

Alternative Dispute Resolution (ADR) from the perspective of Line Managers in the Malaysian Timber Industry

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DOI Link: <http://dx.doi.org/10.6007/IJARBSS/v7-i11/3462>

Published Date: 17 November 2017

Abstract

Alternative Dispute Resolution (ADR) is a mechanism designed to resolve disputes in a non-adversarial manner. In a typical workplace, disagreements are inevitable due to the diversity of the workforce, not just demographically, but also in terms of their work behavior, career goals, etc. Nonetheless, as long as disagreements are kept subtle and do not jeopardize working relationship, they are manageable. The key is to understand the cause of disputes and find ways for quick resolution in a peaceful and win-win manner. When disputes are left unresolved, they tend to escalate, leading to a hostile working environment and ultimately affecting performance. Thus, the purpose of this research is to examine the views and preference of the line managers in using ADR to resolve workplace disputes. The line managers are used as respondents since they are the management team closest to the employees and thus, have direct influence in setting the general climate of employee-employer relationships at the operational level. For this study, the line managers work experience is used as a moderating variable. A total of 200 questionnaires have been distributed. The result shows that although the majority of these line managers lack knowledge on the full spectrum of ADR possibilities, they still prefer ADR over the litigious resolution method traditionally adopted by the industry. The findings are beneficial for organizations that are currently operating, or are planning to invest, in an economy and industry that possess similar industrial relations scenario.

Keywords: Industrial Relations, Conflict Management, Workplace Disputes, ADR

1.0 Introduction

Malaysia has transformed itself from an economy dependent on agriculture and primary commodities into an emerging multi-sectors economy also encompassing both services and manufacturing. The increasing rate of industrialization also means a corresponding increase in the number of industrial relations disputes in organizations. This can be seen from the increasing number of labor disputes being referred to the Malaysian Industrial Court for arbitrations. Fortunately, there is a growing awareness among the industry players that this process is time consuming, costly and could lead to irreparable damage to the employer-employees' relationships. In other words, it is in the best overall interests of the disputants to resolve the conflicts as soon as possible before they escalate to formal litigation, as this can lead to unfavorable financial and non-financial repercussion such as stoppage of work, increased operational cost, negative image, loss of goodwill and negative employee-employer relationship (Gibbons, 2007). Alternative Dispute Resolution (ADR) is a way to avoid this by resolving disputes in a non-adversarial way, without recourse to courts, and its adoption has been on the increase, especially in non-union workplaces (Colvin, Klaas & Mahony, 2006). Evidence from countries such as Great Britain, Australia and New Zealand has shown that ADR have been a successful as a first step to resolve disputes (Van Gramberg, 2006). Bearing this in mind, the techniques of Alternative Dispute Resolution (ADR) have become increasingly popular as an alternative to litigation (Eden, 2011). According to Mackie, et.al (1995) ADR is a dispute resolution involving a structured process with third party intervention that does not lead to a legally binding outcome imposed on the parties. The aim of ADR is to resolve conflicts harmoniously, that is, by compromising, systematic problem-solving and taking into account the interest and needs of the parties to the conflict, and thus, preserving their relationship.

This is especially crucial in Malaysia's quest to be a Knowledge-based Economy and investment that the government poured in improving its human capital asset. In line with this, a mediation system as an alternative to the disputing parties was introduced in 2004 whereby the Chairmen of the Industrial Courts themselves would be the mediators. Only when a settlement cannot be reached then the case will be referred for adjudication at the Industrial Court. These are stipulated in the the Code of Conduct for Industrial Harmony 1975 (the Code) which whilst not a law, provides for a tripartite understanding between employers, employees and the government with the aim to achieve greater industrial harmony in the workplace (Parasuraman, 2005). That there is a need for other methods of resolving the dispute and ADR is shown by the high reference of individual disputes and years of low settlement rates, leading to a large backlog of cases before the Industrial Court. Whilst conciliation, mediation and arbitration are considered the primary formal employment disputes resolution mechanisms in Malaysia, the disputants are encouraged to resolve disputes at the workplace level through direct negotiations wherever possible. Hence, the objectives of this study are to examine the line managers' perspective and recommend ways to increase the adoption of peaceful dispute resolution such as ADR in the Malaysian timber industry.

