INDUSTRIAL COURT OF MALAYSIA
[CASE NO: 20/2-2143/20]

BETWEEN

KESATUAN SEKERJA INDUSTRI ELEKTRONIK WILAYAH TIMUR SEMENANJUNG MALAYSIA

AND

ROHM-WAKO ELECTRONICS (MALAYSIA) SDN BHD

AWARD NO. 836 OF 2023

CORAM	**:**	**PUAN RAJESWARI KARUPIAH - CHAIRMAN** **MR. NG CHOO SEONG - EMPLOYEES' PANEL MEMBER** **MR. ANANDARAJU A/L AMOOKKAPILLAI - EMPLOYERS' PANEL MEMBER**
VENUE	**:**	Industrial Court Malaysia, Kuala Lumpur
DATE OF REFERENCE	**:**	07.09.2020
DATE OF RECEIPT OF THE REFERENCE	**:**	18.09.2020
DATE(S) OF MENTION	**:**	30.10.2020, 05.04.2021, 20.04.2021, 05.05.2021, 06.05.2021, 18.11.2021, 06.12.2021, 27.04.2022, 01.07.2022, 07.12.2022 & 10.01.2023
DATE(S) OF HEARING	**:**	24.08.2022 & 27.09.2022
REPRESENTATION	**:**	*For the claimant - Chandra Segaran Rajandran; M/s Prem & Chandra* *For the company - Edward Andrew Saw Keat Leong; M/s Josephine, L K Chow & Co*

REFERENCE:

This is a reference dated 07.09.2020 made by the Honourable Minister of Human Resources pursuant to Section 26(1) of the Industrial Relations Act 1967 ("the Act") arising out of a trade dispute between **Kesatuan Sekerja Industri Elektronik Wilayah Timur Semenanjung Malaysia** ("the Union") and **ROHM-Wako Electronics (Malaysia) Sdn. Bhd** ("the Company") in relation to the terms and conditions of employment of the 2nd Collective Agreement for period of 01.05.2020 to 30.04.2023.

INTRODUCTION

[1] This is a trade dispute between the Union and the Company in relation to the terms to be incorporated into the 2nd Collective Agreement for period of 01.05.2020 to 30.04.2023. The Company is in the business of manufacturing electronic components such as diodes and LED. The products of the Company are made for export. The Company operates its business in Kota Bahru, Kelantan.

[2] The First Collective Agreement between the parties was for the period of 01.05.2017 until 30.04.2020.

[3] Prior to the Ministerial reference, the parties held direct negotiations but could not resolve the dispute pertaining to the 2nd Collective Agreement. The parties therefore had agreed to submit a joint request by letter dated 21.07.2020 to the Honourable Minister to refer the trade dispute pertaining to the 2nd Collective Agreement to the Industrial Court for adjudication and an Award.

[4] The Union had initially proposed 55 Articles in the 2nd Collective Agreement (pages 9 to 74 of UB-1). The Company had meanwhile counter proposed to the Union that the Articles of the 1st Collective Agreement (pages 119 to 151 of COB-1) be maintained in the 2nd Collective Agreement.

[5] Upon reference by the Honourable Minister, the parties had narrowed down the issues disputed on instructions of the Court. The parties were thus able to reduce the disputed Articles to 13 Articles.

[6] At the outset of the hearing, the Learned Counsel of the Union informed the Court that the disputed Articles have been reduced further to **11 Articles**.

[7] The Court has in handing down this Award in this case considered the notes of

proceedings as well as the following documents and cause papers: -

(i) The Union's Statement of Case dated 20.11.2020

(ii) The Company's Statement in Reply dated 31.12.2020

(iii) The Union's Bundles of Documents - UB-1 and UB-2

(iv) The Company's Bundles of Documents - COB-1 to COB-4

(v) The Union's Witness Statement - (Mohd Fazuid Akram Bin Abdul Kadir) - UW-1

(vi) The Company's Witness Statement (Wong Pui Li) - COWS-1

(vii) The Union's Written Submissions on 29.11.2022 and 03.01.2023 (viii) The Company's Written Submissions on 01.12.2022 and 04.01.2023

[8] The Agreed Articles of the 2nd Collective Agreement are annexed as to this Award as an Appendix. These articles are as follows: -

