



# Labour Bulletin

## HR Minister endorse British American Tobacco's Union Busting Tactics

BAT Employees' Union's hope for justice was shattered when Human Resources Minister Dato Fong Chan Onn ruled that the company's decision not to allow production workers to continue their union membership was correct. Minister's decision clearly demonstrate the power and influence of large multinational corporations in the country. MTUC is deeply disturbed by BAT's action and have advised the union to challenge Minister's ruling.

Last August the company categorized all the Production Technicians as Process Specialist and denied them the right to union membership. Union disputed company's contention and complained to the DGIR that the exercise was primarily aimed to kill the 44 years old BAT employee' Union.

On February 28 several long serving technical and maintenance service employees were denied entry into the factory compound by the security guards without any prior notification. All of them had earlier refused company's call to leave through a voluntary separation scheme. Following union's strong protest, company has directed all the eight employees to stay at home on paid leave until end of March. Subsequent action by the company shows that these employees will be terminated under the pretext of retrenchment.

BAT has now requested another company to take over the maintenance service, who have brought in their own crew.

MTUC has requested the Director General of Human Resources to urgently intervene to stop the termination.

At the February 2007 meeting, MTUC General Council decided to submit a complaint to the ILO and OECD. Twenty three MTUC affiliates have protested against management's unfair labour practices.

**G. RAJASEKARAN**  
Secretary General

**Sambutan  
HARI BURUH 2007  
akan diadakan  
pada:**

**Tarikh : 1 Mei 2007  
Masa : 8 Malam  
Tempat: Dataran  
Merdeka**

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# Industrial Court

## Punishment too harsh

**DISMISSAL:** *The claimant was dismissed on the ground that he left the workplace without permission - Whether constitutes misconduct - Company terminating claimant's services - Claimant's colleagues committing same misconduct but not dismissed - Whether punishment meted out on claimant too harsh - Whether company acted arbitrarily - Claimant's years of service not considered*

### Domestic Inquiry:

- *Procedural Impropriety - Findings of the domestic inquiry - Claimant appealing against findings - Claimant's plea not considered - Not complying with company's optional grievance process - Whether rules of natural justice breached - Whether claimant denied substantive justice;*
- *Company taking into account claimant's previous misconduct which had already been dealt with - Whether correct process - Whether dismissal without just cause or excuse.*

### Issues:

The sole issue to be determined by this court was whether on the facts, the claimant's punishment of dismissal was commensurate with the misconduct committed by him. The claimant had been *denied the right to be heard when his appeal for review of punishment was not considered by his employer*. This was fundamental as it went to the root of his case against the company.

Another flaw detected was the *undue consideration by the DI on the claimant's previous misconduct which was a spent misconduct with not much probative value and had already been dealt with accordingly vide a letter of warning*.

The *right and prudent approach* that should have been taken by the company was for it to have viewed and considered the claimant's misconduct only by reference to the facts and circumstances of the *case at hand*.

### The court findings:

It was patently clear that in terms of punishment, *the claimant had been dealt with differently and discriminated against, compared to the four other staff* of the company who had been punished with a lesser penalty of deferment of increment and transfer and no punishment respectively. This difference in punishment smacked of arbitrariness by the company, as they were equally guilty of leaving the workplace when they were rostered to be on duty. In fact the charge against the claimant made reference to them as his colleagues, which only indicated that they were on the *same footing and equally culpable for the misconduct as the claimant*. Another salient factor, which had not been given relevant consideration, was the fact that *the claimant had given 16 years of service to the company*. To the Court's mind, if these considerations had been taken into account in its totality by the decision maker, the claimant would have been spared the maximum penalty of dismissal.

