

B. BRAUN MEDICAL INDUSTRIES SDN. BHD., P. PINANG *a*

v.

**KESATUAN PEKERJA-PEKERJA B. BRAUN INDUSTRIES
SDN. BHD., P. PINANG** *b*

INDUSTRIAL COURT, PULAU PINANG
YUSSOF AHMAD *b*

EMPLOYERS' PANEL: ABDUL WAHAB P. NAGOR GHANEY
EMPLOYEES' PANEL: TAN SEAH HEAN
CASE NO: 2/2-114/97
19 FEBRUARY 1998 *c*

TRADE DISPUTE: Collective agreement - Wages, terms and conditions of service - Disputed articles - Section 26(1) of the Industrial Relations 1967

Article 3 : Duration of the collective agreement. *d*

Article 17 : Upgrading.

Article 25(a) : Public holidays.

Article 37 : Industrial accident. *e*

Article 39(b) : Medical benefits.

Article 45 : Meals allowance.

Article 46 : Shift allowance.

Article 46 : Seniority bonus. *f*

Article 49 : Salary adjustment.

Held:

[1] The collective agreement to be for a three-year duration. *g*

[2] As the question of upgrading and promoting was a management prerogative, the court did not adjudicate on this.

[3] All gazetted holidays to be paid public holidays for workers *h*

[4] The company to insure workers under a group personal accident scheme.

[5] Medical benefits be extended to specialist treatment but limited to RM200 per treatment.

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- a* [6] RM2.50 to be paid as meal allowance, to cater for light meals and refreshments.
- [7] Afternoon shift allowance to be increased to RM3.50 and night shift allowance RM7.50.
- b* [8] The company to pay a seniority bonus.
- [9] The company's policy of paying a uniform rate for the job and revising employees' salaries annually taking into consideration the market rate and the rise in CPI to be retained..
- c* [Award accordingly.]

Legislation referred to:

Industrial Relations Act 1967, ss. 20(3), 30(3)

- d* For the company - A. Ramadass, (*Zainuddin Yeong Abdullah, Human Resources Manager with him*); M/s. Ramadass & Assocs.
For the union - K. Veeriah (*Halimah Syed Ghany, Secretary with him*), Secretary;
Malaysian Trade Union Congress Penang Division

AWARD NO. 97 OF 1998

- e* Section 30(3) of the Industrial Relations Act 1967 ('the act') enjoins the court to make its award without delay and where practicable within thirty days from the date of reference to it of the trade dispute or of a reference to it under s. 20(3) (in the case of a dismissal). It is almost a certainty that a full award cannot be made within thirty days from the date of reference. In fact the
- f* dispute may not even be heard within 30 days of its reference.
- In a trade dispute involving claim for salary revision and improvement in other terms and conditions of employment the employees in particular look forward to an early award.
- g* For the above reasons the court makes an interim award in this case. It is also because the parties in this case during the hearing informed the court that they wished to make a written submission on one of the issues and promised to forward to the court the text of the articles they have agreed on. Unfortunately to date neither the written submission nor the agreed articles
- h* have been submitted to court. By this interim award the court can inform the parties the employees in particular the decision of the court on the disputed articles. The grounds for the award and the collective agreement pursuant to the award and the agreed articles would be handed down later after the agreed articles have been received from the parties.
- i*

Yet another reason why the court feels it is best to go into the grounds later is that it wishes to take some time to do so since this is the first case in which an employer has put forward a salary scheme which is partially linked to productivity which the union disagrees in some aspects. An award on this issue may have far reaching consequences. *a*

The court now in the interim awards in respect of the disputed articles as follows: *b*

a) Article 3: Duration of the Collective Agreement.

The court decides that the agreement shall be for three years effective from the date of this award. *c*

b) Article 12: Trade Union Leave.

It is the opinion of the court that leave to enable union officials to attend to purely union affairs such as its executive committee meetings is not a trade dispute. Therefore the court rules that the provision of s. 6 of the Act shall govern this matter. *d*

c) Article 13: Check Off.

It has been decisively held in the past that check off is not a trade dispute. The court sees no reason to depart from this ruling. The union's claim for check off is therefore not allowed. *e*

d) Article 16(h): Increment on Promotion.

The union requests for one increment above the minimum salary of the promoted grade. *f*

The company practises "rate for the job" policy and does not practise giving increments. For rewards above the rate for the job i.e. the minimum salary the employee must show better than average performance. This is the essence of the company's wage system. It is a productivity linked wage system. *g*

The court is in favour of this system. Rewards or bonus is given for efficiency and quality under the company's Efficiency Quality Incentive Bonus (EQIB) system. It is a fair and equitable wage system. *h*

The union's request for increment for a promoted employee will mean he will get better wages than employees who join that grade directly from outside. It conflicts with the concept of rate for the job and the EQIB system. Therefore court cannot allow the union's request. *i*

a e) Article 17: Upgrading.

