PRESTIGE CERAMICS SDN BHD

v.

NON-METALLIC MINERAL PRODUCTS MANUFACTURING EMPLOYEES' UNION

INDUSTRIAL COURT, KUALA LUMPUR
YUSSOF AHMAD
EMPLOYER'S PANEL: CLAUDIA LAU SAY MIN
EMPLOYEE'S PANEL: SYED SHAHIR SYED MOHAMUD
AWARD NO. 211 OF 2004 [CASE NO: 1/2-983/2000]
28 FEBRUARY 2004

TRADE DISPUTE: *Collective agreement - Terms and conditions of service - Whether in looking at profit and loss account of company, depreciation of company's fixed assets, purchase of fixed assets, taxes and exceptional items should not be taken into account - Whether employees could be granted wage revision and continuation of payment of annual increment and bonus - Whether company's proposal to replace annual increment with productivity linked wage system ought to be allowed*

This was a trade dispute under s. 26(1), Industrial Relations Act 1967 ('Act') between the union and the company. The reference was over the failure of the parties to conclude their collective agreement for the period between 1 January 2000 to 31 December 2002. The background of the case showed that the seventh collective agreement between the parties had expired on 31 December 1999. Before the end of the agreement, the union filed a complaint of non-compliance under s. 56(1) of the Act over the company's failure to pay annual increment and bonus. The company pleaded special circumstances primarily due to its financial incapacity as the reason of its non-payment. The court ordered compliance. However, the High Court on the company's application for judicial review quashed the court's award.

The unions' case was that the company did not suffer from any financial incapacity during the period of 1 January 1996 to 31 December 1998. It contended that in looking at the profit and loss account of the company, depreciation of the company's fixed assets, purchase of fixed assets, taxes and exceptional items should not be taken into account. It therefore prayed for the employees to be granted a wage revision and a continuation of the payment of annual increment and bonus. The union objected to the company's proposals to introduce a productivity linked wage system and to do away with annual increments.

The company's arguments were that it was in a bad financial position during the seventh collective agreement (1997 to 1999), which the union in the previous non-compliance proceeding referred to earlier, had accepted. It therefore could not revise salary or pay annual increment and proposed to introduce a productivity linked wage system.

Held [majority decision in favour of company]:

[1] A wage increase could not be granted as long as the company could not afford it. Further, the company was not bound to continue with the existing wage system of granting annual increment and contractual bonus if it could not afford it. (p. 1181 e-i)

[2] The practice of looking at the financial position of the company at the time of the previous collective agreement is right. This is because the court is not able to forecast what will be the position during the period of collective agreement that the court is deciding. The same practice applies to the Consumer Price Index ('CPI'). The court looks at the increase in CPI during the previous collective agreement because it is unable to forecast the CPI during the collective agreement it is deciding. However, when the court has the accounts for the period of the collective agreement as in this instance, it should look at these accounts. (p. 1182 b-d)

[3] In computing 'real profits/(loss)', in the union's submission, it added to the company's actual profit/loss figures the following items; depreciation of fixed assets, purchase of fixed assets, taxation and exceptional items. However, even by using this method put forward by the union, it still could not be taken into account when computing profits for 2000 and 2001, as the company according to the union did make 'real losses' for those years respectively. The position of the law on this issue is not settled. (pp. 1183 f-g, 1184 b-c)

[4] Having regard to s. 30(4) of the Act and the company's poor financial condition, the wage revision sought by the union was not allowed. The union's proposal for an increase in basic salary was therefore rejected. (p. 1184 e & g)

[5] It was observed that it is not right to have both, the annual increment and the incentives, especially when the company faces financial problems. Thus, considering the requirements of s. 30(4) and s. 30(5) of the Act and the circumstances of the case, the company's proposal to replace the

annual increment with a system of paying incentives which is linked to the company's performance and productivity was thought to be fair and was judiciously endorsed. This system will see the employees rewarded when the performance of the company warrants it, in that there is increase in productivity. Thus, the company's proposal to introduce its productivity linked wage system was allowed. With the introduction of the productivity linked wage system, there will be no bonus, salary adjustment and annual increment. (pp. 1186 b-g, 1187 b-c)

[Ordered accordingly.]

