

**IN THE INDUSTRIAL COURT OF MALAYSIA
[CASE NO: 21/3-853/20]**

BETWEEN

**KESATUAN SEKERJA INDUSTRI ELEKTRONIK WILAYAH
BARAT SEMENANJUNG MALAYSIA**

AND

CHEMI-CON (MALAYSIA) SDN BHD

AWARD NO. 85 OF 2024

BEFORE : **Y.A. TUAN SYED NOH BIN SAID
NAZIR @ SYED NADZIR -
CHAIRMAN**

**EN. MOHD KAMARULZAMAN
BIN ZAINAL - EMPLOYEE'S
PANEL**

**YBHG. DATO' DR. LIM WENG
KHUAN - EMPLOYER'S PANEL**

VENUE : Industrial Court Malaysia, Kuala Lumpur

DATE OF REFERENCE : 03.07.2020

DATES OF MENTION : 11.08.2020; 19.08.2020; 25.09.2020;
20.04.2022; 26.05.2022; 11.10.2023

DATES OF HEARING : 12.06.2023; 07.08.2023

REPRESENTATION : *For the claimant - Chandra Segaran
Rajandran; M/s Prem & Chandra*

*For the company - Jerry Low Kok
Kiang & Edward Andrew Saw Keat
Leong; M/s Josephine, L K Chow &
Co*

REFERENCE

[1] The dispute before this Court emanates from a Ministerial reference dated 15th July 2020, wherein the Honourable Minister of Human Resources, Malaysia whilst exercising his powers under S. 26(2) of the Industrial Relations Act 1967 pertaining to a trade dispute between the Company and the Union regarding the retirement benefits from the service of Rajandran a/l Natarajan (“Rajandran”).

BRIEF FACTS OF THIS DISPUTE

[2] Rajandran commenced his employment with Toshiba Electronic (M) Sdn. Bhd. (“Toshiba Electronic”) on 22.11.1976. Effective from 15th October 1984, Toshiba Capacitor (M) Sdn. Bhd. (“Toshiba Capacitor”) took over its electrolytic capacitor manufacturing activities from Toshiba Electronic. Rajandran accepted Toshiba Capacitor’s offers to continue his employment under the same terms and conditions of employment as Toshiba Electronic. This includes maintaining his salary, benefits and a continuous contract of service calculated from the date he commenced his employment at Toshiba Electronic. In August 1995, Toshiba Capacitor changed its name to Chemi-Con (M) Sdn. Bhd.

[3] By a letter dated 14.10.2019, the Company formally notified Rajandran of his retirement from his position as an assistant supervisor, with his last date of employment set for 27.12.2019. The letter also provided the computation of Rajandran’s retirement benefits, amounting to RM110,708.07. This calculation was based on a retirement benefit rate of 12% applied to his total base salary of RM829,040.19, in accordance with the provisions outlined in *Item 13.4(iii) of the Employee’s Handbook*.

[4] By a letter dated 12.12.2019, Rajandran raised a dispute regarding the calculation of his retirement benefit, alleging that the Company had applied an incorrect computation and formula to determine his retirement benefits (See page 11 of UOB-1). Rajandran supported his claim by referencing and citing a statement made in the 2nd sentence of paragraph

9 of the Company's Financial Statements for the year ended 31 March 2018. He argued that according to the said statement the correct retirement benefit formula for him is 'one month per each year of Service' and he contended that the retirement benefit amount should be RM159,901.00.

Paragraph 9 of the Company's Financial Statements for the year ended 31 March 2018

[5] The whole of the above paragraph reads as follows:

"The Company makes contributions to a defined benefit plan that provides pension benefits for employees upon retirement. Under the scheme, eligible employees are entitled to a retirement benefits of a factor of the last drawn monthly salary for each completed year of service upon the retirement age of 60 (2017:60)"

[6] The Union relies on the underlined sentence as the basis of its complaint. The Company then communicated with Rajandran, clarifying that the formula of one month per each year of service stated in the Company's Finance Statements for the year ended 31 March 2018 applied exclusively to management-level employees (Grade A and above), whereas Rajandran had held the position of assistant supervisor (Grade D), classifying him as a non-management employee.

[7] In response, the Union through its solicitors, issued a letter of demand seeking Rajandran's retirement benefit to be calculated based on a formula of one month for each year of service. (See pages 13 to 14 of UOB-1). The Company, through its solicitors, explained that the applicable retirement benefits formula for Rajandran was as provided for in Item 13.4 of the Company's Handbook, which specifies the formula as 12% x Total Base Salary for an employee who had completed 15 years or more of service with the Company. The Company's solicitors further explained that the formula relied on by the Union as being the applicable formula was only applicable to management employees of which the

Claimant was not. The Claimant was a non-management employee (Grade D) at the time of his retirement. (See pages 110 to 111 of COB-1).

