

**HSBC BANK MALAYSIA BHD**

*a*

v.

**PERSATUAN PEGAWAI-PEGAWAI HSBC BANK MALAYSIA  
BERHAD SEMENANJUNG MALAYSIA**

*b*

INDUSTRIAL COURT, KUALA LUMPUR  
ABU HASHIM ABU BAKAR

EMPLOYER'S PANEL: ESA AHMAD  
EMPLOYEE'S PANEL: YIN CHEW CHAI

AWARD NO. 172 OF 2001 [CASE NO: 7/2-500/2000]  
23 MARCH 2001

*c*

*TRADE DISPUTE: Collective agreement - Terms and conditions of service  
- Salaries and annual increments - Tabulation of - Whether union's  
proposals reasonable*

*d*

The parties involved were in the midst of negotiating their fourth collective agreement. This dispute arose as the parties involved disagreed regarding the following:

- i) Rates of pay - art. 16;
- ii) Annual increment - art. 17;
- iii) Allowances - art. 19;
- iv) Retirement - art. 30.

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The main issue in this dispute concerned the different approaches adopted by each side in relation to salary adjustments generally, and to the question of annual increment particularly.

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The union proposed the traditional salary scales method which has a minimum, with the normal or assured 5% increment to reach a definite maximum. The bank, on the other hand, proposed the usage of the productivity-linked wage system which involves the salary range method with increments only based on productivity and/or performance of each individual employee in the context of total productivity.

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The union contended that the bank's proposal allowed for arbitrariness on the management's part as the question of productivity was subjective matter, it being based on performance appraisals. In forwarding its proposal, the union submitted that the normal practice of salary scales was based on some definite or objective criteria.

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*a* **Held:**

[1] The matrix grid system ('MGM') by the bank in relation to its proposal was found to be subjective and depended very much on the appraiser. This system would produce, more often than not, dissatisfaction and thereby creating an unhealthy working environment.

*b*

[2] In a service industry like a bank, however fair or reasonable the management and the appraiser claims to be, the suspicions and accusation will always be that those few actually deserving of the outstanding grid, are accused of being "favourites to the boss".

*c*

[3] The union was correct in submitting that that stoppage of increments is related to the notion of punishment (for misconducts) whereas it is more appropriate to equate "increments" to the idea of a motivation, to encourage and to provide the same mechanism accorded to all other "incentives", which are all conducive to a happy or satisfied workforce.

*d*

By the appraisal method, to stop an increment will be misconstrued as a "punishment". By right, a punishment or stoppage of increment should only be confined to "misconducts", and not as a "punishment" for poor appraisal.

*e*

[4] In relation to the budget pool, the bank's proposal was also weak in that the said pool would be declared solely at the discretion of the top management. This being the case, the workers may feel that it has been arbitrary or feel deprived in spite of the bank's high achievement.

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[5] The union's proposal based on the salary scale would be adopted with the annual increments as an ascertained way by the number of steps to reach the maximum. This would leave the bank to try and work out additional ways to reward individual workers for increased productivity, over and above the set or ascertained method, just so in order to maintain certainty, predictability and nurture the obligation of mutual trust and confidence on the part of the workers in the best interest of the employers themselves.

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[6] Regarding salary adjustments, it was not disputed that the CPI had increased by 11.55% since 1999. In order to reflect a fair balance in this dispute, a 9% increase was awarded in the mode of the salary conversion i.e. 9% upward salary adjustments affecting the two categories of officers of the bank, staff officers and senior staff officers.

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[7] In relation to annual increments, yearly incremental rate at 5% in the computation of their salaries involving the annual increments due to the employees was awarded.

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- [8] Based on the 9% salary adjustments and the 5% annual increments with the twenty-three steps allowed, it was decided that the new salary scale would take effect 1 January 2000 up to expiry of the collective agreement as in appendix A of this award. *a*
- [9] Pertaining to allowances under art. 19, the practice of meal allowance should be continued and it is quite rightly a settled issue under previous awards. The method of computation of the meal allowance is tied to the CPI by which the court had granted a 9% increase therein. Since the bank is deemed an essential service, they have the right to call back on public holidays or rest days. *b*
- [10] The bank's proposal regarding shift work was followed. *c*
- [11] It was agreed that work on rest days and public holidays would be as per the tabulation of the rates presented in the bank's exh. B2.
- [12] The bank's proposals in relation to the various items falling under outstation duty was accepted. *d*
- [13] Claims relating to childcare allowance was found to be unfair to the bank and therefore rejected.
- [14] The bank's proposals regarding acting allowance was adopted. *e*
- [15] In relation to retirement, the bank's formulae as per its proposed art. 31 was adopted, and this new provision would be effective as from the date of the award (not retrospective).
- [16] Both parties were to submit a fully executed agreement which will form an integral part of this award as an annexure. *f*

