

**INDUSTRIAL COURT MALAYSIA**

**CASE NO. 4/3-406/12**

**BETWEEN**

**KESATUAN EKSEKUTIF AIROD SDN. BHD**

**AND**

**AIROD SDN. BHD**

**AWARD NO. 1121 OF 2014**

**CORAM: Y.A. TUAN P IRUTHAYARAJ D PAPPUSAMY - Chairman**

**ENCIK KUNASEGARAN A/L  
SANKARA PILLAI**

**- Employee's  
Panel**

**ENCIK CHUNG BOON POH**

**- Employer's  
Panel**

**VENUE: Mahkamah Perusahaan Malaysia, Kuala Lumpur**

**DATE OF REFERENCE: 28.02.2012**

**DATES OF MENTION: 11.05.2012, 24.05.2012, 02.08.2012,  
24.09.2012, 24.10.2012, 03.12.1012,  
13.08.2014**

**DATES OF HEARING: 29.01.2013, 22.07.2013, 23.07.2013,  
26.02.2014, 27.02.2014, 17.04.2014**

**DATES OF WRITTEN:  
SUBMISSIONS**

Written Submission by the Claimant filed  
on 02.06.2014;

Written Submission by the Company filed  
on 20.6.2014;

Written Submission in Reply by the  
Company filed on 03.07.2014.

**REPRESENTATION :**

Mr. V.K. Raj of Messrs P. Kuppusamy & Co.  
represented the Union.

Mr. Mahadi bin Muhammad together with  
Mr. Mohd Suharin bin Sulaiman Siew of  
Messrs Mahadi Redzuan & Co. represented  
the Company.

**REFERENCE :**

This is a reference by the Honourable Minister of Human Resources under Section 8(2A) of the Industrial Relations Act 1967 for an award in respect of a dispute arising out of **KESATUAN EKSEKUTIF AIROD SDN. BHD** (hereinafter referred to as “**the Union**”) by **AIROD SDN. BHD** (hereinafter referred to as “**the Company**”).

## **AWARD**

This is a dispute between Airod Sdn Bhd (**“the Company”**) and the Kesatuan Eksekutif Airod Sdn. Bhd (**“the Union”**) referred to the Industrial Court by the Honourable Minister pursuant to Section 8(2A) of the Industrial Relations Act 1967 (**“the IR Act”**) (**“the Minister’s reference”**).

### **Introduction**

By Order of the High Court dated 28.02.2012 the Industrial Court Award No: 1257 of 2011 was quashed and the said ministerial reference was ordered to be heard before another Chairman and panel of the Industrial Court. Hence, the said ministerial reference pursuant to S 8(2A) of IR Act 1967 was heard by this Court (Court 4) and with a different panel members. Hence, this Award is now being handed down.

## **The Minister's reference**

The Minister's reference is worded as follows:-

*“BAHAWASANYA selepas menimbangkan laporan Ketua Pengarah Perhubungan Perusahaan Malaysia atas pertikaian di antara Airod Sdn. Bhd., Locked Bag 4004, Pejabat Pos Kampung Tunku, 47309 Petaling Jaya, Selangor Dengan Kesatuan Eksekutif Airod Sdn. Bhd., 16, Jalan 7, Desa Subang Permai, 40150 Shah Alam, Selangor Mengenai Dakwaan Bahawa Majikan Telah Membuat **Tindakan-tindakan Bagi Membasmi Gerakan Kesatuan: Kenaikan Pangkat Presiden Kesatuan ke Jawatan Pengurusan** saya berpuashati bahawa adalah wajar bagi pertikaian ini dirujuk ke Mahkamah Perusahaan dan pada menjalankan kuasa-kuasa yang diberi oleh Seksyen 8(2A) Akta Perhubungan Perusahaan 1967, saya dengan ini merujukkan pertikaian ini ke Mahkamah Perusahaan”.*

## **Witnesses**

Witnesses who testified for the Company are as follows:-

1. En. Nor Azizan Md Salleh (COW-1) and his witness statement is marked as (COWS-1).
2. En. Azenam bin Hussain (COW-2) and his witness statement is marked as (COWS-2).

In respect of the Union only En. Shatiri bin Mansor (UW-1) (**“En. Shatiri”**) testified and his witness statement is marked as (UWS-1).

