A

KESATUAN KEBANGSAAN PEKERJA-PEKERJA PERDAGANGAN

v.

KUMPULAN O'CONNOR'S (M) SDN BHD

B

INDUSTRIAL COURT, KUALA LUMPUR
FRANKLIN GOONTING
EMPLOYER'S PANEL: MUHAMMAD RAWI RAVI ABDULLH
EMPLOYEE'S PANEL: HASHIM AHMAD @ MUHAMED
C AWARD NO. 1343 OF 2009 [CASE NO: 3/2-658/08]
13 NOVEMBER 2009

D ***TRADE DISPUTE:*** *Collective Agreement - Commencement date - Parties had entered into collective agreements five years consecutively - Effect of - Whether commencement date of collective agreement was to take effect immediately upon expiry of last collective agreement - Effect of - Industrial Relations Act 1967, ss. 26(2) & 30(7)*

E ***TRADE DISPUTE:*** *Collective Agreement - Terms and conditions - Promotion of technical staff - Whether they should be put on probation for a longer period of time - Whether technical staff had a higher responsibility compared to clerical staff - Effect of - Factors to consider - Industrial Relations Act 1967, ss. 26(2) & 30(5)*

F ***TRADE DISPUTE:*** *Collective Agreement - Terms and conditions - Annual leave - Whether annual leave should be allowed to be carried forward by the employee for pilgrimage purposes - Company currently allowing such a practice - Effect of - Whether such a practice should be reduced into writing - Industrial Relations Act 1967, ss. 26(2) & 30(5)*

G ***TRADE DISPUTE:*** *Collective Agreement - Terms and conditions - Medical benefits - Company seeking to cap such benefits - Whether it was necessary to monitor and manage staff expense - Effect of - Factors to consider - What the company should instead do - Industrial Relations Act 1967, s. 26(2)*

H ***TRADE DISPUTE:*** *Collective Agreement - Terms and conditions - Staff advances - Company seeking to lower the statutory capping - Whether it had been necessary - Factors to consider - Effect of - Industrial Relations Act 1967, s. 26(2) and Employment Act 1955, s. 24(8)*

I ***TRADE DISPUTE:*** *Collective Agreement - Terms and conditions - Bonus payments - Whether a performance based system would be a better model to use - Factors to consider - Effect of - The low fixed bonus quantum distribution proposal - What it was - Whether it would reflect the true essence of a performance bonus payout - Whether a pro-rated bonus payment should be paid to employees who leave the company - Factors to consider - Industrial Relations Act 1967, ss. 26(2) & 30(5)*

TRADE DISPUTE: *Collective Agreement - Duration of - Can it be extended beyond 3 years - Provisions under the Act - Effect of - Industrial Relations Act 1967, s. 14(2)(b)*

TRADE DISPUTE: *Collective Agreement - Terms and conditions - Salary structure and annual increments - Whether it should be based on a PLWS system - What is a PLWS system - Effect of - Factors to consider - Industrial Relations Act 1967, ss. 26(2) & 30(5)*

TRADE DISPUTE: *Collective Agreement - Terms and conditions - COLA - Adjustment of COLA in accordance with salary adjustments - Whether it ran contrary to wage revision principles - How to distinguish mediocre performers from outstanding ones - Factors to consider - What model should be used - Effect of - Factors to consider - Industrial Relations Act 1967, ss. 26(2) & 30(5)*

This trade dispute is between the Kesatuan Kebangsaan Pekerja-Pekerja Perdagangan ('union') and Kumpulan O'Connor's (M) Sdn Bhd ('company') concerning the terms to be incorporated into the 6th Collective Agreement for workmen coming within its scope.

Held: In favour of the union on the issues of the commencement date, annual leave, medical benefits and staff advances and in favour of the company on the issue of promotion, bonus, salary structure and annual increments.