(i) Article 1 - Parties to the Agreement

(ii) Article 2 - Title

(iii) Article 3 - Scope of Agreement

(vi) Article 4 - Effective Date and Duration of Agreement

(v) Article 5 - Preamble

(vi) Article 6 - Interpretation and Arbitration

(vii) Article 7 - Modification and Amendment To Agreement

(viii) Article 8 - Termination of Agreement

(ix) Article 10 - Recognition of the Union

(x) Article 11 - Recognition of the Company

(xi) Article 12 - Language and Copies of the Agreement

(xii) Article 13 - Check Off

(xiii) Article 14 - Existing Benefit

(xiv) Article 15 - Labour - Management Council

(xv) Article 16 - Grievance Procedure

(xvi) Article 17 - Leave on Trade Union Business

(xvii) Article 18 - Notice Boards

(xviii) Article 19 - Appointment and Probationary Period

(xix) Article 20 - Notice of Vacancy and Promotion

(xx) Article 21 - Notice of Termination

(xxi) Article 23 - Off Day and Rest Day

(xxii) Article 24 - Overtime

(xxiii) Article 26 - Annual Leave

(xxiv) Article 27 - Compassionate, Congratulatory and Paternity Leave

(xxv) Article 28 - Examination Leave

(xxvi) Article 31 - Prolonged Illness

(xxvii) Article 32- Disablement

(xxviii) Article 33 - Maternity Leave

(xxix) Article 34 - Retirement

(xxx) Article 35 - Retirement Benefits

(xxxi) Article 36 - Retrenchment

(xxxii) Article 37 - Retrenchment Benefits

(xxxiii) Article 38 - Outstation Duty Allowance

(xxxiv) Article 40 - Transport Allowance

(xxxv) Article 41 - Canteen Subsidy St Meal Allowance

(xxxvi) Article 44 - Safety & Health

(xxxvii) Article 46 - Haj or Pilgrimage

(xxxvii) Article 47 - Salary Advance

(xxxix) Article 49 - Bonus

[9] The eleven (11) disputed articles are as follows:

(i) Article 9 - Legislation

(ii) Article 22 - Hours of Work

(iii) Article 25 - Public Holidays

(iv) Article 29 - Medical Benefit

(v) Article 30 - Sick Leave & Hospitalization Leave

(vi) Article 39 - Shift Allowance

(vii) Article 42 - Uniform and Personal Protective Wear (PPE)

(viii) Article 43 - Group Personal Accident Insurance

(ix) Article 45 - Acting Allowance

(x) Article 48 - Annual Salary Adjustment and Increment

(xi) Article 50 - Salary Scale

THE LAW

[10] This was a case that was referred to the Industrial Court by the Honourable Minister as a trade dispute pursuant to the provisions in s. 26(1) following a joint request by the parties.

[11] In making an award in respect of a trade dispute, the Court shall have regard to s. 30(4) of the Act. In the case of *Mersing Omnibus Co Sdn Bhd v. Kesatuan Pekerja-Pekerja Pengangkutan Semenanjung Malaysia St Anor* [1998] 1 MLRH 303 Nik Hashim J (as his Lordship then was) stated as follows:

> *"By its terms, s. 30(4) is a statutory requirement which the Industrial Court must take into account when deciding a trade dispute. It is a relevant provision. Section 30(4) states:*
>
> > *in making its award in respect of a trade dispute, the Court shall have regard to:*
> >
> > *(i) the public interest,*
> >
> > *(ii) the financial implications, and*
> >
> > *(iii) 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...*
> >
> > *While it is true that the Industrial Court must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal form (s. 30(5)), the Industrial Court nevertheless*

cannot disregard the provision of s. 30(4) in its decision in this case. The section is a statutory safeguard which the Industrial Court is obliged to have regard to in making the award relating to a trade dispute... the Industrial Court must make clear in its decision that the three elements in the section have been considered and make its findings accordingly."

[12] In addition, the principles of wage fixation were reiterated by the Industrial Court in the case of *Penfibre Sendirian Berhad, Penang v. Penang & S Prai Textile a Garment Industries Employees' Union* [1986] 1 MELR 86 as follows:

"14. It is well established in Industrial Law that in deciding on the question of wage structure and wage increases, the Court has to take into account the following factors: -

(a) Wages and salaries prevailing in comparable establishments in the some region;

(b) Any rise in the cost of living since the existing wages or salaries were last revised; and

c) The financial capacity of the Company to pay the higher wages/ increases.

