INDUSTRIAL COURT OF MALAYSIA

CASE NO. 1/1-1369/13

BETWEEN

NATIONAL UNION OF EMPLOYEE IN COMPANIES MANUFACTURING RUBBER PRODUCTS

AND

ANSEL COMPANIES OPERATING IN MELAKA (ANSELL MALAYSIA SDN.BHD./ANSEL MEDICAL SDN. BHD./ ANSELL N.P. SDN. BHD.)

AWARD NO : 1025 OF 2014

Coram : **Y.A. PUAN SUSILA SITHAMPARAM – PRESIDENT**
MR. PREM KUMAR A/L APPUKUTTY – EMPLOYEES' PANEL
ENCIK SIMUNIR BIN ABAS – EMPLOYERS' PANEL

Venue : Industrial Court, Kuala Lumpur.

Date of filing of Form S : 18 October 2013.

Dates of Hearing : 5 May 2014.
23 and 27 June 2014.

Representation : Encik Sulaiman Amin
Industrial Relations Officer
for and on behalf the complainant/union.

Mr. Dharmen Sivalingam
Messrs Dharmen Sivalingam & Partners
Counsel for the respondent.

AWARD

This is an application for an order of non-compliance of article 32 clause (F) of the tenth collective agreement dated 6 February 2010, cognizance number 58/2010 (hereafter referred to as "the said collective agreement") by the National Union of Employees In Companies Manufacturing Rubber Products (hereinafter referred to as "the said complainant") against Ansell Companies Operating in Melaka namely Ansell Malaysia Sdn Bhd, Ansell Medical Sdn Bhd and Ansell N.P. Sdn Bhd (hereinafter referred to as "the said respondents").

The preliminary objection which was raised by the respondents was heard on 5 May 2014 before a coram which comprised of the learned President, Encik Simunir bin Abas, the member from the Employers' Panel and Mr Ng Choo Seong, the member from the Employees' Panel. That coram dismissed the preliminary objection.

The continued hearing was fixed on 23 and 27 June 2014. Mr Ng Choo Seong informed the court subsequently that he was not available on those dates as he would be attending a conference overseas. The court appointed Mr Prem Kumar s/o Appukutty to replace him. Both parties had no

objections.

Preliminary objection

On 5 May 2014, counsel for the respondents raised a preliminary objection that the said collective agreement was *void* as the said collective agreement had not complied with section 14(2)(c), Industrial Relations Act 1967 (hereinafter referred to as "the said Act") which provided that a collective agreement should contain a provision for the modification and termination of the said collective agreement.

Section 14 (2)(c) reads:

> "14. (2) A collective agreement shall set out the terms of the terms of the agreement and shall, where appropriate -
>
> ...
>
> (c) prescribe the procedure for its modification and termination."

The second ground for his preliminary objection was that the said collective agreement had expired on 31 December 2011 as it was for a period of three years. He contended that the complainant could not apply for an

order of non-compliance of the said collective agreement as it had expired.

Article 6 clause (A) of the said collective agreement reads:

> "Article 6 - Duration And Termination of Agreement
>
> Clause (A)
> This Agreement shall take effect from the 1st January 2009, and shall remain in force for a period of three years and thereafter unless superseded by a new Collective Agreement negotiated between the parties or awarded by the Industrial Court."
>
> (emphasis added)

He also submitted that when the said collective agreement expired on 31 December 2011, the terms of the said collective agreement became the implied terms of the contract of service for the workmen. He cited the decision of the Industrial Court in Socfin Company Berhad v All Malayan Estates Staff Union, Industrial Court Case 21 of 1969, Award 19/70 (Unreported) in support of his contention.

The representative for the complainant submitted that the said collective agreement was an award of the court and was binding on the parties pursuant to section 17(1) of the said Act.

Section 17(1) of the said Act reads:

> "17. (1) A collective agreement which has been taken cognizance of by the Court shall be deemed to be an award and shall be binding on
>
> (a) the parties to the agreement including in any case where a party is a trade union of employers, all members of the trade union to whom the agreement relates and their successors, assignees or transferees; and
>
> (b) all workmen who are employed or subsequently employed in the undertaking or part of the undertaking to which the agreement relates."
>
> (emphasis added)

The court overruled the preliminary objection by the respondent. The first issue was the absence of a provision for the modification and termination in the said collective agreement.

