

*a***PIHP (SELANGOR) BHD.**

v.

*b***KESATUAN KEBANGSAAN PEKERJA-PEKERJA HOTEL, BAR &
RESTORAN, SEMENANJUNG MALAYSIA**

INDUSTRIAL COURT, KUALA LUMPUR

K. RAMAKRISHNAN

EMPLOYER'S PANEL: WINIFRED CHAI NYUK YUN

EMPLOYEE'S PANEL: NAVAMUKUNDAN ACHUTHAN NAIR

AWARD NO. 106 OF 2001 [CASE NO: 5/2-217/00]

c

21 FEBRUARY 2001

TRADE DISPUTE: *Collective agreement - Terms and conditions of service
- Whether union's proposals to be accepted*

d

This was a trade dispute between the hotel and the union. The dispute was over the collective agreement where the parties had agreed on all articles with the exception of seven articles. The disputed articles were:

e

(i) Article 2 - Effective Date and Duration

(ii) Article 10 - Salary Structure
Appendix A
Annual Increment

(iii) Article 11 - Annual Bonus

(iv) Article 17 - Public Holidays

f

(v) Article 18 - Annual Leave

(vi) Article 37/38 - Shift Allowance

(vii) Article 43 - Existing Benefits.

Held:*g*

[1] In relation to art. 2, having regard to s. 30(7) of the Industrial Relations Act 1967, the court has the power to make the effective date retrospective to a period of six months from the date of reference of the dispute. Therefore, in light of the fact that the reference was made on 13 March 2000, the effective date and duration of this new collective agreement shall be from 1 October 1999 to 30 September 2002.

h

[2] Under art. 10, an immediate increase of 9.5 % was awarded on the basic salary rounded up to the nearest higher Ringgit, as opposed to the hotel's proposal of immediate increment of 3½%. The hotel did not plead financial disability to pay and the evidence on the hotel's financial performance confirmed this.

i

- [3] Regarding the annual increment, the current provision on rate of annual increment was to be retained. All employees shall be entitled to their annual increment on 1st January of each calendar year and any employee with less than 12 months' service shall have the annual increment pro-rated to 1st January of that year upon being confirmed. *a*
- [4] Referring to art. 11, the hotel's proposal for the current provision of a fixed annual bonus to be substituted with a bonus that is productivity linked was found to be inequitable. Therefore, the current provision on rate of annual bonus be retained. *b*
- [5] With reference to art. 17, the union's proposal that the current 14 days of paid public holidays be increased to 16 days was not accepted. There was no justification in increasing the number of public holidays. Thus, the current number of public holidays was retained as proposed by the hotel. *c*
- [6] In relation to art. 18, the union's proposals for the current provisions for annual leave to be improved was considered especially when the hotel has the financial capacity to pay. Therefore, the number of days as paid annual leave was increased. *d*
- [7] Under art. 37, an increase in shift allowance was awarded for the third shift only. An employee who works on a shift from 11p.m. to 7p.m. or any other third shift, shall be entitled to an allowance of RM3.50 per occasion. *e*
- [8] Regarding art. 43, the hotel's proposal that this clause be deleted was not accepted. In the absence of any clear statement of existing benefits provided by the hotel and the union, the current provisions protects the workers with regard to benefits not included in the collective agreement or this award. *f*

[Ordered accordingly.]

Legislation referred to: *g*

Industrial Relations Act 1967, s. 30(7)

For the company - N. Sivabalah (Raymond T.C. Low with him); M/s Shearn Delamore & Co.

For the union - Lim Chooi Phoe; National Union of Hotel, Bar & Restaurant Workers *h*

AWARD

The Honourable Minister of Human Resources had referred to the court the trade dispute between PIHP (Selangor) Bhd. (Petaling Jaya Hilton) (hereinafter referred to as 'the hotel') and Kesatuan Kebangsaan Pekerja-pekerja Hotel, Bar dan Restoran Semenanjung Malaysia (hereinafter referred to as 'the union') on 13 March 2000. *i*

a The dispute is over the collective agreement which had expired on 31 December 1998.