Of all the three factors stated above, the Company's financial capacity to pay is really the limiting factor in dealing with wage increases and with other employees' benefits, because when other factors may provide prima facie justification, increased wages will normally be awarded only within the limits of the Company's financial capacity."

[13] In the case of *PIHP (Selangor) Bhd v. Kesatuan Kebangsaan Pekerja-Pekerja Hotel, Bar & Restoran Semenanjung Malaysia & Anor* [2005] 5 CLJ 422 the Court held that the burden of proof lies upon the party who is proposing the change: -

"There is one cardinal rule however, that is, the party that proposes a change must prove his case. It is important to note that in this case the changes that were proposed by PJ Hilton were fundamental. A party cannot come to the Industrial Court seeking to persuade the court with vague figures and justification. Particularly, on the facts of this case, where on issues such as job integration and in proposing to change a whole system, PJ Hilton must know that they are talking about when proposing such change. There are many anomalies in PJ Hilton's proposal and that they were wholly lacking in supporting evidence."

[14] Further, the Federal Court has in the case of *Ismail Nasaruddin Abdul Wahab v. Malaysian Airline System Bhd* [2022] 9 CLJ 801 held that the Industrial Relations Act 1967 ("IRA") a piece of social legislation whose aim is to promote social justice, industrial peace and harmony in the country. The IRA has to be interpreted in a manner which promotes the underlying purpose of the Act. Her Ladyship Nallini Pathmanathan FCJ delivering the judgment of the court stated that: -

> *"The IRA has been judicially recognised as a piece of social legislation, to be construed liberally. In Kesatuan Kebangsaan Wartawan Malaysia & Anor v. Syarikat Pemandangan Sinar Sdn Bhd & Anor [2001] 3 CLJ 547; [2001] 3 MLJ 705, this court opined that:*
>
> > *... the IRA is a piece of social legislation whose primary aim is to promote social justice, industrial peace and harmony in the country. As such, the approach to interpretation must be liberal in order to achieve the object aimed at by Parliament.*
>
> *This had been described by Lord Diplock as the 'purposive approach', an approach followed by Lord Denning in Nothman v. Barnet London Borough Council [1978] 1 WLR 220, who reiterated that in all cases involving the interpretation of statutes, we should adopt a construction that would promote the general legislative purpose underlying the provision."*

[15] The Court will now consider and determine each of the disputed articles.

ARTICLE 9: LEGISLATION

[16] With respect to this Article, the parties have in principle agreed to adopt the contents of Article 9 from the First Collective Agreement that is as follows:

> *1. Should Parliament introduce any legislation which relates either in whole or part to the benefits contained in this agreement then the relevant portions of this Agreement shall be revised in the following manner:*
>
> > *i. Where the benefits contained in this agreement are more favorable than the legislation introduced, such more favorable benefits in this agreement will continue to apply.*
> >
> > *ii. Where legislation provides for more favorable terms than those*

contained in this agreement, the provisions of such legislation shall automatically apply.

2. *The Code of Conduct for Industrial Harmony dated 9th February 1975 which was agreed by the Malaysian Employers Federation, the Malaysia Trades Union Congress and the Ministry of Human Resource should be adhered by the Company and the Union on the practice of Industrial Relations for achieving greater Industrial Harmony.*

UNIONS SUBMISSION

[17] The Union proposes to add a new sub-paragraph into Article 9 as below: -

"Where the Government makes a minimum wage order, the Company shall comply with such order and make the necessary adjustments to the salary scale"

[18] The Union submits that Wages and Salary Scale is a fundamental term of an employment contract flowing from a Collective Agreement or an Award of the Industrial Court. No modification or amendment to the Wages and Salary Scale may be effected except through mutual agreement of the parties. Where the Government makes a Minimum Wage Order **("MWO")**, it shall be mandatory for the Company to comply with such order. Adjustments to the salary scale would be necessary to avert workplace disharmony where a new employee at entry level salary scale may be placed, by reason of the MWO, on par with a workman who is senior in service in the Company. To avert this situation, adjustments to the salary scale would have to be effected.