### **Union’s complaint**

The Minister’s reference arises from the Union’s complaint that the attempt by the Company to promote the President of the Union, En. Shatiri (without obtaining his agreement) from the Executive Grade, E2 to the Managerial Grade M1, was nothing but a clear example of interfering with his right of remaining and participating in the lawful activities of the Union. This right is provided under sections 4(1) and (2) of the IR Act 1967. For ease of reference the said sections are reproduced below:-

- “4.(1) *No person shall interfere with, restrain or coerce a workman or an employer in the exercise of his rights to form and assist in the formation of and join a trade union and to participate in its lawful activities.*
- (2) *No trade union of workmen and no trade union of employers shall interfere with each other in the establishment, functioning or administration of that trade union.”*

To compound this problem, the Company wrongfully initiated a domestic inquiry against the Claimant, and wrongfully found him guilty of one charge out of the two charges, and then wrongfully demoted the President of the Union from the managerial position that he was purportedly promoted to, back to his **E2 grade of employment**.

It is an undisputed fact that the Union's scope of representation extends to all executives employed with the Company, with the exception of those employed in the confidential and security capacities as provided under Article 13 of the Collective Agreement ("**the CA**") between the parties.

It is the Company's key contention that despite the reference of union busting on the ground of promotion of En. Shatiri to a managerial grade, there was no incident of union busting as En. Shatiri at all material time remained as the President of the Union and was never removed and/or disqualified from his long-held presidency post of the Union.

The Company had further contended that there was no event and/or action of union busting which had allegedly taken place as erroneously alleged by the Union and from one's right mind and/or perspective, how could there be a union busting if at all material time En. Shatiri was still the President of the Union all along despite the promotion given by the Company where he had never accepted the promotion to managerial grade as what has been persistently contended by the Union throughout this trial. According to the Company it is crystal clear from the evidence adduced by the Union itself that En. Shatiri was still the President of the Union at all the material time. It is also very obvious that the Union has never been busted by the Company and it is still in existence and all the Union's lawful activities have been freely carried out by the Union without any hindrance from the Company.

It is also contended by the Company that since the Union through En. Shatiri has firmly stood its ground that he was never promoted and he was still the President of the Union, there was no need for the Union to



bring this matter before this Court. It was further submitted that it was En. Shatiri who had improperly and with mala fide intent and/or ulterior motive used the Union as his personal vassal to attack the Company and further drag the Company to a stalemate of a trade dispute in view of the pending first collective agreement in the Industrial Court at the material time.

### **Chronology of Event**

Before dealing with the Union's complaint under Section 8(2A) of the IR Act it is pertinent to lay out the following chronology of the significant events that led to the dispute between the Union and the Company:-

<b><u>Date</u></b>	<b><u>Event</u></b>
18.8.2008	The Union President En. Shatiri receives a letter from the Company placing him on a "Temporary Attachment" in the position of "Manager Engines" for a defined period, from 19.6.2008 to 27.8.2008. The stated reason for this temporary attachment is that the Manager Engines, at that time, En. Abd Samad Said

<u>Date</u>	<u>Event</u>
	was away on medical leave till 27.8.2007 (sic) [see page 5 of Bundle UB-1]
14.10.2008	En. Shatiri suddenly receives letter of “Promotion and Transfer” from the Company, without any prior discussion and/agreement with him. [see page 6 of Bundle UB-1].
21.10.2008	En. Shatiri writes to the Company stating that before he accepts or rejects the Company’s offer to promote him, he needed two queries to be answered by the Company. He ends the letter by stating that he needs a written reply to enable him to make an informed decision [see page 7 of Bundle UB-1].
14.11.2008	Having had no reply from the Company, En. Shatiri writes again to the Company reminding it about his earlier letter dated 21.10.2008 [see page 8 of Bundle UB-1].

<b><u>Date</u></b>	<b><u>Event</u></b>
17.12.2008	En. Shatiri sends another reminder about his earlier queries [see page 9 of Bundle UB-1].
22.1.2009	En. Shatiri writes another reminder, yet again [see page 10 of Bundle UB-1].
31.7.2009	<b>Company writes to the attention of En. Shatiri, in his capacity as the President of the Union, and informs him that the Company is withdrawing the “check-off” facility provided to the Union members [see page 12 of Bundle UB-1].</b>
3.8.2009	<b>Union writes to the Company, raising the point that it is very suspicious for the Company to withdraw the “check-off” facility, given the fact that in the Statement in Reply</b>

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filed by the Company in the pending litigation concerning the Collective Agreement, the “check-off” facility was not a disputed article. The Union sought a written explanation [see page 13 of Bundle UB-1].