Award(s) referred to:

B Braun Medical Industries Sdn Bhd, P. Pinang v. Persatuan Pekerja-Pekerja B Braun Industries Sdn Bhd, P. Pinang [1998] 1 ILR 417 (Award No. 97 of 1998)

Far East Cotton Industries (M) Sdn Bhd v. Kesatuan Pekerja-Pekerja Membuat Tekstil dan Pakaian Pulau Pinang dan Seberang Perai [2002] 3 ILR 1092 (Award No. 992 of 2002)

Mersing Omnibus Co Sdn Bhd, Johor v. Kesatuan Pekerja-Pekerja Pengangkutan Semenanjung Malaysia [1996] 2 ILR 770 (Award No. 381 of 1996)

Metro Pacific Sdn Bhd v Kesatuan Pekerja-Pekerja Perkayuan Semenanjung Malaysia [2002] 3 ILR 110 (Award No. 616 of 2002)

Pangkor Island Resort Sdn Bhd, Ipoh v. National Union of Hotel, Bar & Restaurant Workers [1989] 2 ILR 750 (Award No. 241 of 1989)

Renaissance Malacca Hotel v. National Union of Hotel, Bar & Restaurant Workers, Peninsular Malaysia [2002] 1 ILR 142 (Award No. 7 of 2002)

Syarikat E-Rete (M) Sdn Bhd v. Kesatuan Sekerja Pembuatan Barangan Galian Bukan Logam [1990] 1 ILR 106 (Award No. 22 of 1989)

Case(s) referred to:

Koko (M) Sdn Bhd v Kesatuan Pekerja-Pekerja Perkilangan Perusahaan Makanan & Anor [2002] 5 CLJ Supp 535

Prestige Ceramics Sdn Bhd v. Kesatuan Pekerja-Pekerja Pembuatan Barangan Bukan Logam & Anor [2001] 5 CLJ Supp 354

Legislation referred to:

Industrial Relations Act 1967, ss. 26(1), 30(4), (5), 56(1)

For the company - R Sivagnanam; The Chamber Of R Sivagnanam & Assocs
For the union - S Muhendaran; M/s Muhendaran Sri

AWARD
(NO. 211 OF 2004)

The Honourable Minister of Human Resources referred to this court a trade dispute under s. 26(1) of the Industrial Relations Act 1967 between the Non-Metallic Mineral Products Manufacturing Employees' Union ("the union")

and Prestige Ceramics Sdn Bhd ("the company"). The reference was made on 27 November 2000 and was over the failure of the parties to conclude their collective agreement for the period 1 January 2000 to 31 December 2002.

The hearing of the dispute started on 25 June 2001. However, it was not completed until 1 August 2003 when the company's submission in reply was received. The president and panel members deliberated on 28 August 2003. The delay in completing the hearing of this case was due to many reasons. On the first day of hearing it was postponed because the union was late in filing its statement of case which was ordered to be filed before 15 February 2002 but it was not filed until 30 May 2001. The company filed its statement in reply on 13 August 2003. Proper hearing was commenced on 18 September 2001. It continued on 17 January 2002 and 18 January 2002. Hearing scheduled for 16 May 2002 and 17 May 2002; 2 August 2002; 6 November 2002, 8 November 2002 and 21 November 2003 were vacated for various reasons at the request of parties for acceptable reasons. Hearing was resumed on 24 February 2003, 25 February 2003 and 26 February 2003; and 11 April 2003. Parties requested to make written submissions. The union submitted its written submission on 12 June 2003, the company on 16 June 2003 and it also filed a submission in reply on 1 August 2003. It is a matter of regret that it took so long to complete the hearing but it is entirely due to the parties. The dispute involves many important issues, the most important of which is productivity linked wage system versus fixed annual increment.