***The court felt that the company had not come to Court with clean hands, hence they had to suffer the consequence of having wrongfully dismissed the claimant in these proceedings.***

Chairman : Muniandy Kannyappan

Award No: 1338 of 2006, 31 July 2006

Company: Sistem Penerbangan Malaysia



MTUC is shocked by the discrimination against foreigners that recently took place when Keretapi Tanah Melayu Bhd screened its own passengers for illegals, as was recently reported in the main stream media (*New Straits Times*, 4/3/2007 :- *KTM going after illegals*). It was reported that in a two-hour operation conducted by 20 KTM auxiliary police and 14 Rela members, 5 women and 38 men from Indonesia, Nepal, India, Africa, Bangladesh, Myanmar and Pakistan were nabbed.

KTM's central district senior manager Ali Hanafiah Bujal was quoted as saying that there have been incidences of pick pocketing on the trains and on the platforms. He also said that signaling and track equipment have been stolen. He said that the perpetrators of the crimes were "possibly" drug addicts or foreigners.

The reason advanced by Ali Hanafiah Bujal for the specific targeting of foreigners was not only unacceptable but also an affront to common sense and the whole action seems to have been based solely on prejudices against migrants rather than fact. Further, the KTM operation was not to look for the suspected perpetrators of the said crimes but apparently to weed out allegedly undocumented foreigners.

The prejudice against foreigners with regard their involvement in criminal activities also is not at all supported by facts and statistics. Interestingly in a Star Online report (16/2/2007) entitled "IGP to employers: Monitor your foreign workers", the Inspector General of police, Tan Sri Musa Hassan was reported to have said that **only 2% of the crimes committed in the country are by foreign workers.**

The Deputy Minister of Internal Security Datuk Fu

Ah Kiow said that 34 per cent of the 35,000 prisoners in the country are foreigners. There are 11,900 convicted and remanded foreign nationals awaiting court verdict (*Bernama*, 25/2/2007). It must be pointed out that remand prisoners are those that have not been tried and convicted yet. It must also be pointed out that many foreign nationals, especially migrant workers do end up as remand prisoners as the majority cannot afford bail or fulfill the requirements of getting a Malaysian surety.

Out of a total of 2.6 million foreigners in Malaysia's 10.5 million strong labour force, 11,900 is less than 0.5% only. There is thus no justification whatsoever to associate crime with foreigners.

MTUC also state that specific and conscious targeting of foreigners, including migrant workers, is also contrary to wording and the spirit of Article 8 (1) of the Malaysians Federal Constitution that clearly states that "All persons are equal before the law and entitled to the equal protection of the law.", and by the usage of the word "persons" as opposed to "citizens", it is crystal clear that this guarantee applies to all persons, including foreigners and migrant workers.

MTUC calls for immediate end of all discriminatory practices against specific groups of persons by reason that they are "foreigners" by KTM and other persons.

MTUC also calls again for an end of the usage of the Volunteer People's Corp (RELA) for law enforcement. Law enforcement should always be done by professionally trained police and other law enforcement officers – not lay untrained volunteers.

7th March 2007  
Syed Shahir bin Syed Mohamud  
President of MTUC

# Why We Need Minimum Wage

## ***Implementing a minimum wage will not erode our competitiveness in world market***

In our headlong rush towards modernization, higher GDP per capita and accumulating riches undreamed of in our father's generation, we have forgotten that as a nation, we must move together, and share our resources, spoils and tribulations in good times or bad times.

Some of us have the luck and ingenuity to move ahead, earn wealth and live happily ever after, while some sections of the society, whether through their own fault or not, still stuck in poverty even if they work 12 hour days 6 days a week. A blogger in Malaysia Today commented that we should not implement minimum wages legislation, instead educate the poor so that they can lift themselves out of poverty. Have we forgotten that not all of us have the gift and ability to be educated and learn new skills? Wages and salary, whether high or low is still a market reflection of supply and demand of labour with particular skills, as well as the person's ability to negotiate high wages. You, are your own commodity, your ability to package and sell yourself is the key to your net worth and potential.