[19] To avert arbitrariness on the part of the Company in making salary adjustments, the Union proposes to add the wording in underline below:-

Where the Government makes a minimum wage order; the Company shall comply with such order and make the necessary adjustments to the salary scale ***in agreement with the Union***.

THE COMPANY'S SUBMISSION

[20] The Company submits that it recognizes the requirement to comply with MWO. However, any adjustments to the salary scale following MWO must be carefully assessed before implementation as an adjustment to the salary scale will have a financial impact on the Company. As such, the Company should have the right and prerogative to decide the

level of adjustments that should be made to its employees' salaries. As a result, the Company has requested to be allowed to insert the words - **"as it may deem necessary"** after the words "salary scale".

[21] The Company submits that it has no objection to adding a new sub- paragraph to the existing Article 9 to read as:

> *"where the Government makes a minimum wage order, the Company shall comply with such Order and make the necessary adjustments to the salary scale as <u>it deems necessary</u>."*

[22] The Company states that the additional words (in underline above) is to avoid confusion or dispute in the future as the Union might expect equal or corresponding adjustments to be made throughout the entire salary scale following a MWO.

ANALYSIS

[23] The Minimum Wage Order (MWO) 2022 came into effect on 1st May 2022, with a monthly minimum wage of RM1,500 for all sectors. Accordingly, the national minimum wages were increased from RM1,200 ringgit to RM1,500 ringgit for all sectors.

[24] The Court observes that salary scales are designed to take into account the skill requirements for each job levels or grades. It cannot be denied that the difference in salary between the lowest and highest grade employees in the Company's existing salary scale will reduce following the implementation of the MWO. If the Company does not adjust the salary scale it will lead to discontent amidst the higher-grade employees whose earnings may not be different from than the lower grade employees in the Company.

RULING OF THE COURT

[25] It is the unanimous view of the Panel that the new sub paragraph proposed by the Union explains that the Company shall make the necessary adjustments to the salary scale to avoid discontent or low morale amongst senior grade employees.

[26] At the same time, the wording proposed by both the Union and the Company is not helpful and is likely in our view cause needless misunderstanding between the Union and the Company.

[27] Consequently, it is the unanimous view of this panel that the new sub-paragraph in Article 9 is adopted and it is to read as follows:

"Where the Government makes a minimum wage order, the Company shall comply with such Order and make the necessary adjustments to the salary scale."

ARTICLE 22 - HOURS OF WORK

UNION'S SUBMISSION

[28] According to Article 22 (2) of the 1st Collective Agreement, the Shift Working Hours in the Company are:

Morning Shift - 9.00 to 21.05 (inclusive Overtime)

Night shift - 21.00 to 9.05 (inclusive Overtime)

[29] The Union contends that the above Shift Hours in the Company are in contravention of **s. 60A (7) of the Employment Act 1955** which reads as follows:-

(7) Except in the circumstances described in paragraph (2)(a),(b), (d) and (e), no employer shall require any employee under any circumstances to work for more than twelve hours in any one day.

[30] Whilst s. 60 (2) of the Employment Act 1955 reads as follows:

(2) An employee may be required by his employer to exceed the limit of hours prescribed in subsection (1) and to work, on a rest day, in the case of—

(a) accident, actual or threatened, in or with respect to his place of work;

(b) work, the performance of which is essential to the life of the community;

(c) work essential for the defence or security of Malaysia;

(d) urgent work to be done to machinery or plant;

(e) an interruption of work which it was impossible to foresee; or

(f) work to be performed by employees in any industrial undertaking essential to the economy of Malaysia or any essential service as defined in the Industrial Relations Act 1967: Provided that the Director General shall have the power to enquire into and decide whether or not the employer is justified in catling upon the employee to work in the circumstances specified in paragraphs (a) to (f)

[31] Hence the Union proposed to ensure compliance with s. 60A (7). Thus, the Union's proposal is that the Shift Working Hours are amended as stated below:

Morning Shift - 9.00 to 21.00 {inclusive OT)

Night shift - 21.00 to 9.00 (inclusive OT)

[32] Further, the Union proposed that the word *"shall be notified"* in Article 22 (3) and Article 22 (4), be replaced with *"shall only be made after consultation with the Union"*.