The union seeks an upgrading of a post if its job contents in the area of skill level and/or responsibilities are materially changed and following the upgrading of the post the employee should be promoted to the upgraded post.

b

The court observes there are already many grades in the company's employment structure reflecting different skill levels and responsibilities. The company in evidence stated that it does promote its employees in accordance with its promotion system based on merits.

c

The court therefore sees no reason to allow the union's request. The question of up grading jobs and promotion is also a matter for the management rather than for the court to decide.

f) Article 25(a): Public Holidays.

d

The provision of current agreement is vague: "All employees will be granted paid public holidays observed by the company". The company as a matter of fact observes 14 public holidays. The union is requesting for all the 16 gazetted public holidays.

e

The court from the evidence is satisfied that many companies in the same neighbourhood as the company allows 16 days. The Malaysian Employers Federation's survey in 1995 shows 64% of the companies surveyed allow 16 days paid public holidays.

f

The court therefore allows the union's request for all gazetted public holidays to be paid holidays for the workers.

g) Article 31: Annual Leave.

g

The union seeks better benefits for employees who have served more than 10 years by giving them 22 days annual leave.

The court feels the present annual leave benefits are already more generous than those provided by statute.

The court therefore does not allow the union's claim.

h

h) Article 37: Industrial Accidents.

The court allows the union's claim for improvement in the benefits upon death or permanent disablement.

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The company shall insure all employees under a group personal accident scheme providing a 24-hour coverage for death and disablement as follows: *a*

i) Employees whose services
are between one to five years - RM10,000

ii) Employees whose services
are between five and 10 years - RM20,000 *b*

iii) Employees whose services
are more than 10 years - RM30,000

j) Article 39(b): Medical Benefits. *c*

The present provision regarding medical treatment arising out of emergencies excludes the service of medical specialists. The union requests that it be extended to include specialist treatment.

The court agrees with the union. However the limit should be RM200 per treatment. *d*

k) Article 45: Meals Allowance.

The union requests a substantial increase i.e. from RM1.50 to RM4. *e*

The court allows RM2.50. This allowance is not to pay for main meals e.g. lunch or dinner. Employees would have already taken their main meals during the normal shift hours. Rather it is to pay for light meal or refreshment at the end of the overtime work. *f*

l) Article 46: Shift Allowance. *f*

The court observes the current rates are rather low, in particular for afternoon shift which is RM2.50.

The court agrees to increase them as follows: *g*

(i) Afternoon shift - RM 3.50

(ii) Night Shift - RM 7.50

m) Article 46: Seniority Bonus. *h*

i) Seniority Bonus is already an exception to the productivity linked wage system. There should not be payment for seniority per se. Older employees need not necessarily be productive. However the company "accepts Malaysian reality" and pays seniority bonus but it is pegged *i*

a to the EQIB. It means on account of one's seniority there will be a further bonus but it is a certain percentage of the EQIB itself. What the union wants is that it should be a percentage of the basic salary.

b The court agrees that allowing the union's claim will mean the seniority factor alone determines the bonus i.e. the longer one has served the higher the bonus. It conflicts with the policy of rate for the job and the EQIB system. The union's claim to peg the bonus to basic salary does not take into account the productivity element. The court therefore feels the company's system of rewarding seniority is fair and equitable and conforms to the productivity linked wage system which the court approves. In the circumstances it awards

c in terms of the company's proposal which it has further improved during the hearing of the dispute in court which is as follows:

The company shall pay the employee a seniority bonus monthly to recognise employees for long service which shall be computed as follows:

<i>d</i>	Years of Service	% of Efficiency Quality Incentive Bonus (EQIB)
	Below 2 years	0
	2 years	5
	3 years	6
<i>e</i>	4 years	8
	5 years	12
	6 years	14
	7 years	17
	8 years	19
<i>f</i>	9 years	21
	10 years and above	23

n) Article 49: Salary Adjustment.

g The company practices annual review of the minimum salaries which is done at the beginning of year. This is following the provision of the current agreement. In the review it considers rate of the job, market rate and the rise in the cost of living as reflected by the consumer price index. Thus for the production operator grade I, the minimum salary on 1 January 1993 (at the beginning of the current collective agreement) was RM360.

h It was increased on 1 January 1994 to RM390, on 1 January 1995 to RM420, on 1 January 1996 to RM457 and on 1 January 1997 to RM490. Similar revision were made to all grades of employees. The annual increase ranged from 6.7% to 23.9% of the previous minimum salaries. The company asks the court to retain the existing practice.

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The union on the other hand claims what has happened is that the company was granting annual increments and not making salary revisions as it claimed. The court agrees with the company if this was so then it would have resulted in new employees who joined during the year getting the minimum salary and the serving employees getting minimum salary plus so many increments depending on his years of service. This did not happen. The company pays uniform minimum salaries to all employees irrespective of their seniority. It also conforms to its rate for the job policy. The court accepts this as a fact i.e. that there is only one minimum salary for each grade.

The union maintains there should always be a salary revision at the end of each collective agreement following the traditional practice of awarding increase in salary across the board in accordance with the rise in the consumer price index (CPI) during the previous collective agreement. Following this it asks for increase in minimum salaries e.g. for production operator grade 1 from the present RM490 p.m. to RM550 p.m. This is to be followed by annual increment of 20%.

The court finds the company's policy of paying a uniform rate for the job and revising employees' salaries annually taking into account the relevant factors such as rate for the job market rates and the increase in CPI since the last review perfectly sound and commendable and is the right approach to salary revision. It is particularly appropriate in the present economic condition of the country. There will certainly be an increase in the cost of living following the devaluation of the ringgit. Employers cannot be expected to increase employees' wages simply because the cost of living has increased but without taking into account whether there has been an increase in productivity.

In the circumstances there is no need for the company to revise employees' salaries over and above the revision it has already done and will continue to do annually. The court therefore awards in term of the company's proposal in art. 49.

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