Left on its own, labour market could correct itself, provided that there are no outside forces interfering supply and demand mechanism. But in our Malaysian case, ***the government has this rule that undermined labour market bargaining power "employees can only join in-house trade union, large nationwide umbrella trade union is not allowed."*** As such workers have no negotiating power for the wages they get.

The government further undermines the labour market by doing almost nothing about rampant illegal immigration from neighbouring countries. There were cases in the past in Sabah whereby those illegal immigrants were given citizenship, hence enlarging the pool of cheap labour.

***Introducing minimum wage legislation would bring a lot of benefit to the country.*** Let's say that we set minimum wage at RM5 per hour this year. Inefficient companies who cannot afford to pay this minimum wage will have to close shop, freeing labour resources to be employed elsewhere. On the labour supply side, people who normally do not work because of other commitment or unattractive wages, might find RM5 per hour is good and start looking for jobs, thus contributing to the economy.

More people in the payroll would increase economic activity, contributing to higher economic growth. Companies would invest more, since the economic climate is rosier.

This will spur the country forward to make more capital investment and increase per capita productivity, since employers would not employ employees to do low value jobs. It will also help employees on low income; higher income will ease their burden.

Higher wages for workers would force employer to make more capital investment, since higher capital would result in higher productivity per worker. Workers will be equipped with machinery, instead of doing manual job.

For example in the west, a street sweeper uses truck equipped with sweeper can sweep every street in a city the size of Klang in 3 hours.

### ***A minimum wage law would reduce our competitiveness? FDI would flow to other countries?***

That is shallow argument hiding the fact that competitiveness is equal efficiency in every aspect of our activity. Who is more efficient, a street sweeper using truck or a few street sweepers using brooms and baskets?

We continue to hide the facts that our government red tape is onerous, with a lot of unnecessary paper works. Add to that, service is slow, with a few levels of hierarchy and nobody seems to have the power to approve, even if we have followed the rules to the letter.

What make the matter worse, our government keeps changing the rules and requirements as often as they like. Multinational companies invest in efficient operation, which enhance their competitiveness. So as a country, we should consider investing in efficiency, which would lead us being competitive.

Letter to Editor , 2nd March by Noor Yahaya Hamzah



# ICFTU-APRO Regional Conference on Labour Law Reforms

The three day conference held in Petaling Jaya examined the practices relating to the Right to Form a Union and to Bargain Collectively and concluded that the advance of globalization especially in the last two decades poses further challenges to trade unions. Governments are doing what they could including changing the provisions of labour laws to cater to the demands of capital in the face of increasing international competitiveness. Thus reforms to labour laws by governments may not necessarily be for the betterment to the cause of labour. The labour legislation changes put in place by the present government of Australia is a case in point. The hard won workers' and trade union rights were rolled back in a number of areas.

There is no denying of the need to reform labour laws to meet changing situations. However how reforms are carried out and the nature of and impacts of the reforms on workers and their trade unions are matters of great concern.

Labour law reforms should be formulated with a view to improve and further improve the lives of workers in particular and society in general. They should lead to decent work thus improving the social and economic well being of the country, which governments should be concerned about.

## Proposed major areas for reform of labour laws:

- **Registration of unions**

Registration of a union should be simplified and all unnecessary bureaucratic barriers should be removed. Approval of registration of unions should be based on information provided by the union. It must be done without any restrictions and delay and without having to wait for approval by government agencies such as the Department;

- **Recognition of unions**

There is no need for "recognition by employer" since the union is already registered as a legal organization. Provisions relating to recognition in labour laws must be removed by according automatic recognition. The union with the majority of members will be the bargaining agent for workers where there is more than one union in the same workplace.