6.8.2009

The Union writes to the Company to place on record that at a meeting with the Manager Legal/IR. En. Halim Hariri (“**En. Halim**”) the Union was informed that in withdrawing the “check-off” facility, the Company was exercising its rights. The Union placed on record that such an explanation was unsatisfactory and disruptive of industrial harmony [see page 14 of Bundle UB-1].

21.12.2009

The Company writes to En. Shatiri, on the pretext that since he was promoted with effect from 15.10.2008, he is disqualified to be

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a member of the Union. The Company asks En. Shatiri to take the necessary action to immediately cease from being a member of the Union [see page 20 of Bundle UB-1].

28.12.2009

En. Shatiri replies appropriately, *inter alia* that the Company cannot take the stand that he has accepted the promotion, as his queries were never answered by the Company, despite his several reminders [see pages 21 to 22 of Bundle UB-1].

25.1.2010

Union lodges a complaint to the Honourable Minister of Human Resources, the DGIR and the Director of Industrial Relation, Selangor, pursuant to section 4, 5 and 7 of the IR Act 1967, complaining about the various

<u>Date</u>	<u>Event</u>
	actions on the part of the Company in disrupting the Union activities [see pages 28 to 31 of Bundle UB-1].
11.2.2010	<b>The Company issues a NOTICE TO SHOW CAUSE to En. Shatiri, preferring two allegations of misconduct [see page 36 of Bundle UB-1].</b>
17.2.2010	En. Shatiri replies appropriately highlighting that the document that was allegedly breached by the Claimant, was obsolete [see pages 37 to 42 of Bundle UB-1].
8.3.2010	The Company issues the Charge Letter and Notice of Domestic Inquiry (“D.I.”), amending the charge (after the benefit of the Claimant’s reply to the Notice to Show Cause) for breaching the practice of the Company. [see pages 43 to 44 of Bundle UB-1].

<u>Date</u>	<u>Event</u>
17.3.2010	En. Shatiri writes to En. Halim, objecting to his role as the prosecuting officer, and <i>inter alia</i> identifying him as a witness, given the fact, that he had asked En. Shatiri to vacate the post of President of the Union. En. Shatiri had also stated clearly that the D.I. against him was an orchestrated attempt to victimize him for his Union activities [see pages 43 to 44 of Bundle UB-1].
Undated	The Company issues an undated letter to En. Shatiri in response to his letter of 17.3.2010, informing that En. Halim will be the prosecuting officer at the D.I. [see page 50 of Bundle UB-1].
22.3.2010	En. Shatiri places on record that En. Halim is in a position of conflict. [see page 52 of Bundle UB-1].
29.3.2010	En. Shatiri writes to all the panel members of the D.I. placing on record that upon his objection at the commencement of the D.I. convened on 23.3.2010, it was unanimously decided by the panel that En. Halim

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was disqualified to be the prosecuting officer [see page 54 of Bundle UB-1].

8.4.2010

En. Shatiri receives notice that the D.I. will resume on 14.4.2010, without naming the new prosecuting officer [see page 55 of Bundle UB-1].

8.4.2010

En. Shatiri writes to the Chairman of the D.I. panel seeking advice as to who will be the new prosecuting officer. He also places the Chairman on notice that he will need En. Halim as his witness [see page 56 of Bundle UB-1].

**NOTE:**

**When the domestic inquiry resumed, En. Halim continued as the prosecuting officer, despite the decision of the panel earlier.**



<u>Date</u>	<u>Event</u>
13.5.2010	The findings of the panel of D.I. is handed to En. Shatiri, showing that the panel had found En. Shatiri as <b><u>NOT GUILTY</u></b> of the first charge, but <b><u>GUILTY</u></b> of the second charge [see pages 63 to 65 of Bundle UB-1].
15.6.2010	<b>The Company writes to the Union <i>inter alia</i> to state that pursuant to the Honourable Minister's decision that a Manager Grade M1 (Manager Engine) is an executive in the managerial, confidential or security capacity, the Company will not acknowledge En. Shatiri as the Union President, and wanted the Union to take the necessary follow up action [see pages 66 to 67 of Bundle UB-1].</b>
21.6.2010	<b>En. Shatiri writes to the Company, <i>inter alia</i>, rejecting the Company's offer of promotion, in</b>