By way of background information, the company is in the business of manufacturing wall tiles. The seventh collective agreement between the parties expired on 31 December 1999. Before the end of that agreement, the union filed a complaint of non-compliance under s. 56(1) of the Industrial Relations Act 1967 over the company's failure to pay annual increment and bonus. The company pleaded special circumstances primarily due to its financial incapacity. The court ordered compliance. However, the High Court on the company's application for judicial review quashed the court's award.

The union's case is that the company was not suffering from any financial incapacity during the period 1 January 1996 to 31 December 1998 which period it contends the court should look at when deciding the collective agreement for 1 January 1999 to 31 December 2002. The union further contends that in looking at the profit and loss account of the company, depreciation of the company's fixed assets, purchase of fixed assets, taxes and exceptional items should not be taken into account. It therefore asks the court to grant the employees a wage revision based on the Harun's formula taking into account the rise in consumer price index (CPI) during the relevant period and to continue paying annual increment and bonus. It strongly objects to the company's proposal to introduce a productivity linked wage system and do away with annual increments.

The company's case is that the company was in a very bad financial position during the seventh collective agreement (1997 to 1999) as found by the court and the High Court and which the union in the non-compliance proceeding referred to earlier accepted. The company went from bad to worse in the period 2000 to 2002. It therefore cannot revise salary, it cannot pay annual increment and wishes to introduce a productivity linked wage system.

The court had heard the evidence of Yap Fook Looi, a senior general manager responsible for the operation of the company on the financial position of the company and the productivity linked wage system proposed by the company. The company also called Sugumar Saminathan, a consultant from the national productivity corporation for his opinion on the company's productivity linked wage system. The union called one of the company's employees, Aminat Dato' Senara Ja'alam to give evidence. Her evidence was to the effect that she had worked for the company since 27 July 1992, her salary was last revised in 1997 and her current salary was RM953 per month. She also testified that the company's proposed productivity linked wage system was never discussed with union or the employees before it was implemented.

The company tendered documentary evidence on the financial situation of the company, the proposed productivity linked wage system and the National Productivity Corporation's opinion on the company's proposal. The union too filed three volumes of documents.

The court having considered the evidence and the submission of learned counsel of the parties by a majority decision decided in favour of the company's proposal. The learned panel member for the employees dissented and wrote a dissenting judgment which will appear later in this award.

We first had to decide the financial capacity of the company. The law on this is very clear. The court cannot grant a wage increase when the company cannot afford it. It would also follow it cannot even continue with the existing wage system of granting annual increments and contractual bonus if the company cannot afford it. In a recent case *Koko (M) Sdn Bhd v. Kesatuan Pekerja-Pekerja Perkilangan Perusahaan Makanan & Anor* [2002] 5 CLJ Supp 535, the learned High Court Judge in quashing the award of the Industrial Court said "I think that considering the financial incapacity of the applicant Company the Industrial Court should not have granted any increase at all". In an earlier case *Mersing Omnibus Co Sdn Bhd, Johor v. Kesatuan Pekerja-Pekerja Pengangkutan Semenanjung Malaysia* [1996] 2 ILR 770, the Court observed "At the hearing before the Industrial Court the Company clearly informed the Court that the Company could not meet any increase in claims". The Industrial Court had granted an increase in wages. The High Court held: "Thus the Industrial Court's decision finding the award is fair in

the face of the clear assertion of the Company's inability to meet the Union's demands in my view is perverse and arbitrary". The Industrial Court's award was quashed.