The timber industry is renowned for being labour-intensive and facing numerous challenges that could affect the future development of its wood processing sub-industries. For instance, the decrease in raw material supply such as logs has led to higher raw material prices, making it difficult for the Malaysia timber producers to rely on their traditional competitive weapon of low price to promote their product in the world's market. Secondly, it has to contend with

both the scarcity of labor, demand for higher wages, and reliance on foreign workers for production work. This cost factor and scarcity of both skilled and unskilled workers consequently has led to increasing change in the labor landscape and ways of managing its manpower. Lastly, given the limited number of ADR-related studies in developing country like Malaysia, low settlement rates and high numbers of labour disputes referral to the Industrial Court, this research offers a way forward on the adoption of ADR as one of the employment dispute resolution.

2.0 Literature Review

2.1 ADR Mechanism Adopted in Malaysia

In Malaysia, ADR falls under the purview of employment legislation such as IRA 1967, encompassing direct negotiation, conciliation and mediation in resolving employment disputes. Goldberg, Sander, and Rogers (2003) defined negotiation as a means of resolving dispute where disputants deliberate and jointly decide on the possible outcomes without the influence of a third party. Each side put forth their argument, exchange proposals and demands, and carries on the dialogue until an acceptable solution is attained by both parties. Conciliation is another acceptable ADR mechanism adopted in Malaysia. Under the IRA 1967, the government officials are given the authority to act as a neutral third party in carrying out conciliation sessions between the disputing parties. Conciliation can be voluntarily requested by either of the disputing parties or Under Section 18 (trade dispute) and Section 20 (claims for reinstatement) of the IRA 1967. The Director-General of Industrial Relations Malaysia (DIRM) may also intervene in a dispute and compel the disputants to attend a conciliation meeting in the interest of the general public. This is a mandatory conciliation where the settlement outcome is decided fast, especially if it involved issues that are going to affect the general public. Lastly, another option that Malaysian employers can use is mediation. The process is almost similar to conciliation whereby a neutral third party is used to assist the disputants to reach an amicable settlement (Golberg et al., 1992). However, unlike conciliation, the mediator is not authorized to render a judgment in the dispute. Their role is mainly to advise each party and they serve as a catalyst to facilitate the process and directing the discussions towards an amicable solution. In 1999, the Malaysian Bar established the Malaysian Mediation Centre (MMC) in promoting the mediation process *“as a drive to alternative dispute resolution and furnish appropriate channel for successful dispute resolutions”* (Malaysian Bar 2010). In addition, the Kuala Lumpur Regional Centre for Arbitration (KLRC) has also been set up to establish rules and provide mediation services which allow disputants to freely elect their mediator in assisting them to resolve their dispute (Ahmad Rosli, 2011)

2.2 Disputes Resolution at the Organizational Level

A conflict management and dispute resolution system includes, but is not limited to techniques such as mediation and arbitration for resolving legal disputes outside the courtroom (Lipsky and Avgar, 2008). Conflict resolution is an automated or semi-automated process used to resolve an early-detected conflict between parties to a dispute. The goal of a company in administering the conflict resolution tools within its business environment usually involves competent problem-solving intelligence, positive communication, and good negotiating skills. The management teams are the most authoritative coalition in the business hierarchy and their acts are most likely to influence their peers and team members in the organization (Ping, Huang, Yongjuan and Erping, 2008). These applications are different from

the conventional use of court annexed ADR. As Fisher (2001) observes, much of the literature on third party mediation agrees that not all conflicts at all points in time will be amenable to a single and unified method of intervention. A range of different situations may need different interventions in order to move the parties toward settlement and resolution. As an illustration, ADR which had been used has extended to cover feedback, coaching, conversation, and facilitation rather than the sole option of mediation. All these processes have in common the role of a neutral third party. Sourdin (2005) quotes the recent description of ADR by the National Alternative Dispute Resolution Advisory Council (NADRAC) as an "umbrella term for processes, other than judicial determination, in which an impartial person assists those in a dispute to resolve the issues between them." Thus, the broader application of ADR in workplaces preserves the defining feature of the third party, but expands the number of processes available, and the range of situations in which these processes might be applied in practice.

