

INDUSTRIAL COURT OF MALAYSIA

CASE NO. 6(1)/1-426/19

BETWEEN

MARINA SUWENDY

AND

**(i) IRR LEGAL SDN. BHD.
(ii) TAN SRI DATUK LEE FOOK LOONG
(Joined as 2nd Respondent By Order of Court
Award No. 2981 of 2019 dated 14 November 2019)**

AWARD NO: 261 OF 2020

CORAM : Y.A. TUAN GULAM MUHIADDEEN BIN ABDUL AZIZ - CHAIRMAN
ENCIK NOR AZMIN BIN TAJOL ARIFIN - EMPLOYEE PANEL
ENCIK MOHD FARIKH BIN MOHD SAID - EMPLOYER PANEL

VENUE : Industrial Court Malaysia, Kuala Lumpur.

FILING OF FORM S : 1 April 2019

DATES OF MENTION : 30 April 2019, 23 May 2019, 30 May 2019, 26 June 2019,
10 July 2019, 31 July 2019, 21 August 2019, 27 August 2019,
23 September 2019, 3 October 2019, 22 October 2019, 25
November 2019, 9 December 2019, 17 December 2019, 6
January 2020 and 16 January 2020.

DATE OF HEARING : -

REPRESENTATIVE : Mr. Edward Andrew Saw Keat Leong with
Mr. P. Vickneswaran from
Messrs. Josephine L K Chow & Co.
(Learned Counsel for the Complainant)

: Mr. Farrandy Iskandar Norshahid from
Messrs. Farrandy & Co.
(Learned Counsel for the Respondent)

AWARD

This is a complaint of non-compliance filed in Form S pursuant to Rule 56(1) Industrial Relations Act 1967 ("IRA") and Rule 24A (1) of the Industrial Court Rules 1967 in respect of Award No. 2932 of 2019 in dismissal Case No. 19/4-520/17 dated 14 November 2018.

The Complainant lodged a complaint that the provisions of the abovementioned Award have not been complied with in respect of paragraph 33 as follows:

"The sum of **RM106,383.51** less any statutory deductions, if any, is to be paid by the Company to the claimant vide her Solicitors, Messrs Vickneswarens & Associates, within 30 days from the date of service of this Award."

By Award No. 2981 of 2019 dated 14 November 2019 the Complainant's application in Enclosure 9 for the joinder application was allowed to join Tan Sri Datuk Lee Fook Long as the 2nd Respondent in this proceedings. The nature of the Company's business was principally involved in providing online legal news and notices and owned the online portal known as AskLegal, (<http://www.asklegal.my>).

Statement of Case & Submissions

The Complainant states in Form S that upon the filing of the same on 1 April 2019, the Company have failed to pay to the Claimant the amount instructed by the Court. The Award No. 2932 of 2019 was duly served on the Company and there was no application for judicial review filed in the High Court. Therefore, the Complainant pray

for order in terms of the application in Form S for the Respondents to pay the Award sum.

Respondent's submissions

The Respondents in the Statement in Reply states that both the Respondents are not disputing the Award but submits that the Award was made against the Company which is existing but currently not active and therefore unable to monetize revenue to satisfy the Award. The 2nd Respondent is unable to satisfy the award as any form of payment it would have received and/or monetized from the Respondent Company is unsuccessful due to non-performance and present dormant status of the Respondent Company. The 2nd Respondent as a shareholder has in addition lost a substantial amount of investment in the Respondent Company without immediate possibility of recuperating the losses and this leaves the 2nd Respondent under financial stress to render the award to be satisfied, valid and enforceable.

The Law

In respect of **“Non-compliance with award”** section 56 of the IRA reads as follows:

- “(1) Any complaint that any term of any award ... by the Court has not been complied with may be lodged with the Court in writing by ... any person bound by such award..
- (2) The Court may, upon receipt of the complaint,-
 - (a) make an order directing any party -
 - (i) to comply with any term of the award ...”

The Industrial Court in the case of **Kesatuan Pekerja-pekerja Perkilangan Perusahaan Makanan v. Gold Coin Specialities Sdn. Bhd.** [2017] 2 ILR 260 at p. 262 referred to a decision by the Supreme Court in the case of **Holiday Inn, Kuala Lumpur v. National Union of Hotel, Bar and Restaurant Workers** [1988] 1 CLJ 133 in relations to section 56 of the Industrial Relations Act 1967 as follows:

“Now, section 56 is concerned with the enforcement in a summary manner of an award made by the Industrial Court or of a collective agreement which has been taken cognisance of by the court under section 17 after a complaint has been lodged as to its non-compliance. The non-compliance of a term of the award or collective agreement must exist as an antecedent fact before the Industrial Court can exercise its power contained in subsection (2) thereof. It is therefore, a condition precedent to the exercise of those powers that there should be in existence a breach or non-observance of a term of the award or collective agreement. This must be satisfactorily established by the complainant.”

The Supreme Court in the case of **Dragon & Phoenix Berhad v. Kesatuan Pekerja-pekerja Perusahaan Membuat Tekstil & Pakaian Pulau Pinang & Anor.** [1990] 2 ILR 515 at p. 616 decided as follows:

“In a complaint of non-compliance with any term of a collective agreement or award under section 56 of the Industrial Relation Act, the Industrial Court should, as a general rule, look at the terms of the contract by confining itself to within the four walls of the collective agreement or award and decide whether the term has or has not been complied with. It is purely enforcement function.”

The Decision

The Court is of the unanimous view that the terms of the Award has not been complied and without reasonable grounds failed to pay the Complainant the sum of RM106,383.51 less statutory deductions if any within 30 days from the date of the Award.

The Respondents failed to produce any documents to show that their financial status for the Court to assess their ability to pay the award sum.

Based on the reasons adumbrated above and upon hearing submissions from both the Complainant's counsel and the 1st & 2nd Respondents' counsel, the Court hereby finds both the Respondent jointly and severally liable for the payment of the Award sum. It hereby makes an order pursuant to s. 56 (2) (a) (i) IRA 1967 directing the 1st & 2nd Respondents to pay the Complainant through her solicitors, Messrs Josephine L.K Chow & Co. the sum of RM106,383.61 forthwith

HANDED DOWN AND DATED THIS 23 JANUARY 2020

-signed-

**(GULAM MUHIADDEEN BIN ABDUL AZIZ)
CHAIRMAN
INDUSTRIAL COURT MALAYSIA
AT KUALA LUMPUR**