

INDUSTRIAL COURT MALAYSIA

CASE NO: 11/2 - 77/05

BETWEEN

SYARIKAT DENSO (M) SDN. BHD.

AND

**KESATUAN KEBANGSAAN PEKERJA-PEKERJA ALAT-ALAT
PENGANGKUTAN DAN SEKUTU**

AWARD NO: 547 OF 2007

Before: PUAN ZURA YAHYA - CHAIRMAN
ENCIK NIK MOHD. NASIR B. - EMPLOYER'S PANEL
NIK SALLEH
ENCIK S.RAJENDRA PARSHAD - EMPLOYEE'S PANEL

Venue : Industrial Court, Kuala Lumpur

Date of Reference: 25.1.2005

**Dates of Mention : 4.4.2005, 20.6.2005, 8.7.2005, 12.8.2005,
1.9.2005, 3.10.2005, 25.11.2005, 5.1.2006,
24.2.2006, 23.3.2006, 20.7.2006 and 5.1.2007**

Dates of Hearing : 27.11.2006 and 24.1.2007

**Representation : Mr. M.Vivekanandan and Mr. M.V.Gopal
representative from MEF, for the Respondent.**

**Mr. Anand Ponnudurai of Messrs Bodipalar
Ponnudurai Nathan, counsel for the Union.**

Reference:

The trade dispute referred by Minister of Human Resources under section 26(2) of the Industrial Relations Act 1967 concerns the Collective Agreement between **Syarikat Denso (M) Sdn. Bhd.** (hereinafter referred to as “the Company”) and the **Kesatuan Kebangsaan Pekerja-Pekerja Alat-Alat Pengangkutan dan Sekutu** (hereinafter referred to as “the Union”).

AWARD

This trade dispute is referred to the Court under section 26(2) of the Industrial Relations Act 1967 (“the Act”). The subject matter of the dispute is the terms and conditions of employment to be incorporated into the 6th Collective Agreement between Kesatuan Kebangsaan Pekerja-Pekerja Perusahaan Alat-Alat Pengangkutan dan Sekutu (“the Union”) and Syarikat Denso (M) Sdn. Bhd. (“the Company”). The 5th Collective Agreement which is for the period 1.1.2001 to 31.12.2003 has thus expired.

Introduction

When the dispute was heard on the first day of hearing, it was centred as to whether the Company’s proposals on performance linked

wages system (PLWS) be introduced in the forthcoming 6th Collective Agreement. Subsequent to the hearing a discussion was held, and parties agreed that PLWS be introduced and implemented in the 6th Collective Agreement. Having agreed in principle that the PLWS be implemented, what was left to be determined by the Court were three Articles in the proposed Collective Agreement, the salary adjustment and the PLWS Appraisal Structure. These Articles in the proposed Collective Agreement were:-

Article 6 - Duration, Modification and Termination of Agreement

Article 25 - Salary Structure

Article 27 - Bonus Structure

Article 6 - Duration of the Collective Agreement

It was submitted by the Union that the 6th Collective Agreement should take effect immediately upon the expiring of the 5th Collective Agreement. Since the 5th Collective Agreement expired on 31.12.2003, the 6th Collective Agreement was to take effect from 1.1.2004 and ended on 31.12.2006. It had to be so since it was a normal practice for a collective agreement to be of a three years duration. The case of *Goodyear Malaysia Berhad v. Kesatuan Kebangsaan Pekerja-Pekerja Pembuat Keluaran Getah* [2006] 2 ILR 1243 was referred to. However the Union was willing to give

an extension of the period till 31.3.2007 to accommodate a smooth transition to the PLWS and to be in accordance with the Company's financial year which was from 1st April to 31st March.

The Company submitted that in view of the delay in reaching an agreement, the effective period of the 6th Collective Agreement be extended beyond three years period from the expiring of the 5th Collective Agreement. The Company proposed the period to be extended up to 31 March 2010. The reason given for period to be so extended was to enable the Company to implement the PLWS and the appraisal system could only come into force effective from April 2007. It was submitted that this extension period was permitted since section 14(2)(b) of the Act states, *inter alia*:

“(b) specify the period it shall continue in force which shall not be less than three years from the date of commencement of the agreement;”

When deliberating on this matter we have considered the submissions that have been forwarded. We also go through the case of *Goodyear Malaysia Berhad v. Kesatuan Kebangsaan Pekerja-Pekerja Pembuat Keluaran Getah, supra*. We are inclined to accept the opinion expressed by the Court in the mentioned case about the need for compelling reasons be advanced so as to depart from the normal practice

of the three years duration. We are of the opinion that a departure from the three years duration is allowable since section 14(2)(b) of the Act specifies a minimum duration for a collective agreement. Being so, then a collective agreement can be for any number of years exceeding three years.

In the present case parties have agreed that PLWS be implemented as from 1.4.2007. With PLWS being implemented on the mentioned date it follows that a reasonable time would be required to enable it to “take-off” by the Company. This therefore constitutes compelling reason for the 6th Collective Agreement to be extended beyond the year 2007. Hence we are of the view that it is reasonable and fair that the 6th Collective Agreement be extended till 31.12.2008. Accordingly, we order that the duration of the 6th Collective Agreement be from 1.1.2004 until 31.12.2008.