The court held that the said collective agreement was not *void* despite the absence of a provision for the modification and termination of the said collective agreement. When the said collective agreement was taken cognizance by the court, it became an award of the court pursuant to section 17(1) of the said Act. An award of the court is enforceable until it is varied by a subsequent award.

The provision in section 14(3) of the said Act applied to terms in the said collective agreement which were less favourable than the provisions in a written law or in contravention of a written law. It was only in such cases that such provisions in the said collective agreement were *void.* The provisions in the written law will be substituted for the terms in a collective agreement which are *void.*

Section 14(3) of the said Act reads:

> "14. (3) Any term or condition of employment, contained in a collective agreement, which is less favourable than or in contravention of the provisions of any written law applicable to workmen covered by the said collective agreement, shall be void and of no effect to that extent and the provisions of such written law shall be substituted therefor."

The next issue was the period of the said collective agreement. The intention of the parties may be ascertained from the words used in the said collective agreement.

The principles on the interpretation of the terms of a collective agreement was highlighted by the Court of Appeal in Kesatuan Pekerja-

Pekerja Perkayuan v Syarikat Jengka Sdn Bhd [1997] 2 CLJ 276 at page 285 as follows:

> ".. However, before embarking upon that exercise, it is important for us to bear in mind two board and general matters that govern the approach that is to be adopted when interpreting a document such as that which has fallen for construction in the present case.
>
> First, it is important to bear in mind that the ordinary rules of construction - whose assistance courts often pray in aid to determine contractual intention - do not apply when interpreting a collective agreement. An application of these rules will necessarily involve a rather strict and legalistic approach which is to be avoided in a case such as the present. Parliament, fully realizing that a just solution may not result in the field of industrial relations by a application of the rules of interpretation that operate in the environment of the common law, has enacted s 30(5) of the Act, which reads as follows :
>
> > `The Court shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal form.'
>
> Secondly, due recognition should be accorded to the fact that a collective agreement is not a commercial document entered into between businessmen aided by legal advice. A collective agreement deals with far more basic issues that relate to the

livelihood of workmen, such as their wages and other rudimentary benefits that are essential for sustaining life. It will therefore be unsurprising to find such agreements couched in rather loose language, often lacking the degree of precision with which lawyers are familiar. A reasonable and pragmatic approach, shorn of an excess of legal learning, is therefore called for when construing a collective agreement, and in particular, any machinery that the workmen and their employer have established for the resolution of their differences."

The court held that the words "shall remain in force for a period of three years and thereafter unless superseded by a new collective agreement" in article 6 clause (A) of the said collective agreement meant that the parties had intended that the said collective agreement would continue to apply until there was a new collective agreement.

There is a provision for a minimum period of a collective agreement in section 14(2) (b) of the said Act which reads:

"14. (2) A collective agreement shall set out the terms of the terms of the agreement and shall, where appropriate -

...

(c) specify the period it shall continue in force which shall not be less than three years from the date of commencement of the agreement."

Article 6 clause (A) of the said collective agreement when read in the light of section 14(2)(b) of the said Act means that the minimum period for the said collective agreement is three years. It does not mean that the said collective agreement expired after the three years. The said collective agreement is an award of the court. An award of the court is enforceable until it is varied by a subsequent award of the court. The court did not follow the decision in Socfin's case as there was no discussion of section 17(1) of the said Act in that case.

The complaint

The complaint is that the respondents stopped the meal allowance of the affected workmen when their basic wages were increased to RM900 per month pursuant to the Minimum Wages Order 2012 (hereinafter referred to as "the said order") which came into force on 1 January 2013.

UW1, a workman with Ansell N P Sdn Bhd testified on behalf of the complainant. He was the Chairman of the Worksite Committee from 2008

until 2013. He was a signatory to the said collective agreement. The members of the Worksite Committee objected when the respondents informed the workmen that their meal allowance of RM55 per month would be absorbed into their basic wages for those who were earning basic wages of less than RM900 per month prior to the implementation of the said order, at a briefing on 4 February 2013.

The reply

The respondents denied that they had stopped the meal allowances for the affected workmen. They contended that they had merged their meal allowances with their basic wages and then increased the basic wages to RM900 per month. There were 128 workmen who were affected whose names appear in Bundle RB1.

The respondents contended that the said collective agreement should be varied pursuant to section 56(2)(c) of the said Act as there were special circumstances. They contended that the parties could not foresee that the said order would be implemented at the time they signed the said collective agreement.

RW1, the Human Resources Manager for Ansell Malacca testified on behalf of the respondents. She was appointed as the Assistant Director Human Resources for Ansell Malaysia in May 2014.She was involved in the negotiations for the said collective agreement.