[8] The Union proceeded to lodge a complaint for a trade dispute under 5.18 of the Industrial Relations Act 1967 which led to this reference under S. 26(2) of the same Act.

The Union's Pleas

[9] In its Statement of Case, the union pleads that this court come to a finding that Rajandran is an eligible employee who is entitled to retirement benefit of a factor of the last drawn monthly salary for each completed year of service upon the retirement age of 60; and order the Company to pay Rajandran his entitlement to retirement benefits of a factor of his last drawn monthly salary for each completed year of service upon the retirement age of 60 ie, a duration of 43.1 years and computed as last drawn salary of RM3,710 multiplied by 43.1 amounting to RM159,901.00 less the amount of the retirement benefit since paid; and/or order any other or alternative relief as this Court deems fit and proper.

ISSUES TO BE DETERMINED BY THE COURT

[10] Premised on the above backdraft, the sole issue to be determined by this Court is which retirement benefit formula is applicable to Rajandran ie,:

- (a) 12% of Total Base Salary pursuant to Item 13.4(iii) of the Employee's Handbook; OR
- (b) One month last drawn salary for each completed year of service as reported in paragraph 9 of its 2018 Financial Statement

PLEADINGS AND DOCUMENTS FILED IN COURT

[11] The pleadings and documents filed in Court are follows:

Pleadings /documents	Date	Marked as
Statement of Case	24.09.2020	
Statement in Reply	16.10.2020	
Company's Bundle of Documents		COB-1
Company's Bundle of Documents (2)		COB-2
Company's Bundle of Documents (3)		COB-3
Company's Bundle of Documents (4)		COB-4
Attachment 7: Summary of Members for Actuarial Valuation Report year 2019		COB-5
Company's Witness Statement of Mohd Radzi bin Hassan	09.08.2023	COWS-1
Union's Bundle of Documents		UOB-1
OECD Guidelines For Multinational Enterprises (2011 Edition)		UOB-2
OECD Guidelines For Multinational Enterprises (2011 Edition - Industrial global union)		UOB-3
Union's Witness Statement of Bruno Gentil Periera	12.06.2023	UWS-1

[12] The following witnesses testified before this Court:

Company's Witness

COW-1 - En. Mohd Radzi bin Hassan

Union's Witness

UOW-1 - Mr Bruno Gentil Periera

BACKGROUND ON RETIREMENT BENEFITS IN THE COMPANY

[13] It is undisputed that to reflect the Company's commitment to recognizing and rewarding its employees for their long-term commitment and dedication to the Company while promoting employee post-retirement well-being and retention, the Company has established a comprehensive retirement benefits program. These retirement benefits are thoughtfully outlined and delineated in precise detail within Item 13.4 of the company's comprehensive employee handbook. **These retirement**

benefits were codified in the Employee's Handbook, in particular page 25 the 2013 print (See pages 6 to 28 of COB-2), and page 39 the 2017 print (See pages 1 to 44 of COB-1). The 2017 print supplanted 2013 print upon its implementation on 01.04.2017. Notably, both editions of the handbook house an identical retirement benefits clause, which reads as follows:

“umur 60 tahun untuk lelaki dan Wanita.

Pekerja-Pekerja yang telah berkhidmat selama lima (5) tahun atau lebih secara berterusan dengan Syarikat adalah layak untuk mendapat faedah bersara sekiranya mereka bersara bila cukup umur bersa dan akan dibayar seperti berikut:

- (a) Pekerja-pekerja yang telah berkhidmat selama lima (5) tahun atau lebih tetapi tidak melebihi sepuluh (10) tahun adalah layak untuk mendapat lapan peratus (8%) daripada jumlah gaji pokok untuk keseluruhan tempoh perkhidmatan dengan Syarikat.*
- (b) Pekerja-pekerja yang telah berkhidmat selama sepuluh (10) tahun atau lebih tetapi tidak melebihi lima belas (15) tahun adalah layak untuk mendapat sepuluh peratus (10%) daripada jumlah gaji pokok untuk keseluruhan tempoh perkhidmatan dengan Syarikat.*
- (c) Pekerja-pekerja yang telah berkhidmat selama lima belas (15) tahun adalah layak untuk mendapat dua belas peratus (12%) daripada jumlah gaji pokok untuk keseluruhan tempoh perkhidmatan dengan Syarikat.”*

[14] As such, understandably, the terms and conditions outlined in the Employment Handbook constitute part of the terms and conditions of employment and serve as a binding document that governs the employment relationship. After all, this is agreed by UW-1 during his cross-examination.