Now what is the financial position of the company? The union's contention is that first the period to be considered is 1997 to 1999 ie, the period of the previous collective agreement since the collective Agreement to be awarded by the court is for the period 2000 to 2002. The company contends since the accounts for 1999 to 2002 are available the court should look at these accounts as well. The practice of looking at the financial position of the company during the previous collective agreement was right because the court is not able to forecast what will be position during the period of collective agreement which the court is deciding. It is the same as the CPI. The court looks at the increase in CPI during the previous collective agreement because it is unable to forecast the CPI during the collective agreement it is deciding. However, when the court has the accounts for the period of the collective agreement as in this case it should look at these accounts. It is the company's contention that if the financial position during the previous collective agreement (1997 to 1999) was bad, the position during the collective agreement to be decided by the court (2000 to 2002) is worse. In *Prestige Ceramics Sdn Bhd v. Kesatuan Pekerja-Pekerja Pembuatan Barangan Bukan Logam & Anor* [2001] 5 CLJ Supp 354 (the judicial review of the Industrial Court's decision on the union's complaint of non-compliance), the learned judge held:

> This crisis had in a very short time turned the tables on the applicant. It was now faced with a scenario that was the reverse from what it had been accustomed to, in that:
>
> i) the cost of its materials were rising out of all proportions;
> ii) the prices of its products were falling rapidly;
> iii) its overall costs had outstripped revenue;
> iv) its marginal cost was higher than revenue;
> v) the demand for its product fell drastically;
> vi) its unutilised capacity sky rocketed;
> vii) its reserves of over RM18m in January 1998 were depleted to about only RM1m within a short span of time of one year; and
> viii) from a marginal profit of RM1.2m the company plunged to a loss of over RM16m.

The company's position today is as follows:

> i) the Company's unutilised capacity remains at a high level namely 53% in 2000 and 54% in 2001;
> ii) its overseas raw materials cost and dye cost remained at a high level due to exchange factors;
> iii) the shareholders have not taken a single cent in dividends to this very date;

iv) on top of that the principal shareholder namely Johan Holdings Berhad has lent substantial sum of monies to the Company and has not recover a single cent in the form of repayment. In fact, the support from the holding Company has only gone higher and higher. In 1999 it was RM18.2 million, in 2000 the amount rose to RM19.8 million and in 2001 it rose yet again to RM21.3 million;

v) more importantly, the Company has reached a stage where its unit selling price is hardly able to stay ahead of unit costs;

vi) the accumulated losses of the Company to this very date stand at RM32.6 million against a share capital of RM20 million; and

vii) even from a cash position, the net cash which the Company was able to generate from it operating activities in 2001 and 2002 was a mere RM468,672.00 and RM1,481,143.00 in 2002. As compared with RM8.9 million in the year 2000 and RM17.4 million in 1999.

On the other hand the union contends otherwise. Learned counsel for the union submits in 1996, 1997, 1998 and 1999 the company made profit. It only made losses in 2000 and 2001. It submits the company made "real profits/(loss)" for those years follows:

1996 - RM55,296,995
1997 - RM20,011,528
1998 - RM20,610,212
1999 - RM6,068,586
2000 - RM8,400,270
2001 - RM8,803,657

In computing "real profits/(loss)" the union added to the company's actual (as certified by auditors) profit/loss figure the following items: depreciation of fixed assets, purchase of fixed assets, taxation and exceptional items. This is found in the union's written submission Table 4 at p. 23. The basis for this is said to be the decision in *Syarikat E-Rete (M) Sdn Bhd v. Kesatuan Sekerja Pembuatan Barangan Galian Bukan Logam* [1990] 1 ILR 106 which was upheld by the High Court. The Industrial Court in this case allowed the union to add taxation, purchase of fixed assets, depreciation and investment in subsidiary to be added to the alleged loss by the company and this yielded a profit. This decision seemed to have been followed in *Pangkor Island Resort Sdn Bhd, Ipoh v. National Union of Hotel, Bar & Restaurant Workers* [1989] 2 ILR 750 (Award No. 241 of 1989). Against this argument, the company submit the court should accept the finding of the company's auditors which certified losses in 1999, 2000 and 2001 relying in the decision of this Court in *Far East Cotton Industries (M) Sdn Bhd v. Kesatuan Pekerja-Pekerja Membuat Tekstil dan Pakaian Pulau Pinang dan Seberang Perai* [2002] 3 ILR 1092 and *Renaissance Malacca Hotel v. National Union of Hotel, Bar & Restaurant Workers, Peninsular Malaysia* [2002] 1 ILR 142,