(1) On the issue of the commencement date, the parties had previously executed 5 consecutive agreements between them. The company's letters giving its proposals were captioned "New Collective Agreement Proposal 2006 - 2009" and nowhere in them had it been stated that implementation of the collective agreement would commence only upon resolution of its terms. By implication therefore, the company had agreed that the collective agreement would take effect from the expiry of the previous agreement Cog. 187/2004. It could not now come to court and make an issue of the effective date of the agreement by attempting to rely on s. 30(7) of the Industrial Relations Act 1967 ('Act'). That would not augur well for industrial harmony. Accordingly, the retrospective effective date of the collective agreement should be 1 November 2006 (para 6).

(2) On the issue of promotion, being an engineering firm the company relied heavily on the competency of its technical staff. As evident in Appendix 1 of the Comparison Table, both parties had proposed a much higher salary for technical staff as compared to clerical staff, as the work of the technical staff entailed a much higher responsibility when compared to clerical staff. It was thus logical

A that these technical staff would need a longer trial period as compared to the clerical staff. The current provision was too rigid, giving only a period of 3 months for trial, failing which the employee would revert back to his previous position and/or be demoted. Thus it was appropriate that the company's proposal of a
B 6 month trial period for technical staff be adopted (para 10).

(3) On the issue of annual leave, since the company had already been practising the carrying forward of such annual leave for pilgrimage, it would be in the best interests of both parties that such a privilege be reduced in writing under a proposed clause on
C accumulation of annual leave (para 12).

(4) On the clause on medical benefits, the court ruled against the company's proposal to introduce a capping to such benefits. If the company had a genuine need to monitor or manage this aspect of
D staff expense, it should consider making it a requirement that the employees seek treatment at its panel clinics and not go to non-panel clinics without prior written permission (para 14).

(5) On the issue of staff advances, whilst appreciating the company's concerns, since s. 24(8) of the Employment Act 1955 provided that
E the total of any amounts to be deducted from the wages of an employee in respect of any one month should not exceed 50% of the wages earned by that employee in that month, the company should follow this statutory capping of 50% and not seek to impose its proposed 30% capping (para 19).

F

(6) On the issue of bonus, the company's proposal that bonus be payable only to employees who have achieved a performance of "having met expectation" would not augur well as this would be too drastic a change from the current bonus expectation of the
G workmen. The union on the other hand does not make any proposal concerning individual performance and RAWC. Performance bonus should be based on the company's productivity and the individual performance of the workman. The union's proposal of a high fixed bonus runs contrary to the spirit of the performance-related bonus system. The court preferred and would
H adopt the company's low fixed bonus quantum distribution proposal as this would reflect the true essence of a performance bonus payout. The company's proposal of 1/2 a month's salary for an employee who has met the performance expectation would be too low to motivate one to perform. To spur individuals on to perform
I and to distinguish non-performers from performers, both panel members suggest and the court concurs that the parties adopt a total performance distribution table. Adequate time should be given

for the implementation of the new bonus system and it should settle in and be fully implemented by 2010. It would be logical in the circumstances to extend the tenure of the new collective agreement by an additional year, which the court hereby does. The period of the new collective agreement is to thus commence on the 1 November 2006 and expire on the 31 October 2010. Payment of pro-rated bonus for an individual who leaves the company would not be in the spirit of a performance bonus payout. Bonus was not only meant to reward high achievers and motivate workers but it was also meant to encourage them to remain in the organisation. Thus bonus should not be paid to employees who leave the company at any time during the financial year (paras 28, 29 & 30).