<u>Date</u>	<u>Event</u>
	the light of the Honourable Minister's letter [see pages 68 to 69 of Bundle UB-1].
21.6.2010	The Union, through its secretary replies to the Company's letter dated 15.6.2010, <i>inter alia</i> highlighting the fact that since En. Shatiri had never accepted the offer of promotion, and as such he cannot be said to have been promoted [see pages 70 to 72 of Bundle UB-1].
25.6.2010	The Company issues a letter to En. Shatiri informing him that he is demoted as a result of the finding of the panel of inquiry, from the Managerial Grade M1, to the Executive Grade E2 [see page 77 or Bundle UB-1].
29.6.2010	En. Shatiri writes to the Company and highlights that the Company cannot demote him, since he never

<u>Date</u>	<u>Event</u>
	accepted the promotion, and had written several reminders about his queries in his letter dated 21.10.2008, which was never replied by the Company. He also reminded the Company that he had officially rejected the promotion vide his earlier letter dated 21.6.2010 [see pages 79 to 80 of Bundle UB-1].
7.7.2010	<b>En. Shatiri writes to En. Norazizan Md Salleh, the Acting Manager, Human Capital, <i>inter alia</i> maintaining his stand that the Company cannot demote him for the reasons explained earlier [see pages 81 of Bundle UB-1].</b>
13.7.2010	The matter is referred to the Industrial Court for adjudication [see page 1 of Bundle UB-1].
16.8.2010	En. Shatiri writes to En. Norazizan Md Salleh, seeking an answer as to why he had not responded to En.

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Shatiri's earlier letter dated 7.7.2010 [see page 87 of Bundle UB-1].

Based on the above chronology of significant events, it is obvious that the Company had taken various steps or measures to interfere and disrupt the Union's activities by attempting to promote En. Shatiri as he Union President (without obtaining his agreement) to the Managerial Grade in order to place him outside the scope of union representation. Besides this the Company even demoted En. Shatiri to his former post and grade when in the first place he had not accepted the said promotion. These actions of the Company have been actually captured in the Union's complaint under section 4, 5 and 7 of the IR Act, 1967 as highlighted above [see pages 28 to 31 of Bundle UB-1].

If the Union's complaint at pages 28 to 31 of Bundle UB-1 is scrutinized, it can be seen that the Union has listed the following events as acts of the Company disrupting the activities of the Union:-

- i. the Company had attempted to force the Union to accept whatever that was proposed by the Company in the CA bargaining process [see 2<sup>nd</sup> paragraph at page 29 of Bundle UB-1].
- ii. when the Union did not accept the Company's proposals, the Company had stopped the check off facility [see last sentence of the 2<sup>nd</sup> paragraph at page 29 of Bundle UB-1].
- iii. members of the Union were not paid salary increments for 2009, although the Company had issued a Notice that amongst other employees, the members of the Union will also be paid increments [see 3<sup>rd</sup> and 4<sup>th</sup> paragraphs at page 29 of Bundle UB-1].
- iv. the Company had attempted to force the Union to reveal the full list of its members to ensure that their names do not appear in the list of employees to be given their annual increments for 2009. On the Union's refusal to comply, the Company threatened to report the Union to Jabatan Hal Ehwal Kesatuan Sekerja [see final three paragraphs at page 29 of Bundle UB-1].

- v. the issue of the Company suddenly promoting the Union President to the Managerial Grade, and trying to force him to accept the promotion and to vacate this position as the President of the Union, despite him not having accepted the promotion in the first place. [see 2<sup>nd</sup> to 6<sup>th</sup> paragraphs at page 30 of Bundle UB-1].

It is undisputed that it was this complaint of the Union pursuant to section 8(2A) of the IR Act, 1967, that led to the matter being referred to the Industrial Court, in the first place. It is also quite clear that the Honourable Minister in his decision to refer the matter did refer the matters complained of by the Union in the plural sense when he used the term “...*Dakwaan Bahawa Majikan Telah Membuat Tindakan-tindakan Bagi Memabasmi Gerakan Kesatuan:....*’. Obviously the term “**Tindakan-tindakan**” refers to more than one action of the Company.

The key dispute is with regard to the issue of promotion and then subsequent demotion of the President of the Union, En. Shatiri. In this regard the following matters must be considered:-

- (i) What then is the dispute concerning the promotion of En. Shatiri. Mansor?

The Union's position is that the Company cannot promote En. Shatiri without getting his consent. The Union claims that this practice of obtaining the Union member's consent before being considered for promotion has been consistently applied. The Company contends that promotion is the Company's prerogative and therefore it need not get his consent.