the court is aware that this issue is far from being settled and the *Renaissance Malacca Hotel* case (*supra*) is being appealed to the Court of Appeal.

However, one thing is clear. Even using the method put forward by the union ie, depreciation etc, cannot be taken into account when computing profit in 2000 and 2001, the company according to the union did make "real loss" of RM8,400,270 and RM8,803,657 respectively.

The court made a finding of fact based on the evidence produced and the opinion of the Malaysian Accounting Standard Board and International Labour Office "that it is necessary to cover depreciation, pay interest and maintain reserves if a business is to survive," the company was in a bad financial position during the years of the previous collective agreement and in 2000 and 2001.

The union's proposal is for an increase in basic salaries of between 6.62% and 7.36% and the continuation of paying annual increments of between RM50 and RM72.

The court in making a decision on the union's proposal besides taking into account the financial position of the company also takes into account the law on this issue. Firstly there is s. 30(4) of the Industrial Relations Act 1967 which provides:

> In making its award in respect of a trade dispute, the Court shall have regard to the public interest, the financial implications and the effect of the award on the economy of the country, and on the industry concerned, and also to the probable effect in related or similar industries.

Secondly the court takes into account s. 30(5) of the Act which provides:

> The Court shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal form.

Having regard to the law and the circumstances peculiar to this case ie, its poor financial condition, the court cannot allow the wage revision sought by the union. It therefore rejects the union's proposal for an increase in basic salary.

With regard to a claim for the continuation of the payment of annual increment, the company's reply is that the practice of giving annual increment is no longer appropriate and it should be replaced with a system that only rewards employees based on performance and an increase in productivity.

The company submits the report of Eugene McCarthy of the International Labour Organisation in 1987 entitled "The Wage and Salary System in Malaysia Chapter 3 - The Wage System in the private sector" in showing

that in Malaysia an employee's basic salary increased by 75% in six years due to the salary revision made every three years (when a collective agreement is signed) and the granting of annual increment of about 5%. This increase is not related to his productivity or the company's financial position. The Malaysian National Labour Advisory Council in 1996 adopted a very general set of guidelines to rectify this anomaly. It advocates a wage reform to provide for a productivity linked wage system. The Government National Economic Action Committee (NEAC) also made recommendation that the public sector should adopt productivity linked wage system. The Industrial Court had from time to time to remind the private sector to consider seriously the merits of a productivity linked wage system. It did so in *B Braun Medical Industries Sdn Bhd, P. Pinang v. Persatuan Pekerja-Pekerja B Braun Industries Sdn Bhd, P. Pinang* [1998] 1 ILR 417 and in *Metro Pacific Sdn Bhd v. Kesatuan Pekerja-Pekerja Perkayuan Semenanjung Malaysia* [2002] 3 ILR 110.

The company in the case before this court has devised and implemented a productivity linked wage system which grants incentives which are determined by the performance or productivity of the plant manned by the employees. The mechanics of the system was explained at length by the company's first witness and the consultant from the National Productivity Corporation (NPC). The system is set out in the company's document Co.B3 and the consultant's report is in Co.B5. Very briefly an employees get a bonus payment when the Company achieves a turnover level of RM70 million in a year. Subsequently this is amended to productivity volume in the form of square meters (m2) of saleable products (ie, finished tiles). Employees start to get incentive in terms of bonus when the production reaches 5.5 million square meters of tiles. The bonus is 0.25 months salary. It increases to two months bonus when production reaches 6.5 million square meters of tiles.