(7) On the issue of salary structure and annual increments, the court rules as follows. PLWS comprises a fixed component and a variable component. The fixed component comprises basic wages plus other fixed allowances or incentives including COLA. It provides income stability, acts as an indicator of job value, reflects the cost of living and is adjusted to meet the cost of living through the annual increment. The variable component, on the other hand, provides the variability determined by both the employer's business as well as the individual worker's performance. The court was unable to accept the union's contention that annual increment was a reward for added value, skills and experience gained by the employee. A true PLWS increment, in order to be meaningful, would address the added value in terms of the contribution of an employee who has delivered the agreed objective of the organisation and an employee who does not perform will get nothing as he can no longer ride on the bandwagon of the contribution of the other employees and get paid through the hitherto conventional increment system. Thus the court accepted the company's proposal for annual salary increment based on PLWS (para 34).

(8) The union's proposal for the adjustment of the COLA in accordance with the 9.5% salary adjustment would be rejected because it ran contrary to wage revision principles. The salary adjustment of 9.5% should be computed based only on basic salary. The court suggests an alternative, that is, that the employee be paid the 9.5% difference from the maximum salary multiplied by 12 months on their incremental date as a one-off *ex-gratia* payment. With this alternative, the 3 steps upward move proposed by the union would not be required. The company's proposal of 1% difference for each appraisal or performance-rating category might not induce performance. The court felt that the pay for performers should demonstrate some distinction between the

mediocre performers and the supreme (for lack of a better word) performers. These outstanding workers should be appropriately rewarded so as to motivate others to strive for higher achievements (paras 35, 36 & 37).

Award(s) referred to:
Prestige Ceramics Sdn Bhd v. Non-Metallic Mineral Products Manufacturing Employee's Union [2004] 1 ILR 1177 (Award No. 211 of 2004)

Legislation referred to:
Employment Act 1955, s. 24(8)
Industrial Relations Act 1967, ss. 14(2)(b), 26(2), 30(7)

For the union - Chandra Segaran (Fong Fook Chuen); M/s Prem & Chandra
For the company - James Ling (Norsuhaila Mat Nudin); M/s Ten & Colin

Reported by Sharmini Pillai

AWARD
(NO. 1343 of 2009)

Franklin Goonting:

[1] This trade dispute between Kesatuan Kebangsaan Pekerja-Pekerja Perdagangan ("the union") and Kumpulan O'Connor's (M) Sdn Bhd ("the company") which has been referred to the court pursuant to s. 26(2) of the Industrial Relations Act 1967 ("the Act") concerns the terms to be incorporated into the sixth collective agreement for those workmen coming within its scope.

[2] The parties have agreed to most of the articles leaving only the following to be resolved:

(i) Article 1	Retrospective commencement date of the collective agreement.
(ii) Article 5(a)	Probationary period.
(iii) Article 6(c)	Promotion
(iv) Article 10(f)	Annual leave
(v) Article 14 11(a)	Medical benefit
(vi) Article 18(d)	Retirement
(vii) Article 23(b)(iii)	General advances
(viii) Article 24	Bonus
(ix) Article 26	Salary structure

(x) Article 32 Duration of the collective agreement

[3] As directed by the court counsel filed outline submissions, and oral submissions were heard on 2 September 2009. Mr. Chandra Segaran from Messrs Prem & Chandra represented the union while Mr. James Ling from Messrs Ten & Colin represented the company.

Article 1 - Commencement Date

[4] The company's counsel cites s. 30(7) of the Act which provides as follows:

> (7) An award may specify the period during which it shall continue in force, and may be retrospective to such date as is specified in the award: Provided that the retrospective date of the award may not except in the case of a decision of the court under s. 33 or an order of the court under s. 56(2)(c) or an award of the court for the reinstatement of a workman or a reference to it in respect of the dismissal of the workman, be earlier than six months from the date on which the dispute was referred to the court.

[5] Counsel submits that since the date of the Minister's reference is 5 December 2008 then, going back six months, the effective date of the collective agreement should not be earlier than 6 June 2008. The union's stand is that this collective agreement should take effect immediately upon the expiry of the previous collective agreement Cog. 187/2004 which expired on 31 October 2006.

