

**INDUSTRIAL COURT OF MALAYSIA**

**CASE NO. 1/1-238/10**

**BETWEEN**

**KESATUAN KEBANGSAAN WARTAWAN MALAYSIA**

**AND**

**UTUSAN MELAYU (MALAYSIA) BERHAD**

**AWARD NO : 746 OF 2011**

**Coram :** Y.A PUAN SUSILA SITHAMPARAM – PRESIDENT  
MR. GILBERT JOHN AROKIA RAJ – EMPLOYEES' PANEL  
PUAN MAHURAN SARO BINTI SARIKI – EMPLOYERS' PANEL

**Venue** : Industrial Court, Kuala Lumpur.

**Date of filing of Form S** : 23 March 2010.

**Date of hearing and oral submissions** : 12 April 2011.

**Representation** : Mr. M. Ravindra  
Messrs Murugavell Arumugam  
Counsel for the complainant/union.

Tuan Haji Zaikon bin Jaafar  
Senior Industrial Relations Consultant  
Malaysian Employers Federation  
for and on behalf the respondent/company.

## **AWARD**

This is an application for an order of non-compliance of article 44 of the collective agreement dated 5 September 2006 between Kesatuan Kebangsaan Wartawan Malaysia (hereinafter referred to as “the union”) and Utusan Melayu (M) Bhd (hereinafter referred to as “the respondent”), cognizance number 281/2006 (hereinafter referred to as “the said collective agreement”). The application was made by the union.

The respondent did not pay its employees a bonus of two months wages for 2009. The respondent had given its employees an *ex gratia* payment of one month wages each for 2009.

Article 44 in its original language read:

“Bayaran bonus dua (2) bulan hendaklah merupakan satu ikatan bagi Syarikat mengeluarkannya untuk para pekerja tiap-tiap tahun, jika Syarikat mendapat keuntungan dalam tahun yang berkenaan.”

## **Submissions by counsel for the union**

Counsel for the union contended that the respondent had made profits in the financial year ending 31 December 2009. It has several subsidiary companies. Its profits as a group was RM5,120,938 as shown in the Directors' Report and Audited Financial Statements as at 31 December 2009 *vide* Bundle RB2, page 1.

The income statement of the respondent as an individual company showed a loss of RM26,169,490 as at 31 December 2009 *vide* Bundle RB2, page 15. Counsel for the union contended that the loss of RM21,624,448 for the depreciation of property, plant and equipment should not be taken into consideration in deciding the profits of the respondent.

He cited the decision of the Industrial Court in Pangkor Island Resort Sdn Bhd, Ipoh v National Union of Hotel, Bar and Restaurant Workers, Case No 1: 2/2-318/88, Award 241 of 1989 (Unreported) in support of his contention. That case was a trade dispute on the terms of a collective agreement where the Industrial Court had to decide on the financial capacity of a the company to pay a salary adjustment, annual increment and bonuses

to its employees.

He submitted that RM29 million which was for “doubtful debts” and which was under the head “other expenses” in the income statement for the respondent as an individual company should not be taken into consideration in deciding the profits of the respondent.

RW1, the Chief Financial Officer of the respondent testified that the amount for doubtful debts was in accordance with the Financial Reporting Standard 139 which came into force in 2010. The respondent had not made any demand on its subsidiary companies which owed it money. RM19 million is owed by Utusan Printcorp Sdn Bhd and RM8.4 million is owed by Utusan Publications and Distributors Sdn Bhd which are subsidiary companies of the respondent.

She admitted that the RM37.5 million which is owed by Utusan Media Sales Sdn Bhd which is another subsidiary of the respondent came from the operating profits of the respondent. The employees of that subsidiary company were given a two months bonus in 2009.

She also admitted that RM76,140,702 is due from the subsidiaries of

the respondent as at 31 December 2009 under the item “other receivables” *vide* Bundle RB2, page 67.

Counsel for the union cited the decision of the High Court in Sykt E-Rete (M) Sdn Bhd v Kesatuan Sekerja Pembuatan Barangan Galian Bukan Logam and another [1991] 1 ILR 708 in support of his contention that depreciation and investment in subsidiaries should not be taken into consideration in deciding whether or not a company had suffered financial losses.

In that case, there was a judicial review of the decision of the Industrial Court which had held that the retrenchment of employees on the grounds of redundancy as a result of financial losses had not been proved by the employer which was a company. The High Court upheld the decision of the Industrial Court.

### **Submissions by the representative for the respondent**

The representative of the respondent submitted that the respondent had made a loss of RM26,169,490 as shown by its income statement as at 31 December 2009. It was entitled to deduct the losses incurred for the

depreciation of property, plant and equipment and also for doubtful debts as that was allowed by accounting standards.

## **Decision**

The respondent being a company is governed by the Companies Act 1965 (Revised 1973). The definition of “profit and loss account” in section 4 reads:

“Profit and loss account includes income and expenditure account, revenue account or any other account showing the results of the business of a corporation for a period.”

As a holding company, the respondent had to comply with section 169(5) and (6), Companies Act 1965 (Revised 1973) which reads:

“165 (5). The directors of a company shall cause to be attached to every balance-sheet made out under subsection (3) a report made in accordance with a resolution of the directors and signed by not less than two of the directors with respect to the profit or loss of the company for the financial year and the state of the company's affairs as at the end of the financial year and

if the company is a holding company also a report with respect to the state of affairs of the holding company and all its subsidiaries.

165 (6). Each report to which subsection (5) relates shall state with appropriate details -

...

- (c) the net amount of the profit or loss of the company for the financial year after provision for income tax.”

In accordance with those provisions, the respondent declared its group profit for 2009 at RM5.121 million in its audited statement of accounts for 2009 in its Annual Report *vide* Bundle RB1, page 6.

The respondent cannot shy away from the fact that it is a holding company and has subsidiary companies. The court held that the word “keuntungan” or “profit” in article 44 of the said collective agreement meant the profits which it made as a holding company in 2009. The union has proved that the respondent had made profits in 2009.

The court ordered that the respondent comply with article 44 of the said collective agreement forthwith. Since the respondent has paid its

employees an *ex-gratia* sum of one month wages each for 2009, it may deduct the sums which had been paid from the bonus of two months wages which is to be paid to its employees for 2009.

**HANDED DOWN AND DATED THIS 24<sup>th</sup> DAY OF MAY 2011**

*signed...*  
**( SUSILA SITHAMPARAM )**  
**PRESIDENT**  
**INDUSTRIAL COURT OF MALAYSIA**