[15] Hence, Rajandran being an employee of the Company, it is argued,

is no exception. He is bound by the terms and conditions articulated in the Employment Handbook, inclusive of the Retirement benefits clause found in item 13.4. Based on the Memorandum dated 31.03.2017, which mandates all Company employees to transition from the Employee Handbook 2013 print to the 2017 print, coupled with the requisite the acknowledgement of 2017 Terms and Conditions of Employment (See pages 30 to 31 of COB-2), it becomes abundantly evident that Rajandran is thoroughly cognizant of the provisions contained in the Employee's Handbook, inclusive of the Retirement benefits clause found in item 13.4. This evidence was unchallenged by the Union.

[16] In the year 2014, the Company implemented a separate and distinct retirement benefit formula applicable to managers falling within the Grade A and above. This retirement benefit formula was formally introduced through a memorandum issued on 07.01.2014 (See page 3 of COB-4). Hence, since January 2014, Item 13.4 only caters for the employees within the Grade F to Grade B range (classified as non-management employees in the context of retirement benefits), whereas for employees within the Grade of A and above (classified as management employees in the context of retirement benefits) the applicable retirement benefits formula is one month per each year of service.

[17] This court's attention was drawn to the testimony of Company's witness, COW- 1, which had adequately and comprehensively clarified and explained in his Witness statement, as well as during the cross-examination and re-examination stages pertaining to the applicable retirement benefits formula. As elucidated by the COW-1, referencing multiple documents that Rajandran held the position of Assistant Supervisor at the time of his retirement, a role categorized as Grade D. He was a non-management employee and is therefore eligible for retirement benefits as provided by Item 13.4(iii). The documents cited by COW- 1 to support this assertion include:

- (a) Company's Organization Chart, with effect from 01.07.2019 - Page 1 of COB-4;

- (b) Company's Job Grades & Position in 2019 table - Page 2 of COB- 4;
- (c) Retirement Listing: 2016 to 2020 - Pages 1 & 2 of COB-3; and
- (d) Employee Retirement Benefit Computation - Pages 26 to 28 of COB-3.

[18] It is further argued by the company that the documents relied on by COW-1 sufficiently form an irresistible conclusion that the formula applicable to Rajandran being the one outlined in Item 13.4(iii). This formula stipulates a retirement benefit of 12% multiplied by the total base salary.

[19] Having firmly established that the applicable retirement benefits formula for Rajandran is undeniably Item 13.4(iii), specifically the provision of 12% x Total Base Salary, the next question revolves around the accuracy of the retirement benefits sum of RM110,708.07 calculated by the Company.

[20] It is pertinent to note that the Total Base Salary of Rajandran of RM829,040.19 throughout his service or the retirement benefits sum of RM110,708.17 calculated by the Company was not in dispute. The bone of the Union's complaint pertains exclusively to the formula employed by the Company, contending that it should be calculated based on one month for each year of service. At this juncture, this Court found that the amount paid to Rajandran through his solicitors as his retirement benefits is mathematically correct; ie, total Based Salary x 12% = Retirement Benefit Sum under Item 13.4(iii) $RM829,040.19 \times 12\% = RM110,708.07$.

[21] It is further undisputed that the said retirement benefits have been paid to and received by Rajandran. The company stands by its position that there is no basis for this complaint made by the Union and the same ought to be dismissed.

WHETHER CHALLENGE AGAINST THE FORMULA EMPLOYED BY THE COMPANY MERITORIOUS

[22] On the other hand, the Union contends that a different formula should apply. In support of its contention the Union relies on the second sentence of the statement made in paragraph 9 of the Financial Statements Year 2018 of the Company, which is available at page 98 of COB-1. This is admitted by the Union's Witness, UW-1 during cross-examination. The second sentence of the statement in paragraph 9 has been referenced previously in paragraph 5 above and is reproduced below for convenient reference:

“Under the scheme, eligible employees are entitled to a retirement benefits of a factor of the last drawn monthly salary for each completed year of service upon the retirement age of 60 (2017:60)”

[23] This court has reservation. Our considered opinion is that the reliance by the union solely on the second sentence of the statement in paragraph 9, without considering the entirety of the statement and the comprehensive Financial Statements, is misleading.