At the hearing, the court was informed that the parties had agreed on all articles with the exception of seven articles which they wanted the court to hear and adjudicate.

b

The clauses referred to are as follows:

- | | | |
|----------|-------------------|---------------------------|
| <i>c</i> | 1. Article 2. | Effective Date & Duration |
| | 2. Article 10. | Salary Structure |
| | | Appendix A |
| | | Annual Increment |
| | 3. Article 11. | Annual Bonus |
| | 4. Article 17. | Public Holidays |
| <i>d</i> | 5. Article 18. | Annual Leave |
| | 6. Article 37/38. | Shift Allowance |
| | 7. Article 43. | Existing Benefits |

e The panel having considered the statement of case, statement of reply, evidence adduced in court and submissions by both parties makes the following award on the above disputed articles:

Article 2 - Effective Date & Duration

f The union had proposed that the effective date and duration of the third collective agreement be from 1 January 1999 to 31 December 2001 as the second collective agreement had expired on 31 December 1998. The hotel had proposed that the effective date and duration of the third collective agreement be from 1 January 2000 to 31 December 2002.

g Having regard to s. 30(7) of the Industrial Relations Act 1967 it is within this court's power to make the effective date retrospective to a period of six months from the date of reference of the dispute, by the Honourable Minister of Human Resources. The Reference of this dispute was made on 13 March 2000 and this panel back dates the effective date and duration of this 3rd collective agreement be from 1 October 1999 to 30 September 2002.

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Article 10 - Salary Structure

i The salary structure comprises of basic salary as in appendix A and service charge distribution as in appendix B. The union has submitted for a 10% increase on employees' basic salary as at 31 December 1998 rounded up to the nearest higher Ringgit while the hotel had proposed as immediate increment

of three and a half percent (3½%) and that the court should not award any adjustments in excess of six point five percent (6.5%). Both parties had submitted their calculations for their proposals. It is pertinent to note that the hotel did not plead financial inability to pay and the evidence on financial performance of the hotel confirms this.

a

The hotel had also proposed a new job classification in appendix A on grounds of maintaining competitive edge and to improve productivity. Witness for the hotel Mohamed Zain Puteh, the general manager of the hotel gave evidence on the hotel's proposal based on CO1. He answered questions posed by counsel for the hotel in an attempt to explain the hotel's proposal. The panel observes that the hotel had failed to explain in detail the basis for their proposed new job classification and its implications in terms of improvements in productivity and the sharing of gain in productivity with the workers. Reorganisation of duties amongst designations alone is insufficient. Productivity should focus on "working smart" rather than "working hard". Reorganisation of work is not an absolute prerogative of the employer. Due consideration must be given to evaluation of the anticipated consequences of proposed changes to organisation and methods of work so that workers do not become worse off in their terms and conditions of employment. His evidence was superficial statements in response to counsel's questions. The panel is unable to make an award for change based on the proposal of the hotel especially when there is no objective and extensive study with in depth analysis on the consequences of organisation methods of work with focus on the economic implications on labour and management.

b

c

d

e

New employees who joined the hotel on or after 1 October 1999 shall follow the salary structure as per appendix A. In the event of a new position which is within the scope of this agreement is created, the Hotel together with the union shall negotiate on the salary and service charge points pertaining to such position.

f

The panel awards an immediate increase of 9.5% on the basic salary as at 1 October 1999 rounded up to the nearest higher Ringgit for the period 1 October 1999 to 30 September 2002. Further, an employee who upon receiving the 9.5% immediate increment and whose basic salary is still less than the salary structure of the minimum salary group shall be adjusted to the minimum salary group respectively.

g

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i

a The panel also awards that the current appendix A be continued and applied with changes to the minimum and maximum salary as follows:

Appendix A

<i>b</i>	Bellman	260	1105
	Doorman		
	Car Jockey		
	Housekeeping Attendant (Cleaner)		
	Housekeeping Attendant (Houseman)		
	Laundry/Linen Attendant		
<i>c</i>	Junior Waiter/Waitress		
	Steward		
	Kitchen Helper		
	Gardener		
	Room Attendant(Chambermaid)	270	1135
<i>d</i>	Room Attendant(Seamstress)		
	Room Attendant(Florist)		
	Waiter		
	Waitress		
	Laundry Operator	295	1175
<i>e</i>	Presser		
	Laundry Sales Assistant		
	Dry Cleaner		
	Despatch Clerk		
	Porter		
	Cook No. 3		
<i>f</i>	Driver	315	1225
	Concierge	335	1260
	Pool Attendant Cum Lifeguard		
	Butler		
	F&B Ordertaker		
<i>g</i>	Junior Housekeeping Supervisor		
	Cook No. 2		
	Restaurant Cashier		
	Bartender		
	Telephone Operator		
<i>h</i>	External Window Cleaner		
	Housekeeping Supervisor	355	1285
	Captain		
	Bar Captain		
	Floor Steward		
<i>i</i>	Hostess		

