

*a***LYE MANUFACTURING SDN BHD**

v.

METAL INDUSTRY EMPLOYEES' UNION*b*

INDUSTRIAL COURT, KUALA LUMPUR
YUSSOF BIN AHMAD
EMPLOYER'S PANEL: KAMARULZAMAN NORDIN
EMPLOYEE'S PANEL: BRUNO GENTIL PEREIRA
AWARD NO. 635 OF 2005 [CASE NO: 1/3-281/2003]
31 MARCH 2005

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TRADE DISPUTE: *Employees' salaries - Section 13(3), Industrial Relations Act 1967 - No provision in s. 13(3) for an employer to change employees' salaries without their consent - 'Piece meal' wage system and productivity linked wage system - Requirement of employees' consent - Alternative for parties to negotiate, reconcile or plead to court for an award whether or not to order such a system*

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This was a trade dispute between the union and the company that arose as a result of the company changing the method of calculating seven employees' salaries from fixed monthly salaries to a 'piece meal' system. The company, while contending that it had the prerogative to change its employees' salaries, relied on s. 13(3) of the Industrial Relations Act 1967 ('Act') to substantiate its case.

*e***Held [for the union]:***f*

[1] Section 13(3) of the Act does not allow an employer to change the employees' salaries without their consent. Section 13(3) merely lists down matters such as promotion and transfer of a workman, in that a trade union should not make such proposals to the company in collective bargaining. Although the 'piece meal' system of paying salaries is one model of the productivity linked wage system and may be suitable in some circumstances, it has to be done properly. It requires the consent of the employees. Alternatively, parties should negotiate and upon failure to reach a settlement, refer the dispute for conciliation and ultimately ask the court for an award whether or not to order such a system. (p. 91 e-i, 92 a)

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[Ordered accordingly.]

Legislation referred to:

Industrial Relations Act 1967, ss. 13(3), 26(2)

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For the company - Bosco Philip Anthony; M/s Bosco Philip Anthony & Assocs
For the union - M Mehala; M/s Muhendaran Sri

**AWARD
(NO. 635 OF 2005)**

The Honourable Minister of the Human Resources referred to the court a trade dispute under s. 26(2) of the Industrial Relations Act 1967 (“the Act”) between Metal Industry Employees’ Union (“the union”) and Lye Manufacturing Sdn. Bhd. (“the company”). The dispute arose as a result of the company changing the method of calculating seven employees’ (members of the union) salaries in 2003 from fixed monthly salaries to “piece meal” system.

The facts are not disputed. Seven employees of the company prior to 1 July 2001 were paid on a “piece meal” system. From 1 July 2001 the company issued to them letters informing them that they will be paid fixed monthly salaries. The employees accepted the offer. However, in January 2004 the company reverted back to paying them on the “piece meal” basis. The employees protested but to no avail. Thus the dispute.

The company’s reply basically is that the company had the prerogative of changing its employees’ salaries. Learned counsel for the company relied for authority s. 13(3) of the Industrial Relations Act 1967. However, he failed to cite any authority to support his contention that the company can do this under s. 13(3) of the Act.

We do not agree that s. 13(3) of the Act allows an employer to change their employees’ salaries without their consent. Section 13(3) of the Act merely lists down matters such as promotion and transfer of any workman etc that a trade union cannot make proposals to the company in collective bargaining. It is indeed the prerogative of management how to manage their business but that does not extend to unilaterally changing employees’ salaries. It is audacious of learned counsel to justify the company’s action under s. 13(3) of the Act.

At the same time the company cited as justification for its action such matters as change of ownership of the company, that the “piece meal” system was more likely to improve productivity, that the company had informed the employees concerned of the change by putting up an announcement to that effect on the company’s notice board. These matters cannot amount to the employees’ consent. All employers should know that they cannot just change employees’ salaries without their consent however good is the company’s motive. The employees could have walked out citing constructive dismissal.

This is not to say that “piece meal” system of paying salaries is not suitable in the circumstances. It is indeed one model of productivity-linked wage system and it is generally preferred to fixed wage system in certain industries particularly manufacturing. However, it has to be done properly. It requires the consent of the employees. Alternatively parties should negotiate and failing

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a to reach settlement refer the dispute for conciliation and finally ask the court for an award whether to order or not to order the productivity-linked wage system proposed by the company. The court will examine the merits of the system and make an award accordingly. The company certainly cannot do it unilaterally.

b The court therefore orders the company to immediately stop paying the seven employees namely:

1. Jamil bin Ramli;
- c* 2. Kaliappan a/l Marappan;
3. Lee Wooi Hooi;
4. Tai Teck Loong;
- d* 5. Khoo Fook Hing;
6. Gunasekaran a/l Subramaniam; and
7. Nathan a/l Subramanian

e according to the “piece meal” system and pay them the salaries agreed in the company’s letters to them dated 1 July 2001. The company is also ordered to pay the aforesaid employees the difference between their salaries stated in the letters dated 1 July 2001 and their salaries under the “piece meal” system during the period it was implemented.

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