[24] During cross-examination, UW-1 openly acknowledged that the Union did not undertake a comprehensive review of the entire financial statement or any accompanying documents. A holistic examination of paragraph 9 of the Financial Statements, when read in its entirety, would have immediately revealed the existence of a defined benefit plan amounting to RM4,664,129. Importantly, the details of this defined benefit plan are meticulously explained in paragraph 2(i)(iii) of the same Financial Statements (See page 92 of COB- 1).

[25] It must be said that such self serving adoption of piece of information is nowhere acceptable as it tends to mislead. This is because the Union ought to have read paragraph 2(i)(iii) of the same Financial Statements, whereby the retirement benefit plan scheme, as stated in the Financial Statements, is explicitly based on the actuarial valuation conducted on 31.03.2018. It is pertinent to note that during the cross-

examination, UW-1 acknowledged that the information contained in paragraph 9 of the Financial Statement may not be complete in reflecting the information pertaining to retirement benefits; and that the Union was willing to accept the Company's admission that perhaps the information concerning non-management retirement benefits might not be fully reflected within paragraph 9 of the Financial Statements.

[26] Nevertheless, UW-1's evidence aforesaid does not reflect in what turned out to be the event. In our views, the union has taken undue advantage of the Company's admission to having unwittingly omitted relevant information in the Financial Statement regarding retirement benefits; letting its member Rajaindran to explore chewing what he had supposed to have been adequately bitten.

[27] This raises doubts about the equity and good conscience in the Union's complaint. We therefore have reason to believe that what is before the Court is not a genuine "trade dispute" and on this ground, the Union's complaint ought to be dismissed.

Whether A Financial Statement Formulate The Terms And Conditions Of An Employment Contract

[28] We are of the views that the answer is in the negative. A financial statement does not serve as the source for establishing the terms and conditions of employment. We agree with the company's submission that the primary purpose of an annual financial statement is to provide a comprehensive overview of a company's financial performance for the year, including its income, expenses, assets, and liabilities. The Union's reliance on a statement within a financial statement as a basis for determining the terms and conditions of employment is therefore erroneous.

Non-Disclosure Of Non-Management Retirement Benefits Formula

[29] The Union has persistently contended against the Company's failure and/or not adequately disclosed the non-management retirement benefits formula in the Financial Statements. In support of its contention,

the Union introduces two documents, specifically UOB-2 and UOB-3, which are the **OECD Guidelines** as the basis to substantiate its claim that the Company is obligated to provide thorough and transparent disclosures.

[30] However, it is important to state that, with all due respect, the OECD Guidelines are legally non-binding and serve as mere guidelines, as indicated on **page i of UOB-2 and page 2 of UOB-3**. In reference to the ministerial reference (See pages 2 to 4 of UOB-1), it is essential to point out that the central focus of this Court's adjudication is to determine the retirement benefits to which Rajandran is entitled to. The scope of the Court's inquiry does not encompass a determination of whether the Company has fulfilled a requirement for full and frank disclosure according to OECD guidelines.

[31] Be that as it may, we are of the views that the company has adhered to all pertinent disclosure obligations under existing regulations and law. In this context, the Company has taken a proactive step by engaging actuaries to prepare the annual actuarial report in compliance with the International Accounting Standards and the Malaysian Financial Reporting Standards 119 (MFRS 119) (See page 47 of COB-1).

[32] This Actuarial Report contains comprehensive details regarding retirement benefits, encompassing formulas for both management and nonmanagement employees (See page 68 of COB-2). Within the same report, a thorough breakdown of how the Company arrived at the net defined benefit plan sum of RM4,664,129 is provided on page 61 of COB-2. It is imperative to note that the actuarial report was subsequently submitted to the auditor for the preparation of the Financial Statements. The information in the actuarial report was readily available to the auditor to facilitate the accurate preparation of the Financial Statements, and this data is unequivocally reflected in pages 92 and 98 of COB- 1.

[33] As such, there is the issue of withholding information or non-disclosure does not arise. We observed that in the course of these proceedings, the Company has sufficiently demonstrated an unwavering

commitment to transparency by furnishing a comprehensive list of all employees who retired from 2016 to 2020 (See pages 1 to 2 of UOB-2). This comprehensive list includes a wealth of detail, encompassing basic salary through the entire employment, the last position held, the formula applied, and the retirement benefit sum for each employee, who have had retired during that period. Furthermore, the Company has also supplied a list of Malaysian Management employees for 2019, who were entitled to the one month for each year retirement benefit (See page 4 of COB-4), the entire actuarial report (see pages 45 to 75 of COB-1) and the full and complete financial statement (See pages 76 to 109 of COB-1).