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Front Office Assistant	375	1320	<i>a</i>
Accounts Clerk	385	1335	
Clerk Typist			
Assistant Head Checker			
Senior Telephone Operator	415	1395	
Cook No.1 (Kitchen Artist)			<i>b</i>
Night Auditor			
Maintenance Technicians Grade 3 (Carpenter/Painter/Plumber/Mechanic/ Welder/Electrician/Air-Con Tech)			
Storekeeper			<i>c</i>
Boilerman Grade 2	465	1465	
Head checker			
Assistant Head Waiter			
Front Office Supervisor			
Maintenance Technicians Grade 2 (Carpenter/Painter/Plumber/Mechanic /Welder/Electrician/Air-Con Tech)			<i>d</i>
Chinese Chef No. 7	475	1485	
General Cashier	515	1555	
Artist			<i>e</i>
Sound Technician	565	1615	
Boilerman Grade 1			
Telephone Supervisor			
Assistant Chief Steward			
Assistant Chef De Partie			<i>f</i>
Maintenance Technician Grade 1 (Carpenter/Painter/Plumber/Mechanic /Welder/Electrician/Air-Con Tech)			
Housekeeping Supervisor			
Laundry Supervisor			
Chinese Chef No. 6			<i>g</i>
Chinese Chef No.5	575	1625	
Senior Boilerman			
Head Waiter	715	1800	
Chinese Chef No.4	725	1810	<i>h</i>
Chinese Chef No.3	825	1910	
			<i>i</i>

- a* Further, the Panel retains the current provisions of Appendix B as provided for in the second collective agreement (COG. NO. 18/97) be retained as follows:

Appendix B

Service Charge Distribution To Employees Within The Scope of This Award except Part-Timers, Temporary, Casual and Retired Employees.

	Job Title	1st Year	2nd Year	3rd Year
	Bellman/Doorman	1.75	1.85	2.00
	Car Jockey			
<i>c</i>	Housekeeping Attendant (Houseman,Cleaner)			
	Laundry/Linen Attendant			
	Junior Waiter/Waitress			
	Steward			
	Kitchen Helper			
<i>d</i>	Gardener			
	Room Attendant (Seamstress)			
	Laundry Operator (Presser, Laundry Sales Asst.)			
	Clerk			
<i>e</i>	Despatch Clerk			
	Porter			
	Cook No.3			
	Driver			
	Cook No.2			
	Telephone Operator			
<i>f</i>	Maintenance Technicians Grade 3 (Carpenter/Plumber/Mechanic/Welder /Electrician/Air-Cond.Tech)			
	Storekeeper			
	Artist			
<i>g</i>	Room Attendant (Chambermaid, Florist)	2.25	2.50	3.00
	Waiter, Waitress			
	Launder Operator (Dry Cleaner)			
	Concierge			
	Pool Attendant cum Lifeguard			
<i>h</i>	Butler			
	Food & Beverage Ordertaker			
	Junior Housekeeping Supervisor			
	Restaurant Cashier			
	Bartender			
	Floor Steward			
<i>i</i>	Front Office Assistant			
	Cook No. 1 (Kitchen Artist)			
	Night Auditor			

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Boilerman Grade 2				<i>a</i>
Maintenance Technicians Grade 2 (Carpenter/Plumber/Mechanic/Welder/ Electrician/Air-Cond.Tech)				
Senior Boilerman				
External Window Cleaner				<i>b</i>
Housekeeping Supervisor	2.50	3.00	4.00	
Captain				
Bar Captain				
Hostess				
Asst. head Checker				<i>c</i>
Head Checker				
Asst. Headwaiter				
Front Officer Supervisor				
Chinese Chef No.7				
Asst. Chief Steward				
Asst. Chef De Partie				<i>d</i>
Senior Housekeeping Supervisor				
Laundry Supervisor				
Chinese Chef No.6				
Chinese Chef No.5				
Chinese Chef No.4				
Chinese Chef No.3				<i>e</i>
Headwaiter	3.50	4.00	5.00	