2.3 Line Managers' Role in Workplace Disputes Resolution

Rowe (1997) contends that conflict management and dispute resolution should not be centralized primarily in HR or legal departments, since the role of managers is greatly involved in conflict management. Hence, the managers are urged to resolve disputes at their level in a proactive manner rather than simply managing the dispute (Lynch, 2001; Lipsky et al., 2003; Rowe, 1997). Costantino and Merchant (1996) echo this premise through their 'principle of subsidiarity' in designing conflict management and resolution systems wherein disputes should be resolved at the lowest organizational level as possible, and it was further affirmed by Lipsky et al. (2003) that the responsibility should spread over to all managers and supervisors from the 'lowest level of the organization'. The literature has further reiterated the need for managers to be trained in appropriate conflict handling skills (Costantino and Sickles Merchant, 1996; Lewin, 1999; Lipsky et al., 2003).

Similar to most of the other Asian's economies, the Malaysian business environment have a relatively high power distance with focus on maintaining of respect and harmonious relationship between management and employees. Malaysian managers preferred consensus and compromise and thus, the direct negotiation approach is still very much in favor among middle level managers to maintain good working relationships (Mansor and Kennedy, 2000). A study on Malaysian managers showed that they scored significantly high in the integrating method, followed by compromising and obliging. Other research studies indicated that managers and executives adopted an integrated method in handling interpersonal conflicts with their peers as well as subordinates (Said, 1996; Tamam, 1997). Other studies also reported similar findings with the integrating and compromising method being the more favored conflict management and dispute resolution method (Ahmad, 1995). Recent empirical study by Suppiah (2006) reported that a high percentage (65.5%) of the managers used integrating method to handle interpersonal conflicts with their peers and subordinates followed by compromising (23.8%) and the least used was the obliging method.

3.0 Research Methodology

The respondents for this study were the intermediate managers from the timber industry in Sarawak, which is the largest state and also the main producer of timber in Malaysia. In 2011, there were 870 wood-based mills in Sarawak and Sibu had contributed 32.34% to the total volume of graded timber in Sarawak. The timber industry sector had a direct employment of

45,000 people comprising of both local and foreign workers (Sarawak Timber Industry Development Corporation, 2011). The intermediate line managers were chosen as they are most likely to be involved in, or tasked to handle employment disputes that occurred in their workplace. 200 respondents were proportionately and randomly selected from the various timber companies to determine their awareness, knowledge and preference of alternative dispute resolution. Survey method in the form of self-administered questionnaire was used for the data collection. Alpha value for the variables in the questionnaire ranges above 0.8 and therefore it is considered reliable and valid. The questionnaire covers information on respondents' demographic, involvement in workplace disputes, and their knowledge and perception of alternative dispute resolution, in addition to their preference methods in resolving workplace disputes

4.0 Findings and Discussions

Out of 200 questionnaires that were distributed to the line managers, 181 were usable (90.5% response rate). Nearly half of the respondents were between the age of 31 – 40 years. In terms of educational level, more than 80% have tertiary qualification which shows that the industry placed high importance on academic qualifications as requirements for its middle-management level staff. The majority are earning above RM4000 per month and are permanent staff rather than hired on a contract basis. The majority of the respondents have worked in their respective organization for more than 5 years, some even having been in the same employment for more than 10 years (23%). This indicates that they are knowledgeable about the company's procedure and aspects of employee-employee relationship. Analysis of the primary data below was conducted to identify the line managers' attitude towards ADR application in the workplace. Table 1 below shows the respondents' viewpoints, with the highest scale of 5 indicating most favorable answer "strongly agree", while lowest of scale 1 representing "strong disagree" towards the statements made in the survey.