Article 25 - Salary Structure

The Company proposed a salary structure that had two components. They were the fixed component which would ensure a fixed income for all employees, and a variable component which would ensure high income with high performance and higher productivity. The Company’s proposal can be seen in the table in the Company’s Supplementary Submission. In the Company’s proposal an employee would continue to get a guaranteed

increment every year, and as for the variable component a performance linked incentive would be given and would be based on appraisal rating.

For the Union, it was submitted that under the 5th Collective Agreement, the employee got a fixed increment yearly in accordance with the salary scale. In the proposal put forward by the Company, counsel for the Union submitted that the Company intended to drastically reduce the annual increment. Thus the Union proposed that the fixed increment under the current 5th Collective Agreement be maintained and the performance linked incentives as proposed by the Company be revised accordingly so that the aggregate of both the fixed increment and the performance linked incentives did not exceed the total amount of increment proposed by the Company.

Having considered the submissions presented we are of the view that the annual increment in the 5th Collective Agreement to be a fair and equitable amount. Further, we are of the opinion that to reduce the amount of the annual increment as proposed by the Company tantamount to taking away what had been agreed before. It also means reverting to the salary structure to that of the one prior to the 5th Collective Agreement. Though the Company proposed to bolster the annual increment with performance linked incentive there is the likelihood that employees' future income would be lower than what they are currently earning since the

incentive is a variable component in the income payable. Hence we are of the view that the existing annual increment ought to remain.

Since the existing annual increment is to remain, then it is fair and equitable that the performance linked incentive be adjusted and that it should not exceed the total payment as proposed by the Company.

Article 44 - Salary Adjustment (as proposed by the Union)

Though the Union at first proposed a salary adjustment of 15% across the board to all the employees of the Company, the Union later brought it down to 10%.

The Company proposed to grant an adjustment of 8% as of 31.3.2007 and in addition to grant one month salary as a lump sum payment to cover the last three years period. The Company also made known of its readiness to increase the maximum salary by three steps based on the PLWS structure.

When deliberating on the salary adjustment we have taken into consideration that in the year 2003 an adjustment of 7% was given. Also it is an undisputed fact that for the past five years the Company's sales has been growing at an accelerated rate. In the submission it was stated that the Company did not plead financial incapability but was more concern

about having to compete with the neighbouring countries' automobile industry. Basing on the financial capability of the Company we are of the opinion that the Company can afford to grant a salary adjustment. Hence we award a salary adjustment of 8% effective from 1.1.2004. Also awarded is an increase in the maximum salary by three steps.

Article 27 - Bonus Structure

Under the 5th Collective Agreement the employees were given two months' bonus. The Company now proposed a fixed bonus of 1.7 months' salary payable to all employees and in addition a variable performance linked bonus. The performance indicator of the performance linked bonus was divided into 3 parts *ie* sales turnover, individual performance based on appraisal ratings, and participation in Company's activities.

The Union proposed a fixed bonus of 1.8 months' salary to be paid to all employees irrespective of their performance and further bonus based on the individual performance as proposed by the Company. It was submitted that the sales performance of the Company was beyond the control of the employees.

Counsel for the Union in the submission had also referred to the testimony given by the Company's witness *ie* COW-1 where she stated that a majority of the employees would be within the 2 points rating in the

individual performance. Going by this testimony it was submitted that since Company's performance in respect of achieving sales targets was beyond the control of the individual employee it could very likely or possibly be that there would be employees who were performing would get less than what they were already contractually entitled *ie* two months. By increasing to 1.8 months it was submitted that those who performed would get the maximum two months which they currently enjoyed.

After the deliberation, we are in agreement with the submission put forward by the Union. We are of the view that the Union's proposal is fair and reasonable. Hence we allow the fixed bonus be at 1.8 months, and the excellent performances (those who obtained 4 points) shall get the maximum bonus of 2.5 months under the individual performance rating.

PLWS Appraisal Structure

As indicated by the Union during the submission, it has no objection to the appraisal process proposed by the Company. In respect of the appraisal criteria, the Union had stated that it had yet to see the detailed appraisal criteria.

Since the Union has no objection to the proposal by the Company as regard the appraisal process, so the said process is allowed. As for the

appraisal criteria, we direct that the parties to discuss and come out with a guideline on the matter.

Regarding the “bell curve”, we are of the opinion that there should be one. Hence in this Award in one of the Tables herein we have suggested the percentages under the “bell curve” which in our opinion is fair and equitable. We are also suggesting that provision be included whereby an employee who is aggrieved or dissatisfied with his appraisal rating can raise about it in accordance with the Grievance Procedures of the Company.

Conclusion

In respect of the order that have been made in this Award, Tables have been prepared by the panel members to assist parties in their preparation of Collective Agreement pertaining to the Articles which they had disputed. Table I herein incorporates the new salary structure, salary adjustments and the performance linked incentive. Table II is in respect of the Bonus Structure and Table III is in relation to the PLWS Appraisal Structure.