*[Order accordingly.]*

**Award(s) referred to:**

- B. Braun Medical Industries Sdn. Bhd. Pulau Pinang v. Kesatuan Pekerja-pekerja B Braun Industries Sdn. Bhd. [1998] 3 ILR 154* *g*
- Malaysian Commercial Bank Association v. Association of Bank officers, Peninsular Malaysia [1988] 1 ILR 280*
- Malaysian Commercial Bank Association v. National Union of Bank Employees [1989] 1 ILR 48*
- Persatuan Bank-bank Perdagangan Tanah Melayu v. Persatuan Pegawai-pegawai Bank Semenanjung Malaysia [1992] 2 ILR 146* *h*

**Legislation referred to:**

Industrial Relations Act 1967, ss. 26(2), 30(4)

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- a* For the bank - Abdul Jalil Mohamad, Manager Employee Relations and Communication (S. Ganapathy, Employee Relations Manager with him)  
For the association - Murugavell Arumugam (Diana Oon, President with him);  
M/s. Murugavell Arumugam & Co.

#### AWARD

- b* The reference in this trade dispute under s. 26(2) of the Industrial Relations Act 1967 relates to some of the terms and conditions of service to be embodied in the fourth collective agreement (CA) for period from 1 January 2000 to 31 December 2002.
- c* On 11 December 2001, both parties informed the court that they have resolved all the items in dispute, except in matters relating to four main articles, as follows, that are left to be adjudicated by the court:
- a) Article 16 - Rates of pay
- d*
- b) Article 17 - Annual increment
  - c) Article 19 - Allowances
  - d) Article 30 - Retirement (company's proposal is in art. 31).
- e* In these main areas of dispute, both parties have urged the court to adopt on two basic and fundamentally different approaches in the concept of wage fixation in relation to salary adjustments generally, and to the question of annual increment particularly.
- f* Whilst the union is proposing the known or traditional salary scales method which has a minimum, with the normal or assured 5% increment to reach a definite maximum, the bank is now seeking to introduce the productivity – linked wage system that the government and the authorities have urged all parties to look into. If the bank's method and proposals (on productivity – linked wage) can be a feasible proposition, it will involve putting in place, what the bank
- g* calls, the salary range method with increments only based on productivity and/or performance of each individual employee in the context of the total productivity of the bank.
- h* The union argues that the bank's proposal is something not definite and allows for arbitrariness on the part of the management, since the whole question of productivity is a very subjective matter based on what appraisals the management dish out to each individual employee. In the normal practice of salary scales, it argues that it is based on some definite or objective criteria.
- i* The bank argues that in the normal salary scale that fixes the minimum and the maximum, it is based on the rate for the job, and the yearly increment is purely based on seniority which becomes automatic, and not performance based.

In the salary range that they are proposing, it will include the performances factor so that each individual's productivity *vis a vis* bank's total productivity can be assessed or gauged. In such an event, increments will not be automatic, and the individual employee will have to satisfy the productivity objectives of the bank through the appraisal system. a

**Appraisal System At The Heart Of The Proposed Productivity-Linked Wage System** b

Whilst the union has called it the traditional annual increment, the bank prefers it to be termed as the annual **merit** increment, to incorporate the idea of performance of each individual in the overall productivity of the bank. c

The bank's representatives sought to convince the court *via* exh. BODI, on the merits of adopting the appraisal system to determine the increment factor, ranging from performance planning, performance review up to the performance assessment stage of the individual employee. The bank is saying that they have recently adopted a new procedure for appraisal, so that its primary focus now is to link individual performance to the bank's business and operating plans, discarding the old cursory method of appraisal. They have now introduced the Merit Grid Matrix method based on certain percentage of the budget pool, which is decided by top management, the lowest being 2% and the highest at 8%. Each of the total workforce will share the budget pool decided by the top management, according to the Merit Grid Matrix each employee obtains whether he is graded unsatisfactory, or marginal or good and outstanding. The exh. BOD (U)1 at p. 29, it is then made into a salary conversion provision as follows: d

3(3)(b) – e

The amount of annual merit increase will be based in accordance with the annual Merit Grid Matrix **determined at the discretion of the Bank.**  
(emphasis supplied) f