- (ii) Where then is the Union's evidence that the Company had always practiced of getting the consent of the employee as a Union member before promoting that person?

The Union produced evidence that the Company had sought the consent of En. Shatiri himself in the past and in this regard page 88 of Bundle UB-1 is one such piece of evidence. Vide letter dated 13.08.1990, the

Company had sought En. Shatiri's acceptance before promoting him to the position of MG3 (Superintendent Engine Assembly) by stating the following at the last paragraph of the letter as follows:-

*“Please indicate your acceptance by signing the duplicate copy of this offer letter and return it to the Personnel Executive on or before 17 Aug 90.”*

From a reading of the above, it is clear that it was an offer of promotion, which En. Shatiri had to indicate his acceptance by signing and returning the duplicate copy of the letter.

It is also pertinent to note that the Article on Promotion which had been agreed and signed off by both the Company and the Union at that time, provides that if the employee selected for promotion does not sign the offer letter within 7 working days, it will be deemed that he has rejected the offer. This can be seen at page 25 of Bundle COB-1 which reads as follows:-

*“19.3. Employees who are selected for promotion will be notified in writing and will be required to*



*serve a probationary period not exceeding six (6) months. The employee shall be notified in writing of his promotion, and any changes to the terms and conditions of employment by signing the promotion offer letter within seven (7) working days of receipt failing which it is deemed he has rejected the offer".*

In the Panel's considered view, a reading of the above Article makes it very clear that:-

- a) **firstly**, a letter of promotion is merely an **offer** of promotion;
- b) **secondly**, the employee selected for promotion, quite obviously has a choice, whether to accept or reject the offer of promotion; and
- c) **thirdly**, the probationary period cannot extend beyond a period of 6 months (presuming that the employee accepts the promotion).

It is the Panel's considered view that when the facts of this case are compared with the past practice and agreed terms of the CA on the subject of promotion, it becomes clear that, En. Shatiri cannot be said to

have been promoted merely by the Company issuing the letter of promotion as at page 6 of Bundle UB-1.

Further the Company's prolonged silence on the query of En. Shatiri, as to whether he could continue as a member of the Union, in his "promoted" M1 grade fell on deaf ears.

To fortify that page 6 of UB-1 was merely an offer of promotion, it is pertinent to refer to the evidence of En. Norazizan Md Salleh (COW-1) during the cross-examination on 26.2.2014 before this Court:-

*"4Q: Sila rujuk kepada Soal/Jawap No. 5 di dalam Penyata Saksi (COWS-1). Sila rujuk juga kepada mukasurat 6, UB-1. Adakah pendirian syarikat bahawa apabila surat ini dikeluarkan, En. Shatiri tidak perlu menerima secara bertulis, tawaran kenaikan pangkat?*

*A: Tidak. Ini bukan pendirian syarikat.*

*5Q: Jadi maksudnya, En. Shatiri memang ada pilihan samada menerima atau menolak kenaikan pangkat, setuju?*

*A: Setuju.*

*6Q: Oleh itu, anda juga setuju bahawa mukasurat 6, UB-1 merupakan satu tawaran kepada En. Shatiri untuk dinaikkan pangkat?*

*A: Setuju.*

7Q: Rujuk kepada mukasurat 88, UB-1. Rujuk kepada perenggan terakhir disitu. Seawal-awal bulan Ogos 1990, amalan syarikat apabila membuat tawaran kenaikan pangkat adalah untuk mendapatkan penerimaan dan persetujuan pekerja terlibat?

A: Yes, based on this letter.

8Q: Rujuk kepada mukasurat 25, COB-1. Lihat Article 19.3. Setuju bahawa mengikut perenggan ini, seorang pekerja yang ditawarkan kenaikan pangkat perlu menandatangani surat tawaran dalam tempoh masa 7 hari, kalau beliau terima tawaran?

A: Setuju.

Based on the evidence above, it is clear that even the Company's witness had agreed that the letter at page 6 of UB-1 was merely an offer until the Company obtains the consent of En. Shatiri where he expressly indicates his agreement to accept the said promotion. This was not the case here.

(iii) What then is the motive of the Company in attempting to promote the President of the Union without getting his prior consent?