The company also pays a monthly incentive based on the productivity index (PI) achieved by the plant. The PI is the ratio of output over input. The output is the plant's capacity per day times 28 working days at 65% efficiency less 8% reject. The input is total machine man hours used which consists of machine hours in a month [in the case of the company: 4 lines x 2 shifts (for wall tiles) + 2 lines x 3 shifts (for floor tiles). This is multiplied by 7.1 hours x 28 days. This is further multiplied by 90 people working per shift.] The actual figures appear at p. 7 of Co.B5. This gives a PI of 1.34. The incentive is paid if the plant achieves this index. A higher incentive is paid if a higher PI of 1.61 is achieved. The incentives vary according to the employee's grade and the level of PI achieved. The detailed working of the system is described in Co.B3 and Co.B5. The evidence of the company's first witness is that it has been implemented on trial run from January 2000 and has to date paid out incentives of RM80,134.15.

The evidence of the consultant from NPC is that the system is linked to productivity and performance. Learned counsel submitted that the company's proposal bears close resemblance to the system used in B Braun. In B Braun there is also no payment of annual bonus.

The union through cross-examination of the company's witness and its learned counsel's submission criticized the company's proposal. Learned counsel for the company in his submission replied to the criticism. Having gone through the criticism and the reply, the court observed that it is not right to have both the annual increment and the incentives, especially when the company faces financial problems. The company is prepared to have a provision in the agreement providing for the company to disclose its production data and to permit the union to inspect the documents to verify the production volume and the PI. The union also complained that the proposal was not discussed with the union before it was implemented. The company replied that there was no need for the agreement of the union. It pointed that the guidelines issued by the government are not statutory. It is not fatal to the company's case.

Having considered again the requirements of s. 30(4) and s. 30(5) of the Act and circumstances of the case, we find that the company's proposal to replace the annual increments with a system of paying incentives which is linked to the company's performance and productivity is fair and equitable and we endorse it. This system will see the employees rewarded when the performance of the company warrants it in that there is increase in productivity. The company is spared the extra expense in terms of annual increment when there is no value added to the employee's performance which was once thought to be the basis of annual increments. The introduction of this system will further improve productivity and make the country's products more competitive. Making our products more competitive will ensure our survival in the face of competition from our neighbours. This is definitely the order of the future in light of globalisation now taking place. For these reasons we allow the company's proposal to introduce its productivity linked wage system. It shall use the volume of production in terms of square meters of saleable products instead of volume of turnover in Ringgit to measure Productivity Index. It should provide in the agreement the duty of the company to disclose the required information agreed to by the company as follows:

> The Union and the house committee may verify the monthly production data of the Company including data of daily production.
>
> The Company shall permit the Union to inspect at a suitable time mutually agreeable to both parties all documents pertaining to its monthly production data and daily production data.

According to the union, the parties have agreed to all articles of the agreement except:

(a) Article 26 - Bonus
(b) Article 32 - Salary Adjustments and Arrears of Pay
(c) Article 38 - Retrospective Benefits
(d) Appendix 1 - Salary and Increment

With the introduction of the productivity linked wage system, there will be no bonus, salary adjustment and annual increment. In so far as art. 38, there is no need for this article since the company had paid out the incentives from 1 January 2000.

The parties may want to prepare the fair copies of the agreement to include the articles agreed by them and the productivity linked wage system as approved by the court and described in Co.B3 and Co.B5.