She stated that the meal allowance of RM55 per month was given to the workmen in order to attract them to work for the respondents. Under the said collective agreement, the lowest basic wages was RM547 per month which were given to Packing Operators, Packing PRMS Operators and Carousel Chlorinator Operators. The meal allowance was given to all workmen under the said collective agreement but other allowances under the said collective agreement were only given if the conditions were satisfied.

She gave three examples as to how the basic wages of workmen who were earning basic wages of less than RM900 per month were increased to the minimum wages of RM900 per month. The first example was one Norfazeila binti Poasa whose basic wage was RM547 per month before the said order was implemented. She had also received a meal allowance of RM55 per month before the said order was implemented. When the said order was implemented her meal allowance was merged with her basic wage which

totalled RM602. Then, her basic wage was increased to RM900 per month. In doing that, she received a 50% increase in her basic wage.

The second example was Nurzainis bin Md Sahari of Ansell N P Sdn Bhd. Her basic wage was RM623 per month and she received the meal allowance in November 2012 *vide* Bundle UB2, page 9. After the said order was implemented her basic wage was increased to RM900 per month and she no longer received the meal allowance *vide* pay-slip for January 2013, Bundle UB2, page 12.

The third example was Mohd Firdaus bin Saad of Ansell N P Sdn Bhd. His basic wage was RM743 per month and he received the meal allowance of RM55 in December 2012 *vide* Bundle UB2, page 10. After the said order was implemented, his basic wage was increased to RM900 per month and he no longer received the meal allowance *vide* pay-slip for May 2013, Bundle UB2, page 11.

She also stated that for the workmen whose basic wages were RM900 per month or more when the said order was implemented, there were no changes to their wages. Since they did not receive any increase in their wages when the said order was implemented, their meal allowances were

maintained. Another reason as to why their meal allowances were maintained was because some of the workmen in the category of who had not received any increase in their wages had left the service of the respondents. The said order had made a big impact on the respondents.

At first, she admitted that the Secretary of the Worksite Committee of Ansell N P Sdn Bhd had objected to the withdrawal of the meal allowance in a letter dated 27 February 2013 *vide* Bundle UB2, page 1. Later, she stated that she could not remember whether she had seen that letter and the second letter of objection dated 7 March 2013 this time from the Secretary General of the complainant *vide* Bundle UB2, page 2.

They were advised by their lawyers that the said collective agreement could be varied if there was a complaint for the non-compliance of the said collective agreement as there were special circumstances. The said order which was gazetted on 16 July 2012 was implemented suddenly *vide* P.U. (A) 214/2012. Their application to the National Wages Consultative Council to defer the implementation of the said order for the respondents was rejected by a letter dated 20 December 2012 *vide* R-5.

The relevant provisions in the said collective agreement

Article 4 clause (1) reads:

> "ARTICLE 4 - LEGISLATION
>
> 1. It is agreed that if any legislation is passed, the terms of such legislation shall apply automatically."

Article 32 clause (F) reads:

> "CLAUSE (F) - Meal Allowance
>
> All employees under the scope of the Collective Agreement shall be paid a meal allowance of RM55.00 per month."

Submissions by counsel for the respondents

Counsel for the respondents conceded that the respondents had not complied with article 32, clause (F) of the said collective agreement when they merged the meal allowance of the workmen who were earning basic wages of less than RM900 per month just prior to the implementation of the said order on 1 January 2013 with their basic wages after the said order was implemented.

The approach to be taken by the Industrial Court in a non-compliance proceeding was elucidated by the High Court in Prestige Ceramics Sdn Bhd v Kesatuan Pekerja Pembuatan Barangan Bukan Logam & another [2001] 5 CLJ 354 which stated that the Industrial Court should consider the relevant facts and make a proper order to achieve the objectives of the said Act. The provisions in section 30(5) and (6) of the said Act also applied to non-compliance proceedings as decided by the Supreme Court in Dunlop Industries Employees Union v Dunlop Malaysian Industries Berhad [1987] 2 MLJ 81.

He submitted that there were special circumstances for the court to vary the said collective agreement pursuant to section 56(2)(c) of the said Act. The implementation of the minimum wages order constituted special circumstances as it had the following characteristics. Whilst financial losses *per se* may not constitute special circumstances, the converse that when there was no financial losses, it would not amount to special circumstances was not true. The Annotated Statutes Of Malaysia, 2009 Issue, Lexis Nexis, pages 755 and 756 was cited.