Footnote

1. The service charge points distribution in appendix B shall come into force with effect from 1 October 1999. *f*
 2. The first year represents an employee's entitlement of service charge point on the date of appointment. The second and third year represent the service charge points and employee is entitled thereto after completing 12 months continuous service from the date of appointment unless the maximum service charge point has been reached. *g*
 3. On promotion, the employee shall receive the service charge point of the promoted post, irrespective of whether it is an increase or decrease. If it is two years or less, he shall be entitled to the service charge point of the corresponding period and the entitlement of the remainder of the service charge point (if any) of the following year from date of promotion. If it is more than two years, he shall be entitled to the maximum service charge point. *h*
- i*

- a* 4. In the event that an employee is not confirmed in the promoted post and is reverted to his former post, he shall receive the service charge point he was previously entitled to prior to his promotion.

Annual Increment

- b* The union's proposal is to increase the quantum of annual increment which is at par with Shah's Motel. The hotel has submitted that the Shah's salary structure is not comparable.

- c* The panel therefore awards that the current provision on rate of annual increment be retained as per the provision in art. 10.4 in the second collective agreement (COG No. 18/97) which is as follows:

10.4 Annual Increment

- d* All employees shall be entitled to their annual increment on 1st January of each calendar year and any employee with less than 12 months service shall have the annual increment pro-rated to 1 January of that year upon conformation of his service.

- e* (i) An employee drawing less than RM300 basic salary per month shall be entitled to RM30 annually;
- f* (ii) An employee drawing RM300 basic salary per month or more but less than RM400 basic salary per month shall be entitled to RM35 annually;
- (iii) An employee drawing RM400 basic salary per month or more but less than RM500 basic salary per month shall be entitled to RM40 annually;
- g* (iv) An employee drawing RM500 basic salary per month or more but less than RM600 basic salary per month shall be entitled to RM45 annually; and
- (v) An employee drawing RM600 basic salary per month or more shall be entitled to RM50 annually.

Article 11 - Annual Bonus

- h* The hotel had proposed that the current provision of a fixed annual bonus be substituted with a bonus that is productivity linked. The current provision of the annual bonus is contractual. The proposal by the Hotel is to link bonus to targeted sales. Under the circumstances, the hotel's proposal is to pass on a part of the business risk to the workers through the variation of the entitlement of annual bonus.

i

The panel finds this inequitable. The panel therefore awards that the current provision on rate of annual bonus be retained. The provision is art. 11 in the second collective agreement (COG No. 18/97) which is as follows: *a*

Article 11 - Annual Bonus

The hotel shall pay at the end of each calendar year an annual bonus to every confirmed employee in service on 31 December as follows: *b*

(i) An employee who is in service with the hotel for one (1) year or more, shall be entitled to fourteen percent (14%) of the total basic salary earned in that year as bonus; *c*

(ii) An employee who is in service with the hotel for less than one (1) year, shall be entitled to a pro-rata basis of fourteen percent (14%) of the total basic salary earned in that year as bonus.

(iii) An employee who retires, is medically boarded out or dies in service with the Hotel during the year, shall be entitled to a pro-rata basis of fourteen percent (14%) of the total basic salary earned in that year as bonus. *d*

11.2 The unpaid maternity leave of female employee or unpaid hospitalisation leave of any employee, shall be taken into account for the computation of the annual bonus as if the employee is on paid leave. *e*

Article 17 - Public Holidays

The union has proposed that the current 14 days of paid public holidays be increased to 16 days of paid public holidays. The hotel has proposed that the current 14 days be retained in view of potential increase in payroll expenses in the form of holiday pay. *f*

The hotel is already granting 14 days public holidays a year under the existing collective agreement. We see no justification to increase the number of public holidays. At this point of economic situation increased productivity should be the focus of the day. The panel therefore awards that the current number of public holidays be retained as per the existing article in the second collective agreement (COG. No. 18/97) which reads as follows: *g*

