INDUSTRIAL COURT OF MALAYSIA

23(2)/2-2567/18

BETWEEN

KESATUAN KEBANGSAAN WARTAWAN SEMENANJUNG MALAYSIA

VS

SIN CHEW MEDIA CORPORATION BERHAD

AWARD NO: 2026 OF 2019

BEFORE	:	**Y.A. RAJENDRAN NAYAGAM - CHAIRMAN** **MR. GILBERT JOHN AROKIA A/L ADAIKALASAMY (Employees' Panel)** **MR. ANANDARAJU A/L A. MOOKKAPILLAI (Employers' Panel)**
VENUE	:	Industrial Court Malaysia, Kuala Lumpur
DATE OF REFERENCE	:	03.08.2018
DATES OF MENTION	:	25.09.2018, 29.11.2018, 15.01.2019, 26.02.2019, 28.05.2019, 24.06.2019
DATE OF HEARING	:	08.07.2019
REPRESENTATION	:	Mr. Ravindra Murugavell Messrs Murugavell Arumugam & Co. (Counsel for the Claimant) Mr. Yiew Voon Lee Messrs CH Yeoh & Yiew (Counsel for the Company)

Award

1. This is a reference under section 26[2] of the Industrial Relations Act 1967 ["the Act"] made on 3rd August 2018 pertaining to the trade dispute between **Kesatuan Kebangsaan Wartawan Semenanjung Malaysia** ["the NUJ"] and **Sin Chew Media Corporation Berhad** ["the Company"].

2. The trade dispute relates to the Collective Agreement for the period from 01.01.2017 to 31.12.2019. The parties were in the process of negotiating the collective agreement. All the articles were resolved except for article 39 relating to salary adjustment. The NUJ, which was representing the journalists in the company had initially asked for an increment of 15% across the board. This was rejected by the Company. The NUJ then counter offered for an increment of 5% plus RM180.00 to the basic salary. On 08.01.2018 the Company responded with an offer of RM50.00 across the board. Thereafter there were no further negotiations. The NUJ then unilaterally declared a deadlock and on 13.04.2018 referred the matter to the Director of Industrial Relations. Subsequently, on 03.08.2018 the Honourable Minister referred the matter to the Industrial Court as a trade dispute.

3. The Background Facts.

The Company in the present case had undergone numerous ownership changes, resulting in change of the name of the Company. From its early inception, the NUJ was representing the journalists in the company. However, when the present company took over the management, they only granted recognition to NUJ in 2009. They had earlier in 1989 granted recognition to the in-house union called

the Kesatuan Pekerja-Pekerja Sin Chew Media Corporation ["KPSCM"]. KPSCM represented all categories of employees in the company including the journalists. Hence, the Company faced a novel situation of having two unions representing their employees, who were journalists. In 2018, the NUJ represented 129 journalists in the Company and the KPSCM represented 295 employees in the Company including the journalists.

The Company had been simultaneously negotiating the collective agreement with both the unions. They had negotiated [9] collective agreements with KPSCM and at the same time had concluded [2] collective agreements with NUJ. Although, the collective agreements were overlapping, there was no problem as the terms in both collective agreements were the same. The problem arose when the parties were negotiating the collective agreement for the period 01.01.2017 to 31.12.2019, [hereinafter referred to as "the current CA"] which was the 10th collective agreement for KPSCM and the 3rd collective agreement for NUJ.

When the Company was negotiating the current CA with the two unions, they had a problem with the Article relating to the salary adjustment. In the case of NUJ, it was Article 39 and Article 40 for KPSCM. The NUJ had asked for an increment of 15% across the board and KPSCM had asked for an increment of 6% plus RM200.00 across the board. The Company had a meeting on 10.03.2017 with both the unions and briefed them on the challenges faced by the media industry. On 04.12.2017 the NUJ counter proposed for an increment of 5% plus RM180.00 to the basic salary and on 11.01.2018 KPSCM counter proposed that they be given one increment over the salary as at 31.12.2016. On 18.01.2018 the Company accepted KPSCM's counter offer and this led to the signing of the current collective agreement

with them on 22.02.2018, which was given cognizance by the Industrial Court. The Cognizance number is 054/2018.

After the current collective agreement had been concluded with KPSCM, the Company did not further negotiate the 3rd collective agreement with NUJ. However, following the past practice of the company having signed collective agreements with both unions, naturally NUJ was waiting to conclude their 3rd collective agreement with the company. When the company did not respond further, they declared it as a deadlock and referred the matter to the Director of Industrial Relations.

4. The issues to be determined by the Court were:

[i] Whether the Company had concluded a collective agreement on 22.02.2018 with KPSCM for the period 01.01.2017 to 31.12.2019?

[ii] If so, was there a pending trade dispute between the Company and NUJ on 13.04.2018?

Evaluation

As stated above, the failure to conclude the 3rd collective agreement by the parties has been referred to the Industrial Court as a trade dispute under section 26[2] of the Act. In order to answer the issues as stated above, it is important to understand the nature of a collective agreement and more importantly, its binding effect on the parties.

With the ratification of the ILO Convention 98 on Right to Organise and Collective Bargaining by Malaysia on 5th June 1961, steps were taken to establish

the machinery for collective bargaining and collective agreements. This was done by incorporating Part IV of the Act relating to collective bargaining and collective agreements.

A collective agreement is the successful outcome of collective bargaining by an employer and union. The Act defines a "collective agreement" to mean an agreement in writing concluded between an employer on the one hand and a trade union of workmen on the other and relating to the terms and conditions of employment agreed upon for a specified period. Please note that the definition states "a trade union of workmen" meaning one union and not two as in the present case.