The first characteristic was that the respondents had no choice in the

matter. When the said collective agreement was signed, the parties could not reasonably foresee that the minimum wages order would be implemented. If they could reasonably foresee that the minimum wages order would be implemented they would not have agreed to include the meal allowance in the said collective agreement.

In RIH Management Sdn Bhd v National Union Of Hotel, Bar & Restaurant Workers, Peninsular Malaysia [2000] 2 ILR 549, there was application for an order of non-compliance of the collective agreement as the respondent who were the owners of Regency Hotel & Resort, Port Dickson had failed to pay their workmen who worked in the hotel their annual increment on 1 January 2000. The Industrial Court found that the JE epidemic which had occurred had resulted in the low occupancy of the hotel thereby causing financial losses to the respondent. The court found that the JE epidemic could not have been reasonably foreseen by the respondent resulting in financial losses constituted special circumstances. The court varied the collective agreement and ordered that the annual increment be paid six months from the date of the hearing unless the parties came to a agreement in respect of the new collective agreement.

The second characteristic was that it was an uncommon, exceptional

and extraordinary event which had taken place after the said collective agreement was signed. In Metal Industry Employees Union v Yodoshi Malleable (M) Sdn Bhd [2013] 3 ILR 621, the Industrial Court held that the fire which had occurred resulting in additional financial losses to the respondent constituted special circumstances as it was an uncommon, exceptional and extraordinary event.

Counsel for the respondents also submitted that the said order was not clear. There were some allowances which had been expressly excluded in the definition of "wages" in section 2, Employment Act 1955. He contended that since the meal allowance had not been expressly excluded in the definition of "wages", it could be absorbed into the basic wage.

In Rothmans of Pall Mall (Malaysia) Bhd v Rothmans Employees' Union [1996] 1 ILR 366, the Industrial Court held that overtime meal allowance and the night shift meal allowance which was payable under the collective agreement fell within the definition of "wages" under section 2, Employment Act 1955.

The definition of "wages" in section 2, Employment Act 1955 reads:

"'wages' means basic wages and all other payments in cash

payable to an employee for work done in respect of his contract of service but does not include -

(a) the value of any house accommodation or the supply of any food, fiel, light or water or medical attendance; or of any approved amenity or approved service;

(b) any contribution paid by the employer on his own account to any pension fund, provident fund, superannuation scheme, retrenchment, termination, lay-off or retirement scheme, thrift scheme or any other fund or scheme established for the benefit or welfare of the employee;

(c) any travelling allowance or the value of any travelling concession;

(d) any sum payable to the employee to defray special expenses entailed on him by the nature of his employment;

(e) any gratuity payable on discharge or retirement; or

(f) any annual bonus or any part of any annual bonus."

The said order was unrealistic as it resulted in the dilution of the wage difference between a long serving workman and a new workman. A new workman who joined the respondents as a Packing Operator on 2 January 2013 would receive a basic wage of RM900 per month. A workman who had been working as Packing Operator for fifteen years and was earning more than RM900 per month as at 1 January 2013 would not receive any increment when the said order was implemented.

The said order had caused internal inequity as the difference in wages of a senior workman and a junior workman had been significantly diminished. A workman with less years of experience could suddenly earn the same basic wages as a workman who had more years of experience. In order to resolve the internal inequity and maintain industrial harmony, the respondents maintained the meal allowance for those workmen who did not receive an increase in their basic wages.

The said order had caused confusion in the industry. There was a view expressed in the newspapers on the said order and the Guidelines issued by the National Wages Consultative Council *vide* Bundle of Authority, item 10.

Submissions by the representative for the complainant

The representative for the complainant submitted that article 32 clause (F) of the said collective agreement was a mandatory provision as the word "shall" had been used in that provision. The meal allowance had to be paid to the affected workmen irrespective of the basic wages they earned.

The law

The relevant legislation which apply are the Industrial Relations Act 1967 (hereinbefore referred to as "the said Act"), the National Wages Consultative Council Act 2011, the Employment Act 1955 and the Minimum Wages Order 2012 (hereinbefore referred to as "the said order").

The Wages Council Act 1947 was repealed by the National Wages Consultative Council Act 2011. The said order which was implemented on 1 January 2013 provides for a basic wage of RM900 per month for workmen in Peninsular Malaysia. The preamble of the National Wages Consultative Council Act 2011 reads:

> "An Act to establish a National Wages Consultative Council with the responsibility to conduct studies on all matters concerning minimum wages and to make recommendation to the Government to make minimum wages order according to sectors, types of employment and regional areas, and to privide for related matters."