[6] This is not the first collective agreement between the parties; they have had five previous consecutive agreements. The company's letters dated 12 October 2006 and 20 April 2007 giving its proposals are captioned "New Collective Agreement Proposal 2006 - 2009" and nowhere in them is it stated that implementation of the collective agreement should commence only upon resolvement of its terms. By implication therefore the company had agreed that the collective agreement take effect from the expiry of the previous agreement Cog. 187/2004. It cannot now come to the court and make an issue of the effective date of the agreement by attempting to rely on s. 30(7) of the Act. This will not augur well for industrial harmony. Accordingly the court holds that the retrospective effective date of the collective agreement should be 1 November 2006.

Article 5 - Probationary Period

[7] In the course of their submissions both counsel agreed that the status quo be maintained and that this article as contained in the collective agreement Cog. No. 187/2004 remain as it is.

Article 6 - Promotion

[8] The current provision in Article 6(c) requires employees, whether technical or non-technical, upon promotion, to undergo a trial period of not exceeding three (3) months. While agreeing that this trial period remain at three (3) months for non-technical staff the company proposes to insert a new clause ie. Article 6(c)(ii), requiring a trial period of six (6) months for promoted technical staff. The company submits that this proposed amendment will be fairer and more equitable to technical staff promoted as otherwise, based on the current provision the company might have to either revert him to his original position after three (3) months should it not be fully satisfied with such staff's performance in his new/promoted position, or extend his trial period for a further three (3) months.

[9] The union submits that the current provision has served the parties well and that there is nothing on record to say that the 3-month trial period is inadequate. It also says that the proposed new provision could be subject to abuse and is not equitable. Since the matter concerns the promotion of employees who have already performed and have been deemed suitable for promotion by the company based on past performance and appraisals, a 3-month evaluation period would be fair.

[10] Being an engineering firm the company relies heavily on the competency of the technical staff. As evident in Appendix 1 of the Comparison Table, where both parties have proposed a much higher salary for the technical staff than that of the clerical staff, the work of the technical staff entails a much higher responsibility than that of the clerical staff. It is logical therefore that these technical staff will need a longer trial period as compared with the clerical staff. The current provision, to the court's mind, is too rigid, giving three months only for trial failing which the employee reverts back to his previous position ie. is demoted. Therefore it is only appropriate that the company's proposal be adopted, and the court so holds.

Article 10 - Annual Leave

[11] The company proposes, and the union agrees, that article 10(e) be amended to provide for the pro-rating of annual leave entitlement in respect of new employees joining the company in any part of a calender year. The company's proposed article 10(f) stipulates that annual leave must be utilised in the year of entitlement, with no carrying over to the next year. Mr. Chandra concedes this but seeks to add "the company may give sympathetic consideration to employees who apply for leave to be carried forward to the following year for the purpose of pilgrimages overseas" submitting that this proviso is quite consistent

with other collective agreements. Mr. James Ling submits that the company has already been practising this but would not like it to be in writing. Mr. Chandra responds by saying that there are no compelling reasons not to put it in writing, and that it would augur well for the company to show that it is caring.

[12] Since it is already in practice for the company to allow the carrying forward of such annual leave for pilgrimage it will be to the best interests of both parties that such a privilege be in writing. The court suggests that Article 10(e) and (f) be reworded as follows:

Accumulation Of Annual Leave

An employee may, with the prior written approval of the company, accumulate part of his annual leave for a period not exceeding three (3) years for the purposes of performing pilgrimage, subject to the following conditions:

(a) The employee gives written notice of his intention to do so in the first year during which he proposes to accumulate his annual leave;

(b) Annual leave may be accumulated only in respect of the number of days of leave which are in excess of the statutory number of days of anual leave as provided in s. 60E of the Employment Act 1955;

(c) Annual leave may only be accumulated for a period not exceeding three (3) years and shall be taken in full in the year immediately following the accumulated period;

PROVIDED THAT in cases of any postponement of such leave for any valid reason whatsoever, the employee shall be permitted to carry forward such accumulated leave to a later date within one year from the last day of the calender year in which the accumulated leave was due;

(d) Accumulated leave not taken under the conditions and within such periods stipulated above shall be forfeited absolutely, with no discretions to appeal;

(e) Prior written notice of one (1) month must be given to the company stating when such accumulated leave is to be utilised;

(f) Pay in respect of the number of days of accumulated leave may be paid to the employee two (2) weeks prior to the commencement of leave upon written application;

(g) Valid travel documents are to be produced prior to departure for overseas to perform pilgrimage.