This in substance will enable the bank's management to finally decide on the productivity ratio each individual has contributed to the total productivity of the bank, on what each of them has earned or qualified in the Merit Grid Matrix (MGM). g

**The Court's Findings On These Issues** h

a) Merit Grid Matrix – Appraisal Method

Put in another way, it is the new appraisal system resulting in the individual employee earning his Merit Grid Matrix that will determine his productivity or level of productivity in order to be able to qualify for the increment (or even other forms of incentives). i

*a* The measure of the Merit Grid Matrix (MGM) subject to the appraisal can be **subjective**, because it is something not definite or certain, and depends very much on the appraiser. This in itself has been subject to a lot of dispute in the past because the appraisee had often felt unhappy and dissatisfied even if there is a slight adverse comment.

*b* Where the workforce is large, the suspicion although it may not be justified – that there has been **discrimination** – cannot be avoided because only a few or handful will get the good or outstanding MGM, the majority getting the mediocre or satisfactory grading only. There is bound to be dissatisfaction, and those below par might even feel disgruntled, which is not a healthy work environment at the workplace.

*c* In a **service industry** like a bank, there is again an element of uncertainty, because one cannot quantify in definite terms the standard of service or quality of service rendered by individual workers. If it is a **product related industry, meaning tangible goods and items**, there can be a definite criteria because one could go by the unit measure, e.g: how many pieces, or items or by weight measure or by bunches. In these kinds of tangible productivity industries, e.g: a hundred (100) pieces per week will be outstanding, 90 pieces may be very good, 80 at being mediocre or good and below that marginal, so and so forth as an illustration – it is ascertainable.

*d* On the other hand, in a service industry, however fair or reasonable the management and the appraiser claims to be, the suspicions and accusation will always be that those few actually deserving of the outstanding grid, are accused of being “favourites to the boss”.

*e* The difficulty at the heart of the problem is that “the merit increase will be based in accordance with the Merit Grid Matrix determined at the discretion of the bank”. Discretion, as we are all aware is a very wide thing, and can be subject of abuse.

*f* There is also merit in the union’s argument that stoppage of increment is related to the notion of punishment (for misconducts) whereas it is more appropriate to equate “increments” to the idea of a motivation, to encourage and to provide the same mechanism accorded to all other “incentives” (there are numerous forms of incentives), which are all conducive to a happy or satisfied workforce. By the appraisal method, to stop an increment will be misconstrued as a “punishment”. By right, a punishment (stoppage of increment) should only be confined to “misconducts”, and not as a “punishment” for poor appraisal.

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b) Budget Pool

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The next weak area is the budget pool which will be declared solely at the discretion of the top management. No evidence has been placed by the bank, whether this budget pool ranging from 2% to 8% is on the total gross income or is it going to be declared on the profit after deduction of the operation cost or expenses.

*b*

The reason is no one can challenge the management's right even say in a situation of maximum realization of profit in any particular year from declaring the lowest ratio of the budget pool of 2%. It will again be at the complete discretion of the top management and the workers may feel that it has been arbitrary or feel deprived inspite of high achievement of the bank.

*c*

The court's inevitable conclusion in a service industry like a bank is that there is a whole range of elements of uncertainties in the appraisal method of trying to quantify the individual's contribution in the total production or productivity of the bank. It may be open to suspicion of discrimination, of favouritism, or arbitrary criterias adopted, or even plain misjudgement in the appraisal.

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The court feels fortified in its view that in a service-oriented industry it may not be feasible to quantify "productivity" by the appraisal method, unless some concrete formulae based on certainties or some objective criterias be devised, so that it can create a definite "link" between the individual worker's productivity to the wage he is entitled to earn – when that link is cut-off by elements of uncertainties, it can lead to arbitrariness and even abuses, because it is at the sole discretion of the appraisers.

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The court does not feel comfortable nor confident on the bank's proposal to adopt the salary range based on the Merit Grid Matrix of the appraisal system as a sure or safe method to quantify and measure individual's productivity, in its efforts to try and promote the productivity-linked wage system. *The genuine fear is that the court may be doing a disservice to the employer (the bank) themselves by putting in place an unsure formulae, which may create restlessness or unhappiness in the large work force that can undermine the employer or even the industry.*

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This court can do no better than to quote and also adopt what the learned Chairman in the case of *B. Braun Medical Industries Sdn. Bhd. Pulau Pinang v. Kesatuan Pekerja-pekerja B Braun Industries Sdn. Bhd.* [1998] 3 ILR 154 has stated:

... It cannot reject the employee's proposal for salary increase because it is not linked to productivity. It is for the Company to propose a scheme that is based on productivity. The B. Braun's scheme is one example of

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- a* what the Court considers a fair and suitable method of rewarding increased productivity. There is scarcity of information on the concept of productivity, the standards to be used and the reward to be given for increase in productivity and the measurement of productivity..."etc. (emphasis supplied)
- b* The *Braun's* case is a unique workable system devised by the company to convincingly satisfy the court that it could link the wage to the productivity level of each individual employee. **Failing that, the court cannot or is not in a position to, reject the employee's proposal for a salary increase, purely on the ground that it is not linked to productivity.**
- c* The court will therefore adopt the union's proposal based on the salary scale with the annual increments as an ascertained way by the number of steps to reach the maximum. That will leave the bank to try and work out additional ways to reward individual workers for increased productivity, over and above the set or ascertained method, just so in order to maintain certainty,
- d* predictability and nurture the obligation of mutual trust and confidence on the part of the workers in the best interest of the employers themselves.

#### **Financial Capacity Or Incapacity**

- e* For consideration of implications under s. 30(4) IRA 1967, both parties have agreed that this item of financial capacity or incapacity is not an issue in this dispute.
- Consequently the court will accept the fact that it will not cause a "snowballing" effect on the industry itself if some financial or monetary enhancement are made by the court [s. 30(4) IRA 1967] in this award.
- f*

#### **The Conversion Rate (Salary Adjustments)**

- Based on the CPI guideline for the past three years to December 1999, it is not disputed that the increase was by 11.55%.
- g* The union is requesting for a 11% increase, on the ground that firstly, the bank is not claiming financial incapacity, and secondly, because the industry itself has accepted 11%, for example, the ABOM CA consisting of 4000 officers in 18 banks have voluntarily accepted 11% and Maybank has also accepted 11% increase.
- h* On the other hand, the bank has offered 9% increase, conditional upon the acceptance of the productivity-linked wage system in the salary range method, the bank is now proposing. The bank claims that the 9% offer or proposal is still higher than the 2/3 of the CPI which is at 7.36% following the Harun's 2/3 guideline, and this they are prepared to do if linked to the productivity proposals the bank is making.
- i*

Since the court has rejected the bank's productivity-linked wage system  **tied to the appraisal system** containing those inherent weaknesses, notwithstanding that the industry itself have now accepted 11% as the norm, in order to reflect a fair balance in this dispute, the court will award a 9% increase in the mode of the salary conversion i.e: 9% upward salary adjustments affecting the two (2) categories of officers of the bank: a

1) Staff officer; and b

2) Senior staff officer.

To allow for 11% would tantamount to almost the maximum of CPI at 11.55%, the court feels 9% is fair. c

Because the court is allowing 9% and not the 11% increase to the union, the court is persuaded further by the union's submission that more and more younger age groups reach the maximum, to allow for the current twenty-one steps to be increased to twenty-three steps to reach the maximum scale. d

#### Annual Increment

The court will also accept the yearly incremental rate at 5% in the computation of their salaries involving the annual increments due to the employees. The court will **not** allow art. 17(2) in the union's proposal for further special payment after reaching the maximum. Basing on the 9% salary adjustments and the 5% annual increments with the twenty-three steps allowed, the court will award the new salary scale effective 1 January 2000 up to expiry of the CA as in **appendix A** of this award. e

#### Article 19 - Allowances f

For work outside normal hours, the union is seeking to introduce overtime allowance, because the union would like to discourage the bank calling officers for long hours after work, and the workers themselves don't prefer to work long hours. They too need quality time to be with their family. g

#### (1) Meal Allowance

The court agrees with the bank that under the terms and conditions of service for staff officers, **no overtime payment is payable**. The practice of meal allowance should be continued and quite rightly a settled issue under *Malaysian Commercial Bank Association v. Association of Bank officers, Peninsular Malaysia* [1988] 1 ILR 280, *Malaysian Commercial Bank Association v. National Union of Bank Employees* [1989] 1 ILR 48 and *Persatuan Bank-bank Perdagangan Tanah Melayu v. Persatuan Pegawai-pegawai Bank Semenanjung Malaysia* [1992] 2 ILR 146. h