The rationale for introducing the minimum wages was explained by The Honourable Datuk Dr. S. Subramaniam, Minister of Human Resources who tabled the bill at the *Dewan Rakyat* (House of Representatives). During the

second and third reading of the bill on 30 June 2011, it was reported in *Penyata Rasmi Dewan Rakyat* (The Hansard) in its original language at pages 35 and 36 as follows:

> "Datuk Dr. S. Subramaniam: Tuan Yang Di-Pertua dan Ahli-Ahli Yang Berhormat sekalian, Kerajaan telah menetapkan sasaran untuk mencapai status negara berpendapatan tinggi menjelang tahun 2020 melalui empat tunggak utama transformasi iaitu Model Baru Ekonomi, Program Transformasi Kerajaan, Program Transformasi Ekonomi dan Rancangan Malaysia Kesepuluh."
>
> ...
>
> "Gaji yang ditentukan melalui kuasa pasaran didapati tidak berkesan kerana berdasarkan kajian oleh Bank Dunia sejak sepuluh tahun yang lepas, kadar gaji di Malaysia hanya meningkat secara purata sebanyak 2.6 peratus setahun. Kajian Guna Tenaga Kebangsaan yang akan dilaksanakan oleh Kementerian Sumber Manusia pada tahun 2009, melibatkan sampel sebanyak 24,000 orang majikan dan 1.3 juta pekerja mendapati 33.8 peratus pekerja adalah bergaji di bawah RM700 sebulan. Ini menunjukkan bahawa terdapat herotan dalam pasaran buruh yang mana kadar gaji yang ditentukan oleh kuasa pasaran telah mengekang peningkatan kadar gaji sedangkan kos sara hidup meningkat berlipat kali ganda."
>
> ...
>
> "Tuan Yang di-Pertua, pelaksanaan gaji minimum bertujuan untuk membantu golongan berpendapatan rendah meningkatkan kuasa beli bagi menghadapi peningkatan kos sara hidup dan seterusnya menangani isu kemiskinan dalam kalangan pekerja iaitu *the working poor*."

The definition of "minimum wages" in section 2, National Wages Consultative Council Act 2011 reads:

> "'Minimum wages' means the basic wages to be or as determined under section 23."

Section 23, National Wages Consultative Council Act 2011 reads:

> "23. (1) Where the Government agrees with the recommendation of the Council under paragraph 22(2)(a) or 22(4)(a) or determines the matters under paragraph 22(4)(b), the Minister shall, by notification in the Gazette, make a minimum wages order on the matters specified in paragraphs 22(1)(a) to (e) as agreed to or determined by the Government."

There have been judicial decisions on the meaning of the term "basic wages". "Basic wages" is defined in Words, Phrases & Maxims, Legally & Judicially Defined, Volume 2, A(II), B by Anandan Krishnan at page 575 as follows:

> "The phrase 'basic wages' is ordinarily understood to mean that part of the price of labour, which the employer must pay to all workmen belonging to all categories, 'Basic Wage' never includes the additional emoluments which some workman

may earth [earn], on the basis of a system of bonuses related to the production. M/S Munir Mills Co Ltd v. Their Workmen AIR 1960 SC 985 AIR 1960 SC 988."

In Decor Wood Industries (Trengganu) Sdn Bhd v Timber Employees' Union, Industrial Court case 1:1/1-398/89, Award 107 of 1990 (Unreported), the Industrial Court held at pages 3 and 4 as follows:

"If we accept the term 'basic wage' as it is ordinarily used, i.e. the price of labour which the employer must pay to his workmen belonging to a particular category or workmen, in contrast with supplements and allowances, such as housing and cost of living, not directly related to their work, we will arrive at a conclusion that annual increment is not any supplement or allowance but part of the structure within the salary structure accorded to the workmen directly to their work."

(emphasis added)

In Kesatuan Kebangsaan Pekerja-Pekerja Hotel, Bar & Restoran Semenanjung Malaysia v Crystal Crown Hotel & Resort Sdn Bhd, Industrial Court Case 13(26)/2-175/2012, Award 875 of 2014 (Unreported) the Industrial Court included a provision on service charge in the first collective agreement. The trade dispute was decided after the Minimum Wages (Amendment) Order 2012 had come into force for the hotel on 1 October 2013. The employees would be paid basic wages of RM900 per month

pursuant to the Minimum Wages (Amendment) Order 2012 and be entitled to service charges.