17.1 Every employee shall be granted fourteen paid public holidays in each calendar year as specified below at his ordinary rate of pay as gazetted by the State or the Federal Government. *h*

(i) Birthday of the Yang DiPertuan Agong

(ii) Birthday of the Sultan of Selangor *i*

- a* (iii) National Day
(iv) Labour Day
(v) Chinese New Year (2 days)

- b* (vi) Hari Raya Puasa (2 days)
(vii) Deepavali
(viii) Maal Hijrah

- c* (ix) Hari Raya Haji
(x) Prophet Muhammad's Birthday
(xi) Christmas

- d* (xii) Thaipusam

The remaining provisions of art. 17 *viz.* 17.2, 17.3, 17.4, 17.5, 17.6 and 17.7 are to be retained.

Article 18 - Annual Leave

- e* The union has proposed that the current provisions for annual leave be improved. The hotel had cited economic reasons to reject the union's proposals.

The panel is of the view that the union's proposals for annual leave be considered especially when the hotel has the financial capacity to pay. It also must be noted that this panel is not awarding an increase in paid public holidays. The panel therefore awards the following increased number of days as paid annual leave. The new art. 18 is therefore as follows:

- f*

Every employee shall be entitled to paid annual leave as follows:

- g* 18.1 An employee who has completed less than two years service, shall be entitled to nine working days.

18.2 An employee who has completed two years service or more but less than five years service, shall be entitled to fourteen working days.

- h* 18.3 An employee who has completed five years service or more shall be entitled to twenty one working days.

The existing provisions in the second collective agreement (COG. NO. 18/97) *viz.* 18.5, 18.6, 18.7 and 18.8 shall remain.

- i*

Article 37 - Shift Allowance

a

The union had proposed that a second shift allowance be paid and the quantum for the third shift allowance be increased from RM2.50 to RM3.50. The Hotel has submitted that the second shift finishes at 11p.m. and that the allowance be confined for the inconvenience of working in late shifts.

b

The panel therefore awards an increase in shift allowance for the third shift only. The new art. 37 shall read as follows:

An employee who works on a shift from 11p.m. to 7a.m. or any other third shift, shall be entitled to an allowance of Ringgit Malaysia three and sen fifty (RM3.50) per occasion.

c

Article 43 - Existing Benefits

The hotel proposes that this clause be deleted. However, the union has submitted that this provision had existed since the first collective agreement.

d

The panel is of the view that in the absence of clear statement of existing benefits by the hotel and the union, the current provisions protects the workers with regard to benefits not included in the collective agreement or this award.

The Panel therefore awards that the existing provisions of art. 44 in the second collective agreement (COG. NO. 18/97) which reads as follows shall remain.

e

Article 43 - Existing Benefits

Notwithstanding the provisions of this agreement, any existing benefits not covered by or in excess of the provisions of this agreement shall continue to remain in force.

f

The panel includes in the award the following increased benefits as agreed between both parties. The articles are as follows:

Article 15 - Overtime

g

1.1 In addition to his ordinary rate of pay for that day, an employee who works in excess of the normal hours of work, shall be paid one point seven five (1.75) times of his hourly rate of pay or Ringgit Malaysia three and sen fifty (RM3.50) per hour whichever greater.

h

1.2 The minimum overtime may be one hour and any part thereof shall be calculated to the nearest hour.

i

a Article 24 - Sick Leave and Hospitalisation

b 24.1 Subject to the provisions of the Employment Act 1955, all employees shall, after being examined and certified by the hotel's appointed doctor or, if having regard to the nature or circumstances of the illness, the services of the hotel's appointed doctors are not obtainable within a reasonable time or distance, by any other any registered medical practitioner or by a government medical officer, be entitled to paid sick leave at the hotel's expense in each calendar year, where no hospitalisation is necessary as follows:

- c** (i) An employee who has completed less than two years service, shall be entitled to fourteen days;
- (ii) An employee who has completed two years service or more but less than five years service, shall be entitled to eighteen days;
- d** (iii) An employee who has completed five years of service and more, shall be entitled to twenty-three days.