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- a* The method of computation of the meal allowance is tied to the CPI by which the court has granted a 9% increase herein. **(Since the bank is deemed an essential service, they have the right to call back on public holidays or rest days).**
- b* (2) **Shift work**
- The court agrees and has decided to follow the proposal of the bank in exh. B2 of the statement in reply.
- (3) **Work on rest days and public holidays**
- c* The court agrees that the overtime issue is settled and therefore agrees with the tabulation of the rates as in the bank's exh. B2.
- (4) **Call back duty**
- d* There appears no difference or not much difference between the bank's proposal and the proposal of the union.
- (5) **Outstation duty involving**
- travelling up to 25 kilometers
  - e* - beyond 25 kilometers
  - beyond 25 kilometers requiring overnight stay
  - duty in Sabah & Sarawak
  - f* - day of return to normal place of work
  - transport
  - off-site allowance
  - g* - daily overseas allowance.
- The court has decided to award in favour of the bank's proposals in exh. B2 of their statement-in-reply in relation to the various items in this category.
- h* (6) **Standby Allowance**
- This is a new item entirely but the court feels that it is a **superfluous** provision, in the sense that the worker is either called back or not called. If he is not called, he still gets the so-called standby allowance, which is of no consequence.
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**(7) Childcare allowance**

*a*

Also an additional item which will not be fair to the employer/bank.

**(8) Acting allowance**

The court views that the union's proposal of RM500 per day for acting allowance is exorbitant, and the court agrees to follow the proposals of the bank.

*b*

**Article 30 (Bank's Article 31) - Retirements**

The court observes in BOD1 p. 114 – that the bank does have some problems and have difficulties in the RBS scheme with its complicated formulae. Before 1 January 1997, for those who have opted to transfer their retirement benefit to the EPF, the bank has contributed 19% of the employees' basic salary to the EPF. The 19% computation was an oversight on the part of the bank, but the bank has honoured their commitment throughout.

*c*

*d*

As from 1 January 1997, the bank is seeking for a 17% contribution to EPF to apply to new executives joining the bank, but the existing members of RBS will continue with the 19% arrangement.

Since the earlier 19% computation was computed on an anticipated changes in the tax which never materialised, it is only fair the bank be allowed the 17% computation for future employees who had never been members of the RBS.

*e*

The court therefore agrees to adopt the bank's formulae (proposed art. 31), and this new provision will be effective as from the date of the award (not retrospective).

*f*

**Section 30(4) IRA 1967 Implications**

In making this award relating to the articles in dispute, the court has taken into consideration the effect it may have on the economy of the country, the public interest, financial implications on the industry and the probable effect in related or similar industries.

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The bank has not made an issue of financial incapacity, and in giving the 9% adjustment, the court notes that ABOM and Maybank have adjusted by 11%.

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The court is only anxious and concerned to try and put into effect the productivity-linked wage system but finds that appraisal formulae a risky proposition and not a safe and sure method to measure productivity of individuals, which could undermine the employer themselves.

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**a Order**

The court will make an order in terms of this award, and requests both parties to submit a fully executed agreement which will form an integral part of this award as an annexure.

**b**

**APPENDIX "A"**

**CONVERSION AT 9%**

<i>c</i>	<b>STAFF OFFICER</b>			<b>SENIOR STAFF OFFICER</b>		
	Step	Present Salary (RM)	New Salary (RM)	Step	Present Salary (RM)	New Salary (RM)
	1	1,832	1,997	1	2,175	2,371
	2	1,941	2,116	2	2,283	2,489
<i>d</i>	3	2,051	2,236	3	2,410	2,627
	4	2,162	2,357	4	2,539	2,768
	5	2,274	2,479	5	2,669	2,910
	6	2,389	2,605	6	2,801	3,054
<i>e</i>	7	2,507	2,733	7	2,941	3,206
	8	2,630	2,867	8	3,084	3,362
	9	2,754	3,002	9	3,242	3,534
	10	2,893	3,154	10	3,404	3,711
<i>f</i>	11	3,039	3,313	11	3,572	3,894
	12	3,185	3,472	12	3,742	4,079
	13	3,342	3,643	13	3,923	4,277
	14	3,499	3,814	14	4,115	4,486
	15	3,668	3,999	15	4,308	4,696
<i>g</i>	16	3,848	4,195	16	4,526	4,934
	17	4,029	4,392	17	4,754	5,182
	18	4,231	4,612	18	4,992	5,442
	19	4,444	4,844	19	5,243	5,715
<i>h</i>	20	4,667	5,088	20	5,505	6,001
	21	4,901	5,343	21	5,782	6,303
	22	-	5,611	22	-	6,619
<i>i</i>	23	-	5,892	23	-	6,950