# MTUC Leadership Training & Women's Day

## Kursus Asas Kepimpinan MTUC / ACILS

26hb Feb – 2hb Mar 2007

Seramai 27 orang wakil pemimpin yang mewakili kesatuan gabungan MTUC dari sektor pengilangan, perladangan, pertanian dan anggota kerajaan telah menghadiri kursus Asas kepimpinan selama lima hari di pusat latihan ini. Antara subjek pokok yang telah menjadi perbincangan ialah aspek perundangan buruh, (akta pekerjaan, perhubungan perusahaan dan akta kesatuan sekerja) globalisasi dan kesan terhadap kaum pekerja dan kesatuan sekerja, ciri-ciri kepimpinan yang berkaliber, penggunaan teknologi maklumat-komputer, dan sebagainya.



### Women's day Celebration

This year, the MTUC Women's Committee held two events to celebrate International Women's Day—a one-day programme on Maternity Protection and a dinner on 8th March 2007. Last year's theme "Strong Women, Strong Union" was retained to indicate continuous struggle towards a healthier woman and an organised women workforce.

Beside enhancing solidarity and support towards Women's Committee activities and programmes, it is hoped that participants would be aware of the on-going campaign that we had launched in year 2000 to improve the maternity protection benefits and for Malaysia to ratify ILO Convention 183.

56 participants (including 4 men) attended the one-day programme held at Wisma MTUC.

Speaker from Human Resource Department, Ministry of Human Resource – Mr T Shanmugam spoke on the Employment Act 1955 with special focus on provisions of Maternity Protection. In an effort to promote chances to train, the Vice Chair and Asst. Secretary of Women's Committee each made a presentation on need for "Organising" and ILO Convention 183, respectively. Sis. Noorlaila-Aslah concluded the programme by initiating discussions on "Women In Trade Union".



The evening was lit with colorful presentations of a Monologue entitled "A woman's dilemma" depicting the various problems and challenges a girl had to face in childhood till adulthood, then married life. The presentations also included Dikir Barat from the Proton Union.





# International News

## **CHINA, REPUBLIC OF**

According to a recent survey by the Council of Labour Affairs (CLA) about 20% of pregnant women workers were discriminated against in the workplace. 16% of the woman workers surveyed believed that there is gender bias in salary adjustment and 5% believed that there is also gender bias in the promotion of employees. Over half of the employers do not offer adequate parental leave benefits, which is the most common form of leave offered by the employers surveyed.

The number of women workers had increased from 3.9 million to 4.3 million i.e. 10.1% in the last five years. This was 4.74% more than that for male workers. Women's participation rate in the labour force increased from 46.59% in 2002 to 48.68% in 2006, again reflecting a higher rate than that for male.

The Gender Equality Employment Law was passed five years ago but little was done to improve working conditions for women workers according to some of the women surveyed.

## **KOREA, REPUBLIC OF**

Data from the Ministry of Labour showed that women workers earned about two thirds of what their male counterparts are paid. Male workers took home an average monthly wage of 2.87 million won (US\$3,059) while women workers were paid only 1.81 won on average. This wage gap, of 36.9% however indicated a slight improvement over the 37.6% wage gap in 2005.

The number of economically active women is around 10 million while that of male is about 14 million. The participation rate of women workers increased from 48.4% in 2000 to 54.6% last year. Many believe that the country's future as one of the world's important economies critically depends on how it employs its pool of women workers. At present women accounts for only 9% of its professionals and 0.5% of executives. 32% of women work in sales/service sector.

Source: ICFTU-APRO Labour Flash No.1267

## **KOREA, REPUBLIC OF**

The Seoul High Court on February 1 overturned a ruling by the Seoul Administrative Court. The appellate court said, "Even though they are illegal migrant workers, they are workers that can form a labour union because they work here and are paid in South Korea" and "It is difficult for us to see how, under current immigrant law, illegal migrant workers can be prevented from forming a labour union". The national constitution guarantees the status of foreigner and the current labour laws ban discriminative measures between domestic and foreign workers.