Binding Effect of Collective Agreement

What is important to note is that once a collective agreement has been concluded by an employer and union and has been taken cognizance of by the Court, then section 17 of the Act will apply. Section 17 provides as follows;

17. Effect of Collective Agreement.

(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 of transferees; and

(b) all workmen who are employed or subsequently employed in the undertaking or part of the undertaking to which the agreement relates.

(2) As from such date and for such period as may be specified in the collective agreement, it shall be an implied term of the agreement that the rates of wages to be paid and the conditions of employment to be observed under the contract shall be in accordance with the agreement unless varied by a subsequent agreement of a decision of the court.

The Federal Court in the case of ***Kesatuan Kebangsaan Wartawan Malaysia v. Syarikat Pemandangan Sinar Sdn. Bhd. [2001] 3 MLJ 705*** in dealing with section17[1] [b] stated as follows:-

"It is accepted that a collective agreement is one entered into between the employer and the employees or union of workmen normally for a period of three years*. Under s 17(1)(b) of the IRA, all employees are bound whether or not they are members of the union which negotiated the collective agreement, or whether they join as employees subsequent to the date of the collective agreement. This provision in the IRA cuts across the law of contract and is meant for the general application of the collective agreement on all employees of a company.* In or view, he same approach must apply to s 17(1)(a) of the IRA involving employers. The rationale is one of continuity of the collective agreement from the original parties and members of the union to their successors, assignees or transferees. *It is meant to ensure that the rights and obligations of the parties to the collective agreement be preserved by those*

taking over from the original parties so as to maintain what Mohd Azmi J in Dunlop Estate Bhd has aptly described as 'good working relationship and fair dealings between the employers and workers and their trade union, and the settlement of any differences or disputes arising from their relationship'. And we may add that this is essential in promoting social justice, industrial peace and harmony in Malaysia" **(emphasis added)**

In the present case, at the time KPSCM had been negotiating the 10th collective agreement with the Company, it had 295 members including the journalists. When the 10th collective agreement was concluded on 22.02.2018 and subsequently given cognizance of by the Court on 06.03.2018, the 10th collective agreement took effect as the current collective agreement. Henceforth, all the journalists in the company whether they were members of KPSCM or NUJ were bound by the current collective agreement by virtue of section 17[1] [b] of the Act. What this means is that the offer of one increment over the salary as at 31.12.2016 by KPSCM will now apply to all the journalists. It now became an implied term in their contracts of employment with the Company, by virtue of section 17 [2]. A further effect is that neither the Company or Union could unilaterally vary the terms and conditions of employment. [See ***National Union of Hotel, Bar and Restaurant Workers Peninsular Malaysia v. Shangri-la Hotels [Malaysia] Bhd. [2017] 2 ILR 433 FC***]

Hence, when the Company concluded the current collective agreement with KPSCM on 22.02.2018, it rightly did not pursue the 3rd collective agreement with NUJ. This is because the issue of across the board salary increase had been settled and the company's journalists who were members of NUJ were bound by the current

collective agreement by virtue of section 17[1] [b]. Further, section 17 [2] states inter alia that the implied term of the contract of employment has to be observed unless varied by a subsequent agreement or a decision of the Court. This bars the Company from entering into another collective agreement with NUJ for the same period on different terms and as such, it is not tenable for NUJ to say on 13.04.2018 that there was a deadlock.

As regards to whether there was a pending dispute under section 26[2], the Company and NUJ could not conclude the 3rd collective agreement because they could not agree on Article 39 relating to across the board salary increase. But in reality, when NUJ referred the dispute to the Director of Industrial Relations on 13.04.2018, there was no dispute between the Company and journalists on the issue of across the board salary increase, as the matter had been settled by KPSCM on 22.02.2018 and the term relating to the salary increase had been incorporated into the current collective agreement. Hence, based on the binding effect of section 17, we are of the considered view that there was no trade dispute subsisting to be referred.

Finally, we would like to address the issue of dual representation. The whole purpose of collective bargaining and collective agreement is to promote and maintain industrial harmony. It is evident from this episode that the Company having to deal with two unions representing the journalists does not augur well for industrial harmony. On the issue of multiplicity of unions under section 15[2] of the Trade Unions Act 1959, we wish to draw the attention of the Company to what the Federal Court said in the case of ***National Union of Newspaper Workers v. Ketua Pengarah Kesatuan Sekerja [2000] 4 CLJ 241*** which was as follows:-

"Finally I come to section 15(2) (b) of the Act which the learned trial Judge should have invoked by the 1st Appellant (Ketua Pengarah Kesatuan Sekerja). Section 15 deals with circumstances when the 1st Appellant can cancel for withdraw the registration of a trade union. Sub-section (2) is concerned with the existence of two or more trade unions in a particular trade, occupation, industry of place of employment, and paragraph (b) of that subsection empowers the 1st Appellant to deal with the matter. Clearly subsection (2)(b) reflects the purpose and objective of trade unions in that only one trade union registered for a particular trade, industry, occupation and establishment can represent employees engaged in similar interests."

5. Order

For the reasons given above, we are unanimous in dismissing the claim of the Union.

HANDED DOWN AND DATED THIS 12th DAY OF JULY 2019.

-Signed-

(RAJENDRAN NAYAGAM)
CHAIRMAN
INDUSTRIAL COURT MALAYSIA
KUALA LUMPUR