

INDUSTRIAL COURT

PRACTICE NOTE NO. 1 OF 2003

GUIDELINES ON WITNESS STATEMENT

The purpose of this Practice Note is to bring about certainty and uniformity in the use of a Witness Statement in Court.

In the absence of any specific provision in the Industrial Relations Act 1967 and the Industrial Court Rules 1967, the use of a Witness Statement, for the time being until the Act or the Rules are amended, may be allowed under the general provisions of sections 28 and 29(g) of the Industrial Relations Act 1967.

PURPOSE OF WITNESS STATEMENT

The purpose for the use of a Witness Statement is to expedite the hearing of a case.

WHEN TO USE WITNESS STATEMENT

Witness Statements may be used only on a voluntary basis i.e. where both parties agree, at the time of mention of the case, that they prefer to go by way of Witness Statements for evidence to be given by the witness during Examination-in-chief.

WHEN NOT TO USE WITNESS STATEMENT

Witness Statements may not be used if -

- (a) any party disagrees to the use of Witness Statements;
- (b) any party is not represented by a legal practitioner or his Union representative and has difficulty in preparing Witness Statement;
- (c) any witness is a subpoenaed witness and there is difficulty in contacting the witness before the hearing in order to prepare the Witness Statement;
- (d) any witness is hostile;
- (e) the evidence to be adduced, when given orally in Court, would be better understood by all parties;
- (f) there is reference to too many documents or exhibits which are controversial or contain too much detail (which need to be explained in Court for clarity) or which may be objected to by the other party; and
- (g) the Witness Statement, by its length, complexity, incomprehensibility or incompleteness would not serve

the purpose of expediting the hearing but instead would complicate and prolong proceedings.

FILING OF WITNESS STATEMENT

Where both parties agree to proceed by way of Witness Statements, they are required to file the Witness Statements in Court and exchange the Witness Statements between them at least two weeks before the hearing date. This will give sufficient time to all parties, including the Court, to read the Witness Statements before the commencement of hearing.

Where only one party agrees to proceed by way of Witness Statements, it may be permitted by the Court provided that he files the Witness Statements in Court and serves them on the other party at least two weeks before the hearing date.

FORMAT

Ideally, a Witness Statement should be drafted in the Question and Answer format (i.e. Q & A format).

A Witness Statement must be signed and dated by the witness, prior to or during the hearing, confirming that the contents are true and correct and if he does not understand the Malay or the English Language that the contents have been explained to him in the language that he understands.

LANGUAGE

A Witness Statement may be in either the Malay or the English language.

PROCEDURE DURING HEARING

The law and procedure applicable to the giving of oral evidence in Court shall apply in the same manner as when Witness Statements are to be used.

After the witness has taken the oath in Court, he may be allowed to tender his Witness Statement as evidence in his Examination-in-chief.

The President or Chairman may allow or direct the witness to go through and read out each question and answer. However, if all parties, including the witness, have already read the Witness Statement before the hearing and are conversant with its contents, then the Witness Statement must be adopted as evidence without the need to go through each and every question and answer.

The Witness Statement shall become evidence after a statement is made under oath by the witness in Court that the Witness Statement is his statement and that he wishes to adduce it as part or all of his evidence in his Examination-in-chief.

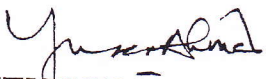
After the admission of the Witness Statement as evidence, the witness may, with the permission of the Court, adduce further oral evidence for his Examination-in-chief.

Cross-examination and Re-examination will then follow after that, in the usual manner.

It is to be noted that a Witness Statement is not to be treated as an exhibit but as evidence given in Examination-in-chief. However, for purposes of easy identification and reference, the Witness Statement may be marked in Court (e.g. COW1-WS, COW2-WS or CLW1-WS, CLW2-WS, etc.).

COMMENCEMENT

This Practice Note comes into effect on 1st April 2003.


(YUSSOF BIN AHMAD)
President
Industrial Court, Malaysia
Kuala Lumpur

Date: 24th February 2003