In a non-compliance proceeding, the court may interpret the provisions of a collective agreement pursuant to section 56(2A) of the said Act. It may vary the terms of the said collective agreement if there are special circumstances pursuant to section 56(2)(c) of the said Act.

Section 56(2)(c) of the said Act reads:

> "(c) Make such order as it considers desirable to vary or set aside upon special circumstances any term of the award or collective agreement;."

Section 56(2A) of the said Act reads:

> "(2A) Notwithstanding the provisions of subsection 33(1), the Court shall, upon making the order under subsection (2), have the power to interpret any matter relating to the complaint made."

The provisions in section 30(5) and (6) of the said Act also apply in a non-compliance proceeding. Dunlop Industries Employees Union v Dunlop Malaysian Industries Berhad [1987] 2 MLJ 81 applied.

Section 30(5) and (6) of the said Act reads:

> "(5) The Court shall act according to equity, good conscience and the substantial merits of the case without regard technicalities and legal form.
>
> ...
>
> (6) In making its award, the Court shall not be restricted to the specific relief claimed by the parties or to the demands made by the parties in the course of the trade dispute or in matter of the reference to it under section 20(3) but may include in the award any matter or thing which it thinks necessary or expedient for the purpose of settling the trade dispute or the reference to it under section 20(3)."

Decision

The provisions in a collective agreement contain the terms of employment and non-employment. The definition of the phrase "trade dispute" in section 2 of the said Act is referred to. One of the fundamental provisions in a collective agreement is the wage structure. The other provisions include monetary allowance such as meal allowances, shift allowances, laundry allowances, etc.

There is a difference between the terms "wages" and "basic wages".

Both terms are not defined in the said Act. Only the term "wages" is defined in the Employment Act 1955. The National Wages Consultative Council Act 2011 follows the definition of the term "wages" in the Employment Act 1955 for workmen in Peninsular Malaysia but does not define the term "basic wages".

The court held that the term "basic wages" does not include monetary allowances. When the minimum wages of RM900 per month was implemented in Peninsular Malaysia on 1 January 2013 pursuant to the said order, the basic wages which became payable was RM900 per month.

The wage structure in appendix A of the said collective agreement is a wage/salary range type with a wage/salary scale consisting of job categories in an ascending order of hierarchy. In each job category, there is a minimum and a maximum wage/salary with annual increments. Within each job category, the seniority of the workmen will depend on their length of service with the respondents.

The target group of the said order are the workmen in the lower income group. It is for their social protection so that their basic needs are provided for. Thus, it would be inequitable to remove any financial benefits or

allowances which they are entitled to under the said collective agreement so as to preserve the hierarchy in the wage/salary scale as provided in appendix A of the said collective agreement. The resulting inequities for the senior workmen who did not benefit from the said order may be addressed in the trade dispute on the terms of the eleventh collective agreement which is pending at the Industrial Court.

The court also took into consideration that the respondents have not proved that they suffered financial losses as result of the said order. In Prestige Ceramics's case, the High Court highlighted the causes which resulted in the financial losses of the employer such the cost of materials rising out of proportion, the prices of products falling rapidly, the fall in the demand for the products, etc as a result of the Asian Economic crisis. Similarly, in RIH's case and Yodoshi's case, the employers had suffered financial losses.

The contention by the respondents that the meal allowance may be absorbed into the basic wages as they fall within the definition of "wages" in the Employment Act 1955 is flawed. The respondents chose to absorb the meal allowance into their basic wages of only 128 workmen who fell in the lowest job category. The meal allowance of the other workmen who earned

basic wages of more than RM900 per month just before the implementation of the said order and for those in the higher job categories were maintained. That was an obvious discrimination of workmen in the lowest job category and it has disturbed the conscience of the court.

The respondents have admitted that they breached article 32 clause (F) of the said collective agreement by not paying the 128 affected workmen their meal allowance when the said order was implemented.

The court held that the respondents have not proved that there are special circumstances to vary the said collective agreement. The respondents are ordered to comply with article 32 clause (F) of the said collective agreement and to pay the 128 affected workmen their arrears of meal allowance since 1 January 2013 forthwith.

HANDED DOWN AND DATED THIS 29TH DAY OF AUGUST 2014

(SUSILA SITHAMPARAM)
PRESIDENT
INDUSTRIAL COURT OF MALAYSIA.