

**DALAM TRIBUNAL TUNTUTAN PENGGUNA MALAYSIA
DI WILAYAH PERSEKUTUAN PUTRAJAYA**

TUNTUTAN NO: TTPM-WPPJ-(P)-62-2008

ENG YOKE KIN - PIHAK YANG MENUNTUT

**AGENSI PEKERJAAN ATA SDN.
BHD. - PENENTANG**

SEBAB KEPUTUSAN

Facts of the case

On 3 March 2007 Pihak Yang Menuntut (PYM) had engaged the services of the Respondent to procure an Indonesian maid as the wife of PYM was going to give birth to a child in September 2007. The first maid chosen by PYM was one Edar Siti. Two months later, the agency informed PYM that Edar cannot come and PYM was requested to choose another maid. On 18 June 2007 the maid (PRA 1) came and was found to be not in good health. The first week, PRA 1 was coughing very badly. Second week, she was ill. Third week PYM found that her hand was bent as a result of a fire accident when she was a child and could not straighten the hand and this caused the hand to be sensitive to detergent and she had skin problems. She was not able to work and after more than 2 months, PYM had to send PRA 1 back to the agency on 22 August 2007. Both PYM and the Respondent agreed to a replacement of the maid and PYM had to pay a further sum of RM2,383.00 (which sum was agreed and details are at page 2 of the Statement of Respondent). PYM was given 2 biodata to choose and PYM chose one by the name of Siti. After about 6 months, the Respondent told PYM that Siti was not coming and PYM was requested to choose another maid. This time PYM chose one Mardyatun. After 6 months Mardyatun did not come. Then the agency offered one biodata by the name Jailini and recommended that this

person is a good maid. Based on the agency's recommendation PYM agreed to take Jailini. Jailini came on 27 March 2008 and PYM noticed that the maid which was sent to he house differs from the photo on the biodata but nevertheless after much persuasion from the agency staff one Miss Yee and due to the fact that the maid was already at PYM's house, PYM agreed to engage the maid (PRA 2). PYM noticed that PRA 2 was not keen to work for PYM and PRA 2 had at one occasion taken out PYM's baby (without PYM's notice) to a nearby telephone booth and later PYM was told that PRA 2 had contacted her former employer to take her away from PYM as PRA 2 wished to work for the former employer. PYM had also recorded a video using her hand phone wherein PYM had many times tried to persuade PRA 2 to work for her but PRA 2 was firm in not wanting to work for PYM for reasons best known to PRA 2. The next day PYM returned PRA 2 to the agency and informed the agency of the matters discovered by PYM. From then till now, the agency has not been able to provide PYM another maid and PYM filed in this claim thereby effectively terminating the services of the Respondent and claiming for a refund of all monies paid.

The Respondent filed in their defence and the Respondent had stated inter-alia :

- (a) That PYM was not co-operative and did not give the second maid the opportunity to work for PYM after counseling by the agency.
- (b) The payment of the replacement fees RM2,383.00 is necessary.
- (c) PYM's claim is not reasonable because after all the deductions as stated at page 3 of the statement of defence the only amount remaining to be refunded to PYM is RM1,226.10.

I shall refer to the defences raised by the Respondent and my findings are as follows :

- (a) **that PYM was not co-operative and did not give the second maid the opportunity to work for PYM after counseling by the agency.**

In respect of this defence, I find that there is no merit in the defence because it is quite clear to me from the video played during the hearing of this case that it was the maid who did not want to work for PYM. I believe PYM's evidence that the maid did contact the former employer and had expressed her desire to work for the former employer and not PYM. I also believe PYM that the maid is not keen to take care of babies. PYM had proven to this Tribunal that the maid was the person who is totally disinterested in working for PYM and it was not the case of PYM not giving an opportunity to the maid to work for PYM.

- (b) **The payment of the replacement fees RM2,383.00 is necessary.**

As PYM had during the trial of this matter abandoned their claim for the refund of this amount, it is not necessary for me to make a decision on this matter save to acknowledge PYM's abandonment of this claim. However, I shall only make a remark that the salary for the number of days the first maid had worked is included in this sum and was paid by PYM.

- (c) **PYM's claim is not reasonable because after all the deductions as stated at page 3 of the statement of defence the only amount remaining to be refunded to PYM is RM1,226.10.**

I find from the facts of this case that there has been unreasonable delay in the provision of a maid to PYM. PYM started applying for a maid from the Respondent on 3 March 2007 and subsequently in September 2007 agreed to a replacement and until today PYM still has no maid and this unreasonable delay justifies PYM terminating

the services of the Respondent by the filing of this complaint claiming for the refund of monies paid to the Respondent. I am also persuaded by the fact that PYM had given so many chances to the Respondent to find a maid for them i.e. first time the maid Edar Siti did not turn up. Then the 2nd maid (PRA 1) had skin problem. The 3rd maid (Siti) and the 4th maid (Mardiyatun) never came. The 5th maid came and did not like handling babies and working for PYM and until today no maid was given to PYM.

In finding that the termination by PYM is lawful, I shall now decide on the amount to be refunded to PYM. I acknowledge PYM's statement that the payment of RM2,383.00 (details are as set out at page 2 and 3 of the statement of defence) being the replacement fee was agreed between the parties and as such there shall be no claim for the refund of this amount. That leaves the amount of RM6,400.00. Out of this amount the balance advance salary is RM2,932.00 leaving the balance sum of RM3,468.00 to be decided. I will allow the Respondent to deduct all statutory payments to the government and other miscellaneous items (which are incurred prior to the maid Jailini coming to Malaysia) as the Respondent did not profit from such payments and reimbursements:

Levy	:	RM 430.00
Fomema	:	RM 195.00
Stamping Fee	:	RM 20.00
Documentation Postage and Courier	:	RM 150.00
Transportation Fees maid to come to Malaysia	:	RM 500.00
Service Tax	:	RM 250.00
Food and Lodging	:	RM 350.00

Total Deduction	:	RM1895.00

Therefore, the balance sum due to PYM is RM3,468.00 – RM1,895.00 = **RM1,573.00.**

The sum of RM1,573.00 + RM2,932.00 (balance of advance salary) = **RM4,505.00.**

Based on the above, I therefore give an award in favour of PYM.

Award Borang 10

Penentang dikehendaki membayar RM4,505.00 kepada Pihak Yang Menuntut dalam masa 14 hari dari tarikh Award diserahkan.

LEONG MAY CHAN
PRESIDEN
TRIBUNAL TUNTUTAN PENGGUNA
MALAYSIA

Tarikh: 8 April 2008