Table 1:

Preference Towards ADR to Settle Workplace Disputes

No	Preference of using ADR services in workplace dispute	Weighted Mean	Std. Deviation
1	The extent to which ADR is viewed as an effective approach to resolve workplace dispute	3.69	.59008
2	The extent to which arbitration is preferred over litigious mechanism to settle disputes	3.81	.65398
3	The extent to which ADR is viewed as less stressful than litigious mechanism	4.02	.67458
4	The perceived level of company's readiness and availability of ADR services	3.35	.72790
5	The extent to which ADR mechanism is viewed as more practical and less complex than litigious mechanism	3.65	.71130

Based on Table 1 shown above, the majority of the line managers have positive view towards ADR as a mechanism to resolute workplace disputes. In other words, it is generally preferred

over the more combative and litigious mechanism such as arbitration by the Labor Court. ADR service is viewed as more practicable and less complex since third-party intervention is not needed to reach a final resolution. Furthermore, they recognize that ADR is less stressful, more discreet and flexible; the costs are not as excessive and with far less lengthy proceedings. Thus, this makes it a suitable mechanism for an industry like timber which is characterized by its labor-intensive nature and high number of unskilled & semi-skilled employees. Be that as it may, the major concern that the line managers' have is on the organization readiness and availability of assistance to the line managers' if they were to adopt ADR. This perceived lack of guidance and support system contributes towards their lack of confidence in proactive managing disputes as they feel that they might make things worse and being held responsible if things go to legal proceedings. Thus, it can be seen that managers' willingness to adopt ADR mechanism is influenced by their perception on the availability of assistance and guidance rendered by the top level management.

4.1 Relationship between managers' working experience and preference towards ADR

Regression analysis was also done to identify whether the amount of working experience possessed by the line managers has significant influence and impact on their attitude towards ADR.

Table 2: Model Summary

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
1	.542 ^a	.294	.290	.48279

a. Predictors: (Constant), Working experience

Table 3:

Linear regression between Working experience and preference for ADR

Model	Unstandardized Coefficients		Standardized Coefficients	t	Sig.
	B	Std. Error	Beta		
1 (Constant)	2.982	.097	.542	30.813	.000
Working experience	.298	.035		8.629	.000

a. Dependent Variable: Preference for ADR

Table 3 indicates that there is a significant relationship between managers' length of working experience and their preference toward ADR. That is, the regression analysis using managers' working experience as the explanatory variable has produced a significant result with a coefficient of .542, and, $r^2 = .294$. That is, that an increase in ADR preference is strongly predicted by length of working experience possessed by the line managers. This implies that senior line managers are more willing to adopt the more hands-on and peaceful approach towards resolving workplace disputes compared to their less experienced counterparts. It also indicates that respondents who have longer working experience have higher understanding of the benefits of finding a win-win solution to ensure smooth organization process. ADR is believed to be more discreet and flexible; the costs are not excessive and far lesser lengthy proceedings. Furthermore, they recognize that ADR is a less stressful, effective

problem solving and practical source that is readily available for them to use in workplace dispute. Even though there is tendency of adopting ADR in the workplace dispute, however, without the appropriate organizational support and guidance, the companies will remain unaffected and there is no change for better.

5.0 Recommendations & Conclusion

Based on the research findings, the majority of the industry players are in favor of ADR. The main hurdle why ADR is not being more widely adopted is because of lack of knowledge, plus apprehension on the part of management in taking over a task that has traditionally been viewed as the domain of the legal department or lawyers. Traditionally, whenever workplace disputes occurred, the disputants did not work through the options of discussion or conduct negotiation towards amicable settlement. The recourse normally taken is to engage outside lawyers to handle the dispute while management turn their efforts towards mentally preparing for the disputes to be referred to labor office, or end up in court. By recourse to court, whatever outcome the court derives will only likely damage the working relationship of the parties involved. Thus, there need to be a systematic approach to not just increase the awareness of ADR but also develop the facilitative skill of managers so they can develop competency in ADR such as mediation skills etc. Based on the findings, policy implications and recommendations are proposed below.

