krishna Kumari informed the Court that the other cheques already been cleared that is:

- i) UOB Cheque No:303357 dated 31<sup>st</sup> March 2010 amounting to RM4,400.00.
- ii) UOB Cheque No:303388 dated 21<sup>st</sup> April 2010 amounting to RM5,500.00.
- iii) UOB Cheque No:303387 dated 21<sup>st</sup> May 2010 amounting to RM5,500.00.
- iv) UOB Cheque No:328062 dated 21<sup>st</sup> June 2010 amounting to RM5,500.00.

The Court ordered that as for the UOB Cheque No:328120 dated 5<sup>th</sup> of July 2010 amounting to RM5,500.00 still pending clearance and the Court directed the Complainant's Counsel to submit the question of expenses incurred, the Court then adjourned the matter to 20<sup>th</sup> of July 2010 and the Complainant has to be appeared in Court on the next continued hearing date.

On 20<sup>th</sup> of July 2010, Mr. Eric Cheah Woon Leng, the learned Counsel from Messrs Hong, Cheah & CO for the Complainant appeared in Court together

with the Complainant. Miss Krishna Kumari Ratnam, the learned Counsel from Messrs Krishna & CO for the Respondent appeared in Court.

Mr. Eric informed the Court that the Cheque dated 5<sup>th</sup> of July 2010 by the Respondent was cleared on the 9<sup>th</sup> of July 2010. Further, he is requesting the panel to consider and ordering the Respondent to pay travelling expenses to Industrial Court Of Malaysia, Kuala Lumpur by Complainant's Counsel for 2 mention dates on 22<sup>nd</sup> of July 2009 and 2<sup>nd</sup> of September 2009 plus hearing on 15<sup>th</sup> of October 2009 but the hearing was postponed because the Respondent's Counsel was on Deepavali leave. Mr. Eric also requested cost of the day of RM200.00 plus travelling expenses of RM800.00 totalling RM1000.00.

Mr. Eric refers to Industrial Relations Act, Section 62(d) and Industrial Relations Regulations, 1967 Section 5 - The President shall have power to make orders with respect to costs and expenses, including expenses of witnesses of proceedings before the Court. He refers to case *Kerjaya Binaan Sdn. Bhd. vs Kok Yen Chow* [2004] 3 ILR 534, *Region System Sdn. Bhd. vs Anus Maidin* [2004] 2 ILR 320 and *Sudirman Wan Mansor vs Kelab Golf Sarawak* [2007] 4 ILR 501. He also refers to page 11 of the bundle. This is a last minutes postponement and the Complainant already incurred RM800.00 and because of the application

of judicial review in the High Court he had agreed Respondent to pay the judgement after the disposal of the case. He also enclosed the receipt at pages 25 & 26. Petrol expenses at pages 27 & 28 totalling RM186.00. Mr. Eric submits that he only asking for extra expenses only basic that is tolls and petrol. Further, he submits that he is also asking the Respondent to pay costs of the day for RM200.00. If the Respondent had paid earlier, this issue would not had incurred and he seeked justice for the Complainant. The payment not made by the Respondent after one year and the Respondent is able to pay but delay the payment.

Miss Kumari replies that the first issue whether to be paid Solicitors or Witness Client's Solicitors is different. This is regarding the non-compliance case. The Respondent are not agreeable because it was not pleaded and asked for the cost for witness. She refers to Section 56, IRA 1967 under this Act nothing to states that payment costs. Only general provision under the regulations (5) under Section 23 - 2<sup>nd</sup> schedule IRA – no mention of costs. The non-compliance has to be filed in Industrial Court Of Malaysia, Kuala Lumpur. The first mention date given the Respondent's Director attended the Court. As the date of hearing on the 15<sup>th</sup> of October 2009, postponement allowed by the Court and the case to be transferred to Industrial Court Of Malaysia, Penang Branch. All parties,

Complainant, Respondent Company and Solicitors are in Penang. To avoid the unnecessary expenses the Respondent Company had requested the case to be transferred to Penang and no undue unnecessary delay. She submits that the parties has the right to appeal. The Respondent had filed judicial review and the stay was granted. This is a process of the Court. The Company has paid the full sum. She also wish to refer to page 6 of the bundle, Kerjaya Binaan Sdn. Bhd. vs Kok Yen Chow [2004] 3 ILR 534 - the Case is different. In this case, the Court had granted the application. She then refers to page 18, Sudirman Wan Mansor vs Kelab Golf Sarawak [2007] 4 ILR 504 – this case can be distinguished. The Respondent had made the thing easy for every one. The Court has the discretion taking into consideration the facts of this case and she prayed no order on costs to be awarded. No doubts there is regulation. The Board has the discretion.

Mr. Eric replies that the parties has the right to apply to transfer the case and it is the discretion of the Court. The Complainant wanted to try this case as soon as possible and the date of hearing has been fixed on 15<sup>th</sup> of October 2009 and the Court had agreed to grant the postponement. He also said that regulation 5 gives wide power to the Court.

**Decision:**

The Respondent had exercised its right under the law that is to get the case transferred from Kuala Lumpur to Penang.

The Respondent had also exercised their right to go for judicial reviewed in the High Court. The Court feels that it was neither the fault of the Respondent or his solicitor.

The two cases cited by the Counsel for the Complainant is not applicable for this case. This is non-compliance case and the Respondent had exercised his right under the law as provided by the Act, 1967.

Anyway as regard to the hearing date on 15<sup>th</sup> of October 2009, the Court had granted the postponement. It was neither the fault of the Respondent or his solicitor. Their request had been granted by the Court, therefore Respondent should not penalised.

For the above reasons stated Court feels that the applications by the Complainant's Solicitor for the costs of RM200.00 and travelling expenses could be allowed. In the circumstances the Court with the concurrence of its panel members agree to dismiss the application.

HANDED DOWN AND DATED THIS 21<sup>st</sup> DAY OF JULY 2010.

**(DATO' HAJI SULAIMAN BIN ISMAIL)  
CHAIRMAN  
INDUSTRIAL COURT OF MALAYSIA  
PENANG BRANCH.**