Article 14 (11)(a) [new Article 15(11)(a)] - Medical Benefits

[13] Currently the company's employees are eligible for medical treatment by a medical practitioner. However the company seeks to cap such benefits at RM350 for each employee. This capping applies to out-patient treatment, but not hospitalisation to which the employees are also entitled. The rationale for such capping, so the company says, is that it is "only appropriate and prudent for purposes of budgeting and staff expense management." The court is unable to understand this explanation. The union submits that there has been no such capping before and that a caring employer should take into account the employees' medical wellbeing so as not to jeopardize productivity.

[14] There is no evidence before the court that the absence of such capping might lead to abuse. Furthermore the financial capacity of the company to meet such medical expenses is not in issue. The court therefore rules against the company's proposal to introduce such capping. If the company has a genuine need to monitor (or "manage" as it puts it) this aspect of staff expense it should consider making it a requirement that the employees seek treatment at its panel clinics and not go to non-panel clinics without prior special written permission.

Article 18(d) [new 19(d)] - Retirement

[15] During oral submissions Mr. Chandra conceded and agreed to the company's rewording of this article, so it is not necessary to delve further into this.

Article 23 [new Article 24] - Staff Advances

[16] Under Article 23(b) staffs are eligible to a once a year advance of one month's salary for festivals or emergencies repayable by ten (10) equal monthly instalments. The company proposes to add a new Article 24(b)(iii) to make such advance subject to a proviso that the monthly salary deductions to collect such instalments shall not exceed 30% of a staff's basic salary. This proviso is to ensure that the staff is not financially overcommitted to such an extent that he does not have a sufficient remaining amount of his salary to see him through the month.

[17] The union submits that there is no reason for the company to play a regulatory role as there is already an Act, that is, the Employment Act 1955, which regulates the amount of such deductions that can be made by an employer.

[18] The company contends that sometimes an employee might over-extend himself by taking a further advance whilst a previous advance still remains unsettled. If he is already owing the company and he wants another loan the monthly deductions might leave him with nothing to live on.

[19] While appreciating the company's concerns the court is of the view that since s. 24(8) of the Employment Act 1955 provides that the total of any amounts deducted from the wages of an employee in respect of any one month shall not exceed 50% of the wages earned by that employee in that month the company should follow this statutory capping of 50% and not seek to impose its proposed 30% capping.

Article 24 [new Article 25] - Bonus

[20] By the existing system bonus was computed and paid based on one factor ie. the company's Return on Average Working Capital (RAWC) for the financial year ending 30th September. The flaw in this system is that it meant paying bonus to all staff without regard to individual performance and achievement of its business objective. The company in seeking to rectify this weakness proposes to depart from the existing system and to adopt a Productivity Linked Wage System (PLWS) and, the court is pleased to note, the union is amenable to this introduction of PLWS.