[33] The Union has further highlighted that, the Company is in violation of s. 60A of the Employment Act 1955 in that the workers are not being paid for the break time when they perform work overtime. On this issue however the Union admits that this case is not the forum to determine the issue and has therefore reserved its right to pursue this issue separately.

THE COMPANY'S SUBMISSION

[34] The Company states that, Article 22 is not significantly disputed except that UW-1 states that there was some "keraguan" as to how overtime was calculated and whether or not the break time during overtime hours was paid hours of work, in the Company. UW-1 has at the same time confirmed there is a portal in the Company which every employee has access to. The Company has produced evidence through COB- 3 to show that the method of calculating overtime is readily available on this portal. The Company thus contends that there is no reason why UW-1, or any other employee for that matter, should be unaware of how overtime is calculated unless they do not access the portal.

[35] The Company submits that it is believed that the actual "keraguan" or doubt which UW-1 had attempted to raise was whether or not the break time (2 hrs 5 minutes) was considered paid overtime or not. It is the Company's stand that this is not the forum or proceedings for this issue or "keraguan" to be considered or deliberated upon.

[36] According to the Company, the only matter which affects the form and content of Article 22 which has been raised by the Union is the inclusion of a new paragraph 6 which reads "Any change in working hours shall only be made after consultation with Union". The Company does not object to this additional paragraph 6 except that it wishes to use the words "notifying the Union" instead of "consultation with Union"

[37] The Company submits that its working hours affect its operations directly and hence the Company should be allowed to maintain the prerogative to determine the

working hours as they deem fit so long as they keep within the confines of what the law allows. Hence **notifying** the Union of the change in working hours would be sufficient.

[38] UW-1 has in his evidence testified that he wants to use the word "consultation" so that the existence of the Union is acknowledged and so that views of the Union and the employees on any proposed change in working hours can be obtained.

[39] It is submitted by the Company that this will leave any proposed change in working hours subject to the agreement of the consent of the Union and the employees, which should not be the case on a matter which the Company should be allowed complete control over, subject only to the law.

ANALYSIS

[40] Following the implementation of the Employment (Amendment) Act 2022, total working hours of work per week for all employees in the country shall not exceed **forty-five (45)** hours.

[41] The provisions of s. 60A(7) of the Employment Act 1955 is mandatory except in the situations expressed in s. 60(2) of the Employment Act 1955. Even though it is the Company's justification that their employees are given 2 hours and 5 minutes of breaktime within shifts and there is an overlap for handover between shifts, the additional 5 minutes in the shift working hours of the workers performing shift work is in excess of 12 hours permitted under s. 60A(7) and is against the provision in s. 60A(7) of the Employment Act 1955.

[42] As to the alleged violation of s. 60A of the Employment Act 1955 in that the employees in the Company are not being paid for their break time when they perform overtime work, the Panel takes note that this reference is not the appropriate forum to determine the said issue and the Court will confine itself to Article 22 to be incorporated into the 2nd CA.

[43] As to the Union's proposal to amend Article 22(3) and Article 22(4) to replace the word "shall be notified" with "shall only be made after consultation with the Union" as well as to introduce a new Article 22(6) that any change in working hour shall only be made after consultation with the Union, we observe that the term "consultation" in essence refers to the act of seeking the views of the other party and entails prior discussion of a proposal before change in the working time.

[44] The Company submits that the working hours affect its operations and the Company should be able to determine its working hours as it deems fit. The Company in this regard relied on the Award of the Industrial Court in the case of *Yanmar (M) Sdn Bhd v. Machinery Manufacturing Employees' Union* [1986] 1 ILR 259 which held that the Company had the right to organize or reorganize its business in all respects including for the purpose of convenience or better administration for achieving economic productivity or profitability subject to the limitation that in doing so the Company does not contravene any law and provided it acts *bona fide*. This decision was cited with approval by the Industrial Court in the case of *OYL- Condair Industries Sdn Bhd v. V Periasamy R Varatharaju & Ors* [2007] 4 ILR at page 283 and *Fujisash (Malaysia) Sdn Bhd Prai v. Kesatuan Pekerja-Pekerja Perusahaan Logam* [1993] 2 ILR 270.

