

INDUSTRIAL COURT ASSISTED MEDIATION

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MEDIATION: MEANING

Mediation is a form of alternative dispute resolution (ADR) which is a proven and effective method for the purposes of assisting the Court in the reduction of back logs and hearing of cases which are pending without the need to proceed with it.

Mediation as is commonly known is a concept of ADR which had long been practiced by various institution and professional bodies such as the Legal Aid Department, Bank Negara Malaysia, Malaysian Bar, Regional Arbitration Centre K.L. and the Civil Courts in this country.

According Section 3 of the Mediation Act 2012: Mediation is defined as a voluntary process in which a mediator facilitates communication and negotiation between the parties in reaching an agreement regarding a dispute.

Though the definition of mediation is given here pursuant to Section 3 of the Mediation Act 2012, it will be interesting to note that the Industrial Court is not governed by the Mediation Act 2012.

The Industrial Court follows its own practice of ADR that had been in place ever since by an in built mechanism pursuant to Section 29 (g) the Industrial Relations Act 1967 which states that:-

The Power of The Court to: ***“generally direct and do all such things as are necessary or expedient for the expeditious determination of the matter before it.”***

In the Industrial Court the ADR takes two forms:-

- (i) Mediation
- (ii) Early Evaluation

MEDIATION

Here usually the parties will make suggestion to the Court that they are willing and prepared to resolve the matter amicably without the need to go for a full trial of the matter where parties are expected to produce their respective witnesses to prove their case which often involves

voluminous documents to support the respective litigant's case. Often in this mediation process the parties themselves had assessed the strength and weaknesses of their respective cases. The lawyers and Representative acting for their client commendably play an active role in advising their client on this matter.

When the parties appear before the Court, upon such suggestion by the parties, the Mediator (the Chairman) will usually assist the parties to reach an amicable settlement process that will offer agreeable and acceptable terms between the parties. In such mediation, usually the parties play active role and the mediator is there purely to assist the parties to come to the "middle ground". Usually in this process the Chairman will not embark on the merits of the case. It is a process where the parties themselves are keen to resolve the matter without prolonging the matter. The main objective of this process is to create a "win - win" situation for both parties.

If the terms of the settlement between the parties are amenable to both, the parties usually would require the Court to record a consent award. In some cases as the parties do not wish to have the terms of settlement known by an official settlement document in the form of an Award of the Court, they usually will on their own accord prepare a deed of settlement

(sometimes with confidentiality clauses if necessary) and this document forms the basis for the initiating party to withdraw the case. In cases like that the Award handed down by the Chairman will simply say that the parties have resolved the matter amicably and the case is therefore withdrawn.

In short the mediation process which is court assisted here is a process that is a relaxed method of gauging the suitability of the parties to venture into a settlement process without going into the merits of the case.

EARLY EVALUATION

This is governed by the Industrial Court's Practice Direction 3 of 2010

State the practice direction here.

Early Evaluation process is a suitable tool employed by the Chairman in this ADR process where it is obvious where one party takes an unrealistic stand regardless of the strength of the party's case where the Chairman takes an active role to persuade the parties to relent from their unrealistic position taken.

This process is govern by the Industrial Court's Practice Direction 3 of 2010:-

“Guidelines on Early Evaluation of Case

The settlement of cases is encouraged pursuant to section 29(g) of the Industrial Relations Act 1967.

1. Purpose of the Early Evaluation of Cases

The purpose of the Early Evaluation of Cases is to expedite the disposal of cases by encouraging parties to settle cases.

2. Types of Cases

The Early Evaluation of Cases will be carried out with respect to matters which are referred to the Industrial Court pursuant to section 20(3) of the Industrial Relations Act 1967.

3. The Process of the Early Evaluation of Case

- a) The Early Evaluation of Case will be conducted if both parties consent;

- b) The parties may select a Settlement Chairman or an Assistant Registrar who has been approved by the President to evaluate the merits of the case based on the pleadings and the documents which have been filed at the Industrial Court;
- c) The Early Evaluation of Case will as far as possible be conducted in the presence of both parties and their counsel or representative;
- d) The Settlement Chairman or an approved Assistant Registrar may with the consent of the other party discuss the merits of the case with one party with his counsel or representative present;
- e) The Early Evaluation of Case will, as far as possible, be conducted within one hour and on a single day;
- f) No minutes of the discussion during the Early Evaluation of Case will be recorded in the court file;

- g) Only the date, the names of the Settlement Chairman or an approved Assistant Registrar, the parties, their counsel or representative and the outcome of the Early Evaluation of Case will be recorded in the court file;
- h) If the parties agree to settle a case, the parties may elect to have the case withdrawn or a consent award handed down by the Settlement Chairman;
- i) If the parties do not arrive at a settlement, the case will be heard by another Chairman; and
- j) If the Early Evaluation of Case has been conducted by an approved Assistant Registrar and if a settlement has been reached, the withdrawal of case or consent award will be handed down by the Chairman who has been allocated the case for hearing.”

THE PURPOSE AND ADVANTAGE OF THIS ADR PROCESS BY THE COURT

1. Increases productivity.

2. Reduction of stress.
3. Improves Communication, prevent breakdown in future communication.
4. Offers speedy resolution to the dispute.
5. Certainly Cost Effective – No fees charged in Industrial Court for ADR as opposed to the position in the Mediation Act 2012.
6. It continues to maintain workplace harmony – Reinstatement.
7. Most importantly a binding decision that prevents uncertainty arising out of further appeal process thereby enhancing point No: 1
- 6 stated above.

**IS THE COURT ASSISTED MEDIATION PROCESS WELL RECEIVED
BY THE STAKEHOLDERS?**

As they say, *“the proof of the pudding is in the eating”*.

It is pointless for the Court to have this mechanism in place if the stakeholders and the litigants do not find any benefit arising out of this process for the effective resolution of their grievances.

The good news is, all parties involvement and acceptance of this Court assisted mediation is exceedingly encouraging based on the Industrial Court statistics for the year 2017 & 2018 as follows:-

Mediation & Early Evaluation

2017	Mediation	34.3%
	Early Evaluation	41%
2018	Mediation	35.82%
	Early Evaluation	47%

CONCLUSION

It is an undeniable fact that Court Assisted Mediation is an invaluable tool empowered by the Industrial Relations Act 1967 for the effective resolution of litigants' grievances.

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