The Migrant Trade Union submitted an application for union registration to Seoul Regional Labour Office in May 2005 but its application was rejected for having illegal migrant workers among its members. It then filed a lawsuit against the Office and in February 2006, the SAC ruled in favour of the Office, saying that illegal workers have no right to form a labour union. Source: ICFTU-APRO Labour Flash No.1265

## **KUWAIT**

200 foreign workers of a catering company went on strike on March 12 over the underpayment of wages. They were originally informed at their home-state that they would be paid KD60 a month plus overtime. Subsequently at the airport before their departure to Kuwait they were told that they were to be paid only KD26 for the probation period of three months and thereafter this would be increased to KD70. However they were not paid KD70 after the three months of probation and when they queried about it they were manhandled by the management and seven of the workers whom the management identified as the "troublemakers" were considered for deportation. The workers had sought help from their embassy.

Apart from the underpayment of wages workers were penalized for any "penalties" such as uncut hair or unshaven face amounting to between 5 to 10 KD. Thus part of the KD26 was spent on personal care products making it hard to save. Besides, some of the workers have incurred debts to pay for the visa and airfares and found that they were not able to meet their loan repayments as such.

## **INDIA**

The Government of Tamil Nadu has announced a special renewal period till March 31 for women workers in unorganized sector and who had crossed 60 years of age as on September 1, 2006 to renew the registration of their names for getting their pension. They could register their names with the respective deputy inspectors of labour and apply for the pension. Women workers who are over 60 years and who failed to renew their bi-annual registration would otherwise be ineligible for the pension. Source: ICFTU-APRO Labour Flash No.1268

## Hitachi workers' memo to Dato Fong

200 Pekerja Hitachi Consumer Product telah berkumpul di Putrajaya pada 9hb Mac untuk meluahkan ketidakpuasan mereka kepada Dato Fong Chan Onn, Menteri Sumber Manusia.

Sembilan helaian memorandum tersebut menghuraikan pelbagai permasalahan yang dihadapi oleh pekerja-pekerja akibat dari perlakuan yang tidak wajar dan tidak bertimbangrasi oleh pihak pengurusan Hitachi. Antara tujuan utama memorandum tersebut ialah:

- Bagi meluahkan perasaan tidak puas hati mereka sebagai pekerja, merasakan diri mereka **ditindas dan tidak dihargai**. Segala **usaha dan kerjasama yang telah disumbangkan oleh mereka selama ini diperlekehkan oleh pihak syarikat**.

- Segala saranan syarikat disokong oleh mereka, kerjasama yang amat jitu, namun syarikat memandang remeh, malah **segala janji yang telah ditaburkan kepada mereka hanyalah janji palsu**. Hanya men-

guntungkan syarikat. Segala **faedah untuk mereka disingkirkan** dan menjadi tekanan kepada mereka. Akibatnya segelintir dari mereka telah mengambil keputusan untuk berhenti.



## Penyerahan Memorandum kepada Menteri Kesihatan

Satu memorandum telah di hantar kepada Kementerian Kesihatan Malaysia oleh Gabungan Membantah Pengswastaan Perkhidmatan Kesihatan (GMPPK) pada 1hb Mar 2007 bagi membantah tindakan Malaysia menandatangani FTA yang akan memberi kesan negatif dan menjejaskan kesihatan rakyat Malaysia. Seramai 100 orang telah menyertai gabungan yang diwakili oleh MTUC, Aliran, Parti Sosialis, JERIT, PAS dan kumpulan prihatin telah menyertai arena ini. MTUC telah diwakili oleh Naib Presiden MTUC saudari **Siti Azizah selaku Naib Pengerusi Jawatan kuasa Pengguna**. Antara perkara yang telah diutarakan dalam memorandum tersebut:

- Hak milik Harta Pencipta;
- Pembukaan pintu kepada syarikat Amerika untuk melabur dalam sektor kesihatan Negara;
- Syarat-syarat yang akan menyekatkan kuasa kerajaan mengawal amalan yang boleh menjejaskan kesihatan rakyat dan sebagainya.