e 24.2 In addition to sick leave provided for above, an employee shall be entitled to sixty days without abatement of wages if hospitalisation is necessary.

f 24.3 An employee who has been recommended by the hotel's appointed doctors or government medical officer, shall be entitled to hospitalisation in a second class ward in any government hospital or, having regard to the nature and circumstances of the illness, in a second class ward in a private hospital appointed by the hotel, subject to the following:

- g** (i) The hotel shall bear the cost of second class hospital accommodation charges and any medical charges to a maximum of Ringgit Malaysia three thousand and five hundred (RM3500) per employee in any calendar year.
- h** (ii) In addition to cl. 24.3(I) above, the hotel shall subscribe to a Group Major Medical Insurance Scheme of a further Ringgit Malaysia ten thousand (RM10,000) for medical charges. However, the employee shall be liable to twenty percent (20%) of the said charges while the hotel bear the remaining eighty percent (80%) in any calendar year.

Provided that the hotel's expense and liability under art. 24.3 shall not exceed the provisions of art. 24.3(i) and (ii) as stated above.

i

- 24.4 Any employee who is certified by the hotel's appointed doctors, any registered medical practitioner or government medical officer to be ill enough to be hospitalised but is not hospitalised for any reason whatsoever, shall be deemed to be hospitalised for the purpose of this article. *a*
- 24.5 An employee shall be entitled to paid sick leave after examination by a dental surgeon as defined in the Dental Act, 1971. *b*
- 24.6 The hotel shall not be liable for:
- (i) Medical, Surgical or Other Appliances *c*
 - (ii) Denture or dental treatment;
 - (iii) Spectacles, lenses or optical fees;
 - (iv) Expenses incurred as a result of attempted suicide or injury arising from the performance of an unlawful act, provoked assault or breach of the peace except endeavouring to save human life; *d*
 - (v) Expenses incurred as a result of confinement, pregnancy, miscarriage, self-inflicted injury, illness or disease arising from misconduct or participation of any hazardous sports; *e*
 - (vi) Treatment arising from unlawful use of drugs, narcotics, venereal disease, AIDS;
 - (vii) Expenses incurred as a result of mental illness; *f*
 - (viii) Cosmetic surgery. *f*

Article 26 - Split Shift Allowance

- 26.1 An employee who performs split shift in a spread over period of less than ten hours in one day, shall be paid Ringgit Malaysia three (RM3) per occasion for such split shift performed. *g*
- 26.2 An employee who performs split shift in a spread over period of exceeding ten hours in one day, shall be paid Ringgit Malaysia three (RM3) per occasion for such split shift performed and overtime as follows: *h*
- (i) one point seven five (1.75) times his hourly rate of pay on a normal day;
 - (ii) two times his hourly rate of pay on a weekly rest day; and *i*
 - (iii) three times his hourly rate of pay on a public holiday.

a Article 29 - Free Duty Meal

29.1 The hotel shall provide free duty meal to every employee who is on duty as follows:

- b**
- (i) An employee working on a straight shift shall be entitled to one free duty meal;
 - (ii) An employee working on a split shift shall be entitled to two free duty meals;
 - c** (iii) An employee on duty at 1.00a.m. and thereafter shall be entitled to supper;
 - (iv) All meals shall be taken at the place and time appointed by the hotel.

d 29.1 During the month of Ramadan, a Muslim employee who is working on a shift which disentitles him to consume the free meal, shall be paid Ringgit Malaysia two (RM2) per occasion.

Article 30 - Transport Allowance

e 30.1 An employee who finishes work at or after 11.30p.m. to any time before or at 6.30a.m. shall be entitled to a transport allowance of Ringgit Malaysia four and sen fifty (RM4.50) per occasion.

f 30.2 An employee who commences work at 12.30a.m. to any time before or at 6.30a.m. shall be entitled to a transport allowance of Ringgit Malaysia four and sen fifty (RM4.50) per occasion.

Article 39 - Rest Room

The hotel shall provide a rest room with the necessary and adequate facilities for the employees to rest:

- g**
- (i) in between shifts;
 - (ii) in between meal breaks; or
 - (iii) before reporting for work; or
 - h** (iv) after work if there is rain and the employee has punched out.

i