[34] Comparatively, the Union's submissions merely included a single page from the Financial Statements. We agree that the Company had provided full and adequate disclosure even when Rajandran initially raised inquiries through written correspondence, well in advance of the Union's involvement. Subsequently, upon engagement with the Union, the Company took further steps to elucidate and clarify its position (See pages 110-111 of COB-1). Despite these concerted efforts, the Union has displayed a state of denial to the explanations offered and the factual underpinning of the matter.

[35] It is imperative to underscore that there exists no statutory duty mandating the Company to provide retirement benefits. However, the Company, of its own volition, has consistently extended retirement benefits to its employees to safeguarding their post-retirement well-being. This court observed that despite this longstanding practice, predating the Union's involvement, the Company now faces unfounded allegations of victimization, manipulation of formulas, or information withholding. These accusations are devoid of merit and without basis.

Explanation as to other issues raised by the Union

[36] We have considered the Union's contention that the Company failed to provide an explanation for the inquiry into the incorrect application of the retirement benefit formula raised by Rajendran and found the same unsubstantiated in evidence. We refer to the Company's

Solicitors' letter dated 19.02.2020 on page 110 of COB-1 wherein it is reiterated by the Company that the applicable retirement benefit formula for Rajendran is provided for in Clause 13.4 of the Company's handbook, and the formula taken from the Financial Statement by the Union and Rajendran applies exclusively to management employees.

[37] Furthermore, the Company enclosed the "Attachment 5 - Summary of Plan Provisions" from the Company's Actuarial Valuation Report (Retirement Benefit Scheme). The relevant excerpt reads as follows:

"We refer to your letter dated 3rd February 2020. We have taken our instructions on the matter and we are instructed to respond as follows:-

- (a) That our client's calculation of your client's retirement benefits is correct and is based on the formula provided for in Clause 13.4 of the Company's Terms & Conditions of Employment which constitutes a part of your client's terms and conditions of service;*
- (b) That the formula taken from the Company's Financial Statement which is referred to in your letter applies only to Management employees. Your client was a Non-Management employee at the time of his retirement. Therefore the formula referred to does not apply to him. An extract from the Company's Actuarial Valuation Report (Retirement Benefit Scheme) entitled "Summary of Plan Provisions" is attached herewith for your reference.*
- (c) That the above has been previously explained to your client."*

[38] Hence, we are satisfied that the Union was sufficiently explained of the effect of the Actuarial Valuation Report (Retirement Benefit Scheme) and the particulars and details of the retirement benefit formulas applicable to the Company's employees, as found on pages 68 to 69 of

COB-1. Alas, there was no reply to the letter from the Company's solicitors. Instead, Rajendran collected the cheque for the sum of RM110,107.00.

[39] As such we agree that the company has demonstrated responsive cooperation at the relevant time, providing a comprehensive explanation to both Rajandran and the Union upon their request. Despite these concerted efforts, they have displayed a reluctance to accept the explanation offered and the facts underpinning the matter.

DECISION

[40] In the premises, we unanimously conclude that the Union's present claim before this panel members of the Court for Rajandran to receive a retirement benefit calculated at a rate of one month per year of service is unfounded and without basis. Based on the evidence presented before us, it is evident that the retirement benefit formula that the applicable retirement benefit for Rajandran is none other than the one outlined **in Item 13.4 (iii) of the Handbook, which 12% x the total base salary of his employment with the Company.** We accordingly, by a unanimous decision, dismiss the Union's complaint and finds that Rajandran has been sufficiently and effectively paid the retirement benefits which are due to him.

[41] In the upshot, upon scrutinizing the facts and circumstances of the present case and the evidence adduced in its entirety and having considered the Written Submissions filed by both parties, it is this Court's unanimous findings that the Company had proved the retirement benefit formula that the applicable retirement benefit for Rajandran is none other than the one outlined **in Item 13.4 (iii) of the Handbook, which 12% x the total base salary of his employment with the Company.** We accordingly, by a unanimous decision, dismiss the Union's complaint and finds that Rajandran has been paid the retirement benefits which are rightfully due to him.

CONCLUSION

[42] In arriving at the above decision, this Court had taken into account the totality of the evidence adduced by both parties and bearing in mind Section 30(4) and (5) of the IRA 1967 by which virtue the Court 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 concern, and also to the probable effect in related or similar industries, *and [respectively]* shall act according to equity, good conscience and the substantial merit of the case without regard to technicalities and legal form.

HANDED DOWN AND DATED THIS 09TH JANUARY 2024

(SYED NOH SAID NAZIR @ SYED NADZIR)

CHAIRMAN

INDUSTRIAL COURT OF MALAYSIA

KUALA LUMPUR