5.1 Policy Implications and Recommendations

Although the implementation of ADR process is still in its initial phases, the timber industry players have demonstrated a positive attitude and willingness to adopt these mechanisms within their organizations. Thus, it is important to maintain this momentum by increasing the effort to educate industry players on the correct procedure and also assistance for them in adopting ADR. In comparison to West Malaysia, the level of assistance and enforcement is still lacking in this area. Thus, more joint activities should be undertaken by both the relevant government agencies and business community, such as employer associations, trade unions, chamber of commerce etc. The Ministry of Human Resources (HR) and Labor Departments can promote the ADR knowledge and skills education by facilitating seminars, and workshops to the timber industry companies. Furthermore, incentives should be given to companies who adopt ADR as this will mean less reference of cases to the Labor Court which can greatly reduce the number of backlogged cases. Provision on new legislations such as the mandatory compelling of disputants to attempt resolving their workplace disputes through a series of negotiation or ADR discussions before turning the case directly to labor court, would be very helpful. Even when the dispute case has reached court, the state courts should play a role to redirect the dispute case to be resolved and accomplished through ADR process.

5.2 Organizational Implications & Recommendations

Currently, most of the companies do not have any stipulation in their corporate policy with regards to dispute resolution. Without clear-cut guidance and support from top management, line managers cannot give their full commitment towards ADR. There should be a standard operating system that facilitates the adoption of ADR such as progressive screening and evaluation procedure of dispute resolution to facilitate containment of disputes at the departmental level before it escalates throughout the organization. Currently, the conflict management and dispute resolution roles are seen as secondary to the line managers' immediate operational considerations; hence the insufficient amount of time engaged in such

exercise. Second, the exercise is not included or denoted in their key performance indicators; hence line managers rarely throw effort and time to play the role of “peace broker” when disagreements/disputes occurred at their functional level. In addition, line managers are also fearful of the undesirable consequences if mistakes are made, such as even further litigation (Latreille, 2011). The managers are also worried that being proactively engaged in the exercise will add to the onus and that their focus towards main day-to-day responsibility might be strayed away.

Thus, mentoring system and training workshops to increase ADR skills should be conducted from the supervisory-level onward so the culture of win-win resolution could be instilled. In other words, resolution of workplace conflicts should not be exercised solely by HR and legal departments. Every departmental manager has the responsibility to look into the problems. Companies may also initiate a conflict/dispute management policy and disseminate this information through internal signboard, poster, bulletin and other materials so employees will know where to find assistance to air their grievances. The ability to resolve disputes without the needs for litigation should also be put as the companies’ functional level KPI. Without this initiative, line managers might view conflict management and dispute resolution roles as secondary to their immediate operational considerations and might not exert efforts towards it. In addition, mentoring system for senior managers should be set up to increase the number of competent mediators to internalize and minimize procedure cost. With the increasing facilitative and expert knowledge through experience and mentor training, it may assist to develop and produce competent managers with mediation skills in the workplace. For these timber companies, establishing an understanding of the methods of ADR and the application thereof will add value to the facilitation process. Companies generally might find that a modest disclaimer of authority over workplace dispute settlement by utilizing ADR can have positive effects on employee morale, human resource management practices, and productivity.

5.3 Conclusion

To summarize, ADR is favorably received and positive relationship is found between working experience and ADR preference, but more efforts are needed to increase its adoption. Although this mechanism is available, without proper guidance on ADR, disputing parties would understandably continue to refer their workplace dispute cases to the Industrial Court, hence resulting in backlog cases and conflict. Efforts should be made to ensure ADR is fully utilized at the industry level, and to only use litigious mechanism as the last resort in workplace disputes. Empirically, this study contributes towards the body of knowledge on ADR and its challenges within a labor-intensive industry operating in a developing country like Malaysia.

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