The minority decision of Employees Panel Member is as follows:

> The Industrial Court, in handing down an Award brought before it as a trade dispute, is bound to recognise the provisions of Section 30(4) of the Industrial Relations Act 1967 by taking into account "... public interest, the financial implications and the effect of the Award on the economy of the country, and on the industry concerned, and also to the probable effect in related or similar industries."
>
> The company however, in proposing a radical transformation of the concept of the collective agreement, has blatantly disregarded this provision in failing to take into consideration the interest of its employees. On the wider realm of things, any effect of such a transformation as proposed by the company, would have an adverse impact on society at large.
>
> It is recognised that it is imperative and critical that businesses make profits and enhance its competitiveness to stay relevant in the long-run. However, it must be recognised also that it should be balanced against having to protect the interest of society at large.
>
> The company's proposal to withdraw the fixed quantum of 1.75 months bonus payable to employees should be rejected. If one were to look at an employee's remuneration package on an annual basis, what is sought by the company is to reduce the package of the employees. The company also seems to project bonus as a 'gratis' payment to the employees. This notion would have to be demystified as it forms a contractual term of the collective agreement.
>
> Where an employer seeks to withdraw or reduce any term of contract of employment with any individual employee, it has to seek the agreement with the employee concerned and only where a bilateral agreement is obtained does it become valid. If this court were to agree to proposals of this nature brought

about by companies, it is effectively rendering collective agreements as subservient to individual contract of employment, which cannot be the intention of parliament when it had enacted the Industrial Relations Act 1967.

The way forward in driving sustainable structural productivity improvements would be for companies to maintain the current status of things as far as contractual bonus payments are concerned and put in place an acceptable and equitable productivity improve mechanism on top of what employees are earning now.

With regard to the salary adjustment, it is opined that the court should make an award which would reflect the needs of the employees and society at large. To confine any award to the widely-used principle of between 60% to two-thirds of the increase in the Consumer Price Index (CPI) would seem unfair to the employees and society at large. When the guideline had been enunciated in Award 117 of 1982, the prevailing rate of the CPI during those times were most often in double-digits. Companies would have found it difficult to meet the full complement then. In these times, the CPI increase is of in the region of 5% and the court should seriously consider enunciating a departure from the Harun's guideline by awarding at least the full of the CPI increase.

The proposal of the Company in introducing a Productivity Linked Wage System should not be accepted as it is unclear and it would have a deleterious impact on the morale at the workplace should it be implemented. What has to be worked out, for such a system to actually have its intended effect, would be for there to be a 'safety net' in terms of adjustments to take into account CPI increases and incentive schemes to work on top of that.

The proposal of the Company to do away with fixed annual increments must be described as a draconian. If the intention of the Company is genuine, it would introduce an incentive scheme to operate on top of the fixed annual increment pattern.

It is indeed the Industrial Court is of the view that a productivity linked wage mechanism should be put in place, it would use the guidelines as set out in, "The Guideline of Wage Reform System" adopted by the National Labour Advisory Council on 1st August 1996 where it has prescribed that wages should comprise of the following:

FIXED COMPONENT

1) Basic wage,
2) Annual Increment,
3) Contractual Bonus.

VARIABLE COMPONENT

1) Wage increases for the year based on a productivity profit sharing formula.

As for the variable component, it should be stressed, should be one which is equitable and accepted through the process of negotiation between the union and the management. As set out in the said guidelines the Company and Union must negotiate when introducing such Productivity Linked Wages not using the Industrial Court as a vehicle to impose the Company's proposal.

The annual increment in this case, it is viewed, should rise in tandem with the increase in the Salary Adjustment.

It would have to be qualified here that whilst everyone, the trade union movement included, is for productivity gains, it has to be a system which operates with an equitable mechanism. One cannot simply withdraw what the employees are currently getting and hope to implement an arbitrary system which would operate at the whims and fancies of the employers. This would have a very board effect on the morale at the workplace and would, in the long-run, be a disservice to employers. One cannot help but come to the conclusion that the manner which such are proposed by employers thus far is actually with the intention to take the initiative away from the Union.

For a productivity improvement system to work, it is held that employers should engage unions and its employees in discussions and obtain their buy-in voluntarily.