RULING OF THE COURT

[45] In accordance to the recently implemented Employment (Amendment) Act 2022, total working hours of work per week for all employees in the country shall not exceed **forty-five (45)** hours. In addition, the Company has to ensure that the shift working hours in the Company is in accordance to the provisions of s. 60A(7) of the Employment Act 1955.

[46] On the Union's proposal that consultation is required before any change is made in working hours, it is our view that the word "consultation" implies that if and when the Company decides to change its working hours, it would need to sit down with the Union to discuss the same and to obtain their views on the change. Whist noting that consultation does not mean that the Union must give its consent to the Company's decision if there is a change in working hours, it is the unanimous decision of the Panel that the Company should be able to determine its working hours that best suits the Company's operations. Hence, the existing Article 22(3) and 22(4) will be retained status quo.

[47] The Court agrees that the Company should have control over the working hours that is adopted in the Company subject to the applicable laws and regulations and as such, the new Article 22(6) should read as; *"Any change in working hours shall only be made after notifying the Union"*.

ARTICLE 25 - PUBLIC HOLIDAYS

UNION'S SUBMISSION

[48] In respect of this Article, it is the Union's submission that the Normal working hours' workers are entitled to 18 days and Shift workers are only entitled to 15 days Public Holidays. This means that the Shift workers have been denied Public Holiday rate payment for working on those 3 days. As a result, there is a clear discrimination between Normal Working Hours workers and Shift workers in terms of entitlement to paid Public Holidays.

[49] It is the Union's proposal that all workers regardless whether they are Normal working hours' workers or Shift Workers, shall be entitled to 18 days paid Public Holidays so as not to offend the equality before the law provision enshrined in **Article 8 of the Federal Constitution.**

THE COMPANY'S SUBMISSION

[50] The Company asserts that the form and content of Article 25 is substantially undisputed. The only dispute between the parties is that whether shift employees should be given an additional 3 days of Public Holidays to bring them up from 15 days to 18 days of Public Holidays.

[51] UW-1 justified the Union's proposal for the 3 days of Public Holidays for shift workers on grounds of discrimination. It is UW-1's testimony that the Normal Working Hours employees have 18 days and Shift Employees have 15 days and the shift employees have thereby been discriminated against. According to the Company, UW-1's contention of discrimination is an assertion based purely on the difference between the number of public holidays taken at face value. According to the Company, UW-1 has ignored the material differences between Normal Working Hours employees and Shift employees.

[52] The Company has shown in evidence that the actual working hours for Shift Employees is 37 hours per week while the actual working hours for Normal Working Hours employees is 39 hours per week. UW-1 agreed that the Normal Working Hours employees work 252 days in a year whereas Shift Employees work 238 days in a year.

[53] Thus, it is the Company's position that Shift Employees work less hours a week and less days in a year as compared to Normal Working Hours employees and this is the reason why Normal Working Hours employees have 3 more Public Holidays than Normal Working Hours employees. The Company therefore submits that the allegation of discrimination by the Union is without justification. The Union's stand is flawed in that it has proposed an extra 3 days for the shift employees without taking into account the

difference between the terms and conditions of service between the two types of employees. The Company further submits that even if this could be described as being "discriminatory" (which is denied), the discrimination is justified. The Company has by way of authority submitted **Sheridan & Groves, The Constitution of Malaysia, 5th Edition** at page 89 that:-

> **"Clause (1) does not proclaim that all persons must be treated a like, but that persons in like circumstances must be a like."**

[54] The Company also submits that the additional 3 days of Public Holidays will result in increased costs to the Company who would have to pay public holiday rates to Shift Workers who are required to work on those public holidays. The Company has thus implored the Court to maintain the status quo of Article 25.

ANALYSIS

[55] In determining Article 25, apart from the submissions of the Union and the Company, the Court took into consideration the Industry Standard practice in other companies with Collective Agreements in like industries including in companies from the East Coast Region. The comparison table (see pages 43 to 46, COB-2) proves that the total number of Public Holidays in the other companies are the same <u>for all the workers</u> without differentiation between shift workers and normal work hours employees. Further, it shows that in majority of the Companies, the total number of Public Holidays granted to their employees are higher than the number of Public Holidays that are accorded to the Shift Workers in the Company.