Table I

New Salary Structure, Salary Adjustments, Fixed Increments and Performance Linked Incentive

Grade	Salary Structure		(1) Fixed Annual Incr.	(2) Performance Linked Incentive				Total RM/month (1+2)			
	Min	Max		1 pt	2 pt	3 pt	4 pt	1 pt	2 pt	3 pt	4 pt
B	585	670	47	Nil	17	22	27	47	64	69	74
	671	1557	53	Nil	17	22	27	53	70	75	80
C	610	732	52	Nil	26	31	36	52	78	83	88
	733	1710	58	Nil	26	31	36	58	84	89	94
D	665	805	57	Nil	35	40	45	57	92	97	102
	806	1878	63	Nil	35	40	45	63	98	103	108
E	735	905	62	Nil	43	48	53	62	105	110	115
	906	2077	68	Nil	43	48	53	68	111	116	121
F	800	995	67	Nil	51	56	61	67	118	123	128
	996	2343	73	Nil	51	56	61	73	124	129	134
G	908	1115	72	Nil	59	64	69	72	131	136	141
	1116	2656	78	Nil	59	64	69	78	137	142	147

- (a) The above salary structure is without steps *ie* an employee's salary can be at any point between the minimum and maximum of the appropriate grade.
- (b) Leader / Assistant Leader allowance of RM50 or RM40 per month respectively shall be payable to those appointed in writing by the Company.

Notes:-

- (i) Performance - linked incentive will still be given to employees who have reached the maximum salary level of their respective salary grade.
- (ii) Performance - linked incentive will not be in Base salary but will be included for calculation of Overtime, Bonus and EPF for the year.
- (iii) Effective date of implementation shall be 1st. April 2007. Implementation of PLWS Compensation & Benefit will take effect from 1st. April 2008 (for assessment period 1st. April 2007 to 31st. March 2008).
- (iv) (a) Year 2007 Bonus and Annual Increment shall be based on 5th Collective Agreement.
(b) Year 2008 Bonus (Jan - March) Bonus & Annual Increment are prorated based on 5th Collective Agreement.

Table II**Performance Based****Bonus Structure (Article 27)**

- (1) Fixed + Performance - Linked month of Salary
- (2) Company Performance month of Salary
- (3) Individual Activities contribution month of Salary

Grade	(1) Fixed Component	(2) Performance- Linked Bonus				Total month (1+2)			
		1 pt	2 pt	3 pt	4 pt	1 pt	2 pt	3 pt	4pt
B-G	1.8	0	0.2	0.5	0.7	1.8	2.0	2.3	2.5

Company Performance

In case Co. achieves yearly sales target | 0.2 month

Individual Activities Contribution	Bonus Month (Month)		
	Low Medical Leave	<=7 days: 0.1	<=4 days: 0.2
QCC Meeting Attendance	>=80% : 0.1	>=90% : 0.2	100%: 0.3
Training Attendance	>=24 hours per year		0.1
No of Suggestion Scheme per year — For submission reach 10 pts level		1-5 times : 0.1 6-9 times : 0.2,	10-19 times : 0.3 >20 times : 0.5
Total points of Suggestion Scheme per year		72-99 pts : 0.1 100-199 pts : 0.2	200-399 pts: 0.3 >=400 pts : 0.5

For Example ----- Total Bonus payable for “Best” employees = 4.4

month Bonus

Notes:-

* Medical Leave shall not include medical leave due to Chicken pox, Conjunctivitis or Dengue fever.

* Criteria & Quantum fixed for the period of 6th CA.

Table III

Key Points

1. KPI setting and appraisal carried out through discussion between immediate superior & associate.
2. Coaching provided to guide employees in achieving work Target and improvement if needed.

Appraisal Criteria

Category	Criteria	Pts	Remarks
A 60pts	Quality	25	KPI set (individual)
	Cooperation	20	
	Out put	15	
B 40pts	Discipline	25	Standard Requirements (B-G)
	Safety	10	
	Housekeeping	5	
TOTAL		100	

Appraisal Grading Point Distribution

Job Grade	1 Pt	2Pt	3 Payment	4 Pt
B - G	0-30	31 -70	71 -90	91 - 100
Bell Curve	5%	65%	20%	10%

- 3) An Employee who is aggrieved on his appraisal ratings may raise his grievance in accordance with Article 37 - Grievance procedure upon receipt of his appraisal rating.

The Court records its appreciation to the panel members for not only preparing the Tables abovementioned but also for preparing the draft of this Award based on our discussion. After further discussion we finalised and agreed that the Award be handed down as in the present manner.

Having made our decision on the disputed Articles and other matters proposed we leave it to the parties to prepare the 6th Collective Agreement based on the agreed Articles and on all matters which we have decided in this Award.

HANDED DOWN AND DATED 14TH. MARCH, 2007

**(ZURA BINTI YAHYA)
CHAIRMAN
INDUSTRIAL COURT**