[21] The Government's commitment towards the implementation of PLWS is embodied in its policy statements contained in the Third Outline Perspective Plan [2001-2010]. The Eighth Malaysia Plan [2001-2005] re-emphasised this policy and the need to establish a closer link between wages and productivity. The Industrial Court, too, has, hearkened and rallied to this call to move forward with the times. For example, in *Prestige Ceramics Sdn Bhd v. Non-Metallic Mineral Products Manufacturing Employee's Union* [2004] 1 ILR 1177 (Award No. 211 of 2004) the court stated:

> Having considered again the requirements of s. 30(4) and s. 30(5) of the Act and circumstances of the case, we find that the company's proposal to replace the annual increments with a system of paying incentives which is linked to the company's performance and productivity is fair and equitable and we endorse it. This system will see the employees rewarded when the performance of the company warrants it in that there is increase in productivity. The company is spared the extra expense in terms of annual increment when there is no value added to the employee's performance which was once thought to be the basis of annual increments. The introduction of this system will further improve productivity and make the country's products more competitive. Making our products more competitive will ensure our survival in the face of competition from our neighbours. This is definitely the order of the future in light of globalisation now taking place. For these reasons we allow the company's proposal to introduce its productivity linked wage system.

[22] In adopting PLWS for bonus payment the company proposes computation of bonus as follows:

1)	Fixed Bonus	1 month	
2)	Performance ratings:	a) Meet expectation	1/2 month
		b) Exceed expectation	1 month
		c) Far exceeded expectation	1 1/2 month
3)	RAWC	a) Below 30%	1/4 month
		b) 30 - 40%	1/2 month
		c) 40 - 50%	3/4 month
		d) Above 50%	1 month

Total Bonus = (1) + (2) + (3)

NB: Definition

$$\text{RAW} = \frac{\text{Trading Profit (TP) X 100\%}}{\text{Average Working Capital (AWC)}}$$

Where TP = Adjusted Trading Profit after charging interest, allocated charges but before bonus provision and before tax achieved in the Financial Year being appraised.

AWC = Average Working Capital which comprises of stocks and WIP plus trade debtors less trade creditors and customer's deposits in the Financial Year being appraised. Figures for stocks and debtors will be nett of provisions.

[23] The company submits that this is a more equitable system where due recognition is given to individual performance in sharing the company's profit with its employees.

[24] It can be seen that the company's proposal entails 1 fixed plus 2 variable factors ie, fixed 1 month plus an employee must have achieved a minimum performance of "having met expectation" plus RAWC.

[25] The union draws the court's attention to the fact that for the previous financial years the workers were enjoying a minimum bonus of 2.75 months except for financial year 2006/2007 when they received 2.25 months bonus. Based on the company's proposal a workman who has met the expectation, where the company has achieved RAWC of above 50%, would only receive 2 1/2 months bonus whereas hitherto he was paid 2.75 months bonus. The union's counter-proposal is to adopt the 1 fixed plus 2 variable factors but with a fixed 2 months bonus.

[26] The union objects to the company's proposal to make bonus payable "if the company has sufficient cash flow" for the reason that this is onerous; the workman has no control over management of the cash-flow of the company and in any event financial incapacity has not been pleaded. The court agrees. Financial incapacity has not been pleaded.

[27] By virtue of the company's proposed Article 25(b) an employee must have achieved a performance rating of having "met expectation," to qualify for a bonus payment. The union submits that this is grossly inequitable. Since this is a first-time departure from a company performance based bonus payment system to PLWS the transition should be smooth and not drastic; so that both parties can work together towards developing and achieving an equitable reward system over the years to come. The non-payment of bonus ought not to be used to punish a workman who did not meet expectation but to reward high achievers. The union submits that the fixed bonus of 2 months should be maintained even for those who did not meet expectation. In any event, when compared to the financial years 2003 to 2008 this would still be lower than what he received over the last 5 financial years.