It is the Panel's considered view that it was to ensure that he fell out of the scope of the Union, and could therefore no longer lead the Union, whilst the 1<sup>st</sup> CA was being litigated in the Industrial Court. This is clearly an attempt to not only disrupt the activities of the Union, but also to attempt to interfere with the right of the Union President to

participate in the lawful activities of the Union, contrary to sections 4(1) and 5(1)(a)(c)(e) of the IR Act, 1967. In fact, the motive of the Company was clearly stated by COW-1 during his supplementary questions in examination in chief as follows on 26.02.2014:-

*“37Q: Sila lihat mukasurat 7, UB-1. Sila beritahu mahkamah apa yang anda telah beritahu kepada En. Shatiri?*

*A: Saya beritahu En. Shatiri secara lisan, dengan kenaikan pangkat ke jawatan Manager, beliau telah terkeluar daripada skop keahlian KEA dan dengan itu, dengan sendirinya beliau tidak lagi menjadi Presiden KEA.*

As can be seen from the above, it is crystal clear that the Company not only interfered with the lawful activities of the Union, it had also transgressed the law by interfering with the En. Shatiri's participation in the lawful activities of the Union. There can be no clearer example of unlawful labour practice and victimization, like in the instant case.

### **Conclusion and Remedy**

In the Panel's considered view based on the evidence adduced during the trial it is quite obvious that:-

- 1) The Company did not have regard to past practice of seeking En. Shatiri's consent before carrying out the promotion exercise. The Company must respect and give credence and practical effect to past practice of seeking the union member's acceptance before promoting him. To ensure that the parties give positive effect to this past practice and to preserve industrial peace and harmony between the Company and the Union the Court hereby makes an order pursuant to s30(6) of the IR Act 1967 that prior to promoting a Union member to a higher position the Company must seek his or her written acceptance first in keeping with past practice.
- 2) Since such past practice of obtaining written consent was not applied in the case of En. Shatiri, the Court in the exercise of its powers vested under s30(6) of the IR Act, hereby rule that the promotion of En. Shatiri, the President of the Union vide Company's letter at page 6 of UB-1 was unlawful and /or unfair labour practice in the first place since the Company blatantly breached its own past practice. The only reason the Court can

think of in the instant case as regards the Company's purpose in promoting En. Shatiri was to ensure that he is out of the scope of the Union and accordingly will not represent the Union. If this can be done to a President of a Union, this Court cannot imagine what can happen to ordinary members of the Union who may be ignorant of what the existing past practice is.

- 3) Since the Court has ruled that the said Promotion at the inception was unlawful, it logically follows therefore that the Court also rules that the punishment of demotion of the Union President is unlawful and meaningless since he could not be demoted from the wrongly promoted position in breach of the said existing past practice. This ruling does not mean that the Company's prerogative to promote or demote is curtailed. What it means is that where there has been existing past practice then the Company must abide by this practice, otherwise it becomes a mockery and consequently industrial peace and harmony between the Company and the Union may be difficult to achieve and be maintained.

Authority for the proposition in law that the Industrial Court has jurisdiction to order what the Union has asked about En. Shariti Mansor's demotion, is the clear provision of section 30(6) of the IR Act, 1967, which reads as follows:-

**“30(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 the matter of the reference to it under section 20(3) but may include in its 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)”.**

In the case of Syarikat Kenderaan Melayi Kelantan Berhad v Transport Workers' Union [1995] 2 MLJ 317, the Court of Appeal in the judgment of His Lordship Gopal Sri Ram J held as follows at page 357 of the report:-

*“in my judgment, the limits imposed by s30(6) will not be exceeded, so long as there is rational nexus between the relief and the dispute it seeks to resolve, bearing in mind that a flexibility of approach is called for when considering the relief that is to be granted by the court in*

*a particular case. This then is the true extent of the court's power under s30(6) of the Act."*

Finally, since the Court has ruled that Union President's promotion is wrongful and consequently his demotion has also been ruled as being unlawful and/or an unfair labour practice, this Court therefore based on equity and good conscience logically orders and directs that with immediate effect the Company shall remove from its records the promotion and demotion of En. Shatiri pursuant to the powers contained in s30(6) of the IR Act 1967 as there is clear rational nexus between Union's complaint and the just and equitable relief granted by this Court in order to resolve the dispute under reference pursuant to s8(2A) of the IR Act 1967.

**HANDED DOWN AND DATED THIS DAY 30<sup>th</sup> SEPTEMBER 2014**

*- signed -*

**(P IRUTHAYARAJ A/L D PAPPUSAMY)**

**PENGERUSI**

**MAHKAMAH PERUSAHAAN MALAYSIA**

**KUALA LUMPUR**