[28] It is the court's view that the company's proposal that bonus be payable only to employees who have achieved a performance of "having met expectation" will not augur well as this will be too drastic a change from the current bonus expectation of the workmen. The union on the other hand does not make any proposal concerning individual performance and RAWC. Performance bonus should be based on two components ie. the company's productivity and the individual performance of the workmen. The union's proposal of a high fixed bonus runs contrary to the spririt of a performance related bonus system. The court prefers and adopts the company's low fixed bonus quantum distribution proposal as this will reflect the true essence of a performance bonus payout. On the other hand the company's proposal of 1/2 month salary for an employee who has met the performance expectation is too low to motivate one to perform. Hence to spur

individuals on to perform and to distinguish non-performers from performers both panel members suggest, and the court concurs with them, that the parties adopt the following total performance distribution table:

Factors		Panel Proposal-Months
1. Fixed		1
2. Individual employees Performance	Meet	1
	Exceed	1 1/2
	Far Exceed	2 1/2
3. RAWC	> 30%	1/4
	30 - 40%	1/2
	40% - 50%	3/4
	< 50%	1

[29] The union proposes that the implementation of the new bonus scheme be given sufficient time to settle in for proper implementation. The company contends that it has an on-going appraisal system which has been implemented and wants the new scheme to take effect in 2009. While the existing appraisal is on-going its previous effect on the bonus payout from RAWC was insignificant. Irrespective of performance employees got bonuses *vide* the bonus article of collective agreement Cog No. 187/2004. Hence in all fairness it is suggested that adequate time be given for the implementation of the new bonus system and it should settle in and be fully implemented by 2010. It will be logical in the circumstances to extend the tenure of the new collective agreement by an additional one year. Under s. 14(2)(b) of the Act the period of the collective agreement shall not be less than 3 years, so it could be more. The court therefore hereby extends the period of the new collective agreement by one year. The period of the new collective agreement will therefore be 1 November 2006 to 31 October 2010.

[30] Payment of pro-rated bonus for an individual who leaves the company will not be in the spirit of a performance bonus payout. It must be understood that bonus is not only meant to reward high achievers and motivate workers but also as a means to encourage them to remain in the organisation. Thus bonus should not be paid to employees who leave the company at any time during the financial year.

Article 26 [New Article 27] - Salary Structure

[31] As noted earlier the company's proposal to introduce PLWS is not an issue since this has been agreed to in principle by the union. As for the range of salary increment/adjustment, the company proposes that it be 9.5% as demonstrated in Appendix 1 of the proposed collective agreement and the union concedes that this is reasonable. In its deliberations on this article the court will disregard the submissions of the company's counsel insofar as he raises matters concerning the financial standing or otherwise of the company as this is not in issue and is therefore irrelevant to the dispute at hand.

[32] In applying PLWS the company proposes that Article 26 be amended as follows:

(i) Salary range to be increased by 9.5% as in Appendix 1.

(ii) Annual increment shall be based on PLWS and computation be as follows:

Proposed Annual Salary Increment Based on PLWS

(1) Performance ratings:		(Total performance score)
(a) Did not meet expectation	- 0%	Less than 50%
(b) Partially meet expectation	- 1%	50 to 92.5
(c) Meet expectation	- 2%	92.5 to 107
(d) Exceeded expectation	- 3%	107 to 175
(e) Far exceeded expectation	- 4%	Above 175

(2) Company's Performance (in Revenue)	
(a) 80% to 90% budget	- 1%
(b) Above 90% to 100% budget	- 2%
(c) Above 101% to 110% budget	- 3%
(d) Above 110% budget	- 4%

Annual increment = (1) + (2)

(3) Condition

To qualify for company's Revenue portion in (2) above, the employee's personal performance ratings shall not be below ratings "Did not meet expectation".

(iii) Where the employee's personal performance evaluation ratings do not meet expectation, no salary increment shall be given for the year.

[33] The union is against the idea of the possibility, going by the company's proposed tabulation, that some workmen will not qualify for an annual increment. Mr. Chandra submits that in our system annual increment is the reward for value added to the employee's skill and experience. It is given on the assumption that, with every year of working experience, the employee has become a better employee. Furthermore, five employees who are union members and who have reached their maximum in their salary scale did not receive annual increment thereafter. Since the parties are transiting to a PLWS, the union argues, such PLWS will not achieve its objective of rewarding employees based on performance if, based on "historical performance" the employees are not granted annual increments. The company's proposal for payment of annual increment based on performance does not acknowledge the value-adding to skill and experience without a guaranteed base annual increment. The union submits that an annual increment based on the company's proposed formula with a guaranteed base annual increment should be introduced. As the court understands it, the union wants PLWS to apply only after the workmen get a guaranteed annual increment. Putting it another way there must be a guaranteed annual increment plus PLWS. If there is no increment for those who have reached their maximum/ceiling they will have no motivation. The union suggests that the maximum/ceiling be pushed up three steps in the proposed salary structure and that there be a further re-adjustment of 5% to the salary revision range provided by collective agreement Cog No. 187/2004; in short CA Cog No. 187/2004 plus 5%; and anything more will be PLWS. Furthermore, the employees are currently receiving a Special Relief Allowance (COLA) of RM42 per month. The union wants the 9.5% adjustment to also apply to this COLA factor.

[34] The findings and decision of the court concerning salary structure and annual increments are as follows. PLWS comprises two components, that is, a fixed component and a variable component. The fixed component comprises basic wages plus other fixed allowances or incentives including COLA. It provides income stability, acts as an indicator of job value, reflects the cost of living and is adjusted to meet

the cost of living through the annual increment. The variable component, on the other hand, provides the variability determined by both the employer's business as well as the individual worker's performance. The court is unable to accept the union's contention that annual increment is a reward for added value, skills and the experience gained by the employee. The current annual increment ranges from 3% to 11%. ie. 3% for the most senior employee whereas the junior employee gets 11%. Surely this does not reflect the added value, skills and experience the employees acquired during their employment tenure. A true PLWS increment, to be meaningful, will address the added value in terms of the contribution of an employee who has delivered the agreed objective of the organisation and an employee who does not perform will get nothing as he can no longer ride on the bandwagon of the contribution of the other employees and get paid through the hitherto conventional increment system. Therefore the court accepts the company's proposals for annual salary increment based on PLWS.

[35] The union's proposal for the adjustment of the Special Relief Allowance ie. COLA of RM42 in accordance with the 9.5% salary adjustment is rejected because it runs contrary to wage revision principles. Hence the salary adjustment of 9.5% should be computed based only on basic salary.

[36] This 9.5% salary revision/adjustment is based on actual market data taken from a Mercer survey report (COB pp. 14 to 25) and this survey shows that the company's salaries for equivalent positions is in line with the market, so there is no need to extend the range further. The union proposes that the maximum be moved three steps up to accommodate the senior employees who have reached their maximum. The court suggests an alternative, that is, that the employee be paid the 9.5% difference from the maximum salary multiplied by 12 months on their incremental date as a one-off *ex gratia* payment. With this alternative the three steps upward move proposed by the union will not be required.

[37] The company's proposal of a one percent (1%) difference for each appraisal, or performance-rating category might not induce performance. The court feels that the pay for performers should demonstrate some distinction between the mediocre performers and the supreme (for want of a better word) performers. These outstanding workers should be appropriately rewarded so as to motivate others to strive for higher achievements. Hence the court suggests that the following modified annual increment table be adopted:

(a)	Did not meet expectation	-	0%
(b)	Partially meet expectation	-	1%
(c)	Meet expectation	-	2%
(d)	Exceeded expectation	-	4% (Instead of 3%)
	and		
(e)	Far exceeded expectation	-	6% (Instead of 4%)

Article 32 [new Article 33] - Duration of the Collective Agreement

[38] For the reasons already given earlier the period of the collective agreement shall be four years, that is, from 1 November 2006 to 31 October 2010.

Conclusion

[39] Having thus made our decisions on the disputed articles we give the parties one month to prepare their collective agreement incorporating the articles that were either not in dispute or which were agreed to during the hearing together with the decisions of this court on the disputed articles.