[56] In our view, the Company's submission that the Shift Workers enjoy lesser working hours in a week and lesser number of working days in a year is a argument that overlooks the rationale for providing greater number of rest days to Shift Employees. Thus it is not a persuasive argument. Additional rest hours in a week and rest days in a year are granted to Shift Employees to compensate for disruption caused to these employees as a result of being placed on Shift Working Hours.

[57] This is a necessary and recommended requirement for those who are placed on shift due to the nature of their hours of work that affects their social and psychophysical wellbeing, (see *Giovanni Costa - Shift Work and Health: Current Problems and Preventive Actions] Safety Health Work 2010 Volume 1, No.2, Dec 30, 2010 page 112-123*.)

[58] Further, the Court is mindful of the provisions in s. 59 (1A) of the Employment Act 1955 that Shift Employees ought to be granted Rest Day of not less than 30 hours continuously in a week as opposed to Normal Working Hours employees, who are granted one (1) whole day of rest or 24 hours per calendar week. The same provision is adopted in Article 23(1) of the First Collective Agreement. Therefore, the rationale for granting additional rest days for employees on Shift Working Hours is to give the employees who are on Shift Working Hours sufficient rest time and to reduce the effect of shift work hours on their well being.

RULING OF THE COURT

[59] Having considered the industry standard practice and upon reviewing submissions made by both parties, the panel is of the unanimous view that the number of Public Holidays should be **18 days** for all the employees of the Company irrespective of whether the employee is working Normal hours or is on Shift work hours.

ARTICLE 29 - MEDICAL BENEFIT

UNIONS SUBMISSION

[60] Clause 1 of this Article in the 1st CA reads - "All employees of the Company are entitled for medical benefit where employees are eligible to receive at the Company's expense, medical attention and treatment by a registered medical practitioner appointed by the Company or Government medical officer and it does not exceed **RM 1,000.00** and up to **RM5,000.00** for 36 critical illness (as per attachment) per annum".

[61] The Union's proposal is that the said outpatient Medical Benefit be extended to the family of the employee and that Article 29(1) to read as follows: *"All employees of the Company are entitled for medical benefit where employees are eligible to receive at the Company's expense, medical attention and treatment by a registered medical practitioner appointed by the Company or Government medical officer and it does not exceed RM 1,000.00.* ***Such medical benefit is extended to the immediate family (spouse and children) of the employee****. All employees of the Company are entitled for medical benefit where employees are eligible to receive at the Company's expense, medical attention and treatment by a registered medical practitioner appointed by the Company or Government medical officer up to RM5,000.00 for 36 critical illness (as per attachment) per annum".*

[62] It is submitted that there is no additional cost to be incurred by the Company. Since the Company had agreed in the 1st Collective Agreement to bear such medical expense for

the employee as long as it does not exceed RM1,000.00.

THE COMPANY'S SUBMISSION

[63] The Union seeks to extend the limit for medical treatment of RM1,000.00 to the employee's family members. The Union maintains the limit for RMS,000 in the case of critical illnesses which would not be extended to family members.

[64] COW-1 in her testimony had explained that the current cost to the Company with respect to medical benefits is around RM 600,000 and, given the annual increases in medical costs and if the benefit is extended to family members, this cost is likely to escalate to RM 2.2 million on the assumption that all employees and their family members utilize this benefit to its maximum limit. In addition, given that the size of their respective families would be different for every employee and given the fact that the Company uses at least 5 clinics, administering and monitoring the medical claims under Article 29 would prove to be time consuming and costly affair.

[65] COW-1 has also testified that the purpose of the medical benefit is to ensure that the employee has adequate and sufficient access to medical treatment so that they can remain productive in their employment and service to the Company. If it is extended to family members {and depending on the size of the family) who will be utilizing the same allocation, the employee's own access to the same allocation would be diminished. It is submitted by the Company that this would defeat the purpose of the medical benefit that has been given to its employees.

[66] The Company therefore requested the Court to maintain the status quo in Article 29.

ANALYSIS

[67] The Court is mindful of the Company's submission that extending outpatient the medical benefit of RM1,000 per annum to the family members and the utilisation of the medical benefit by the family members will diminish the amount in allocation for the employee to seek treatment for himself in the event of sickness.

[68] At the same time, the Court has considered the Standard Industry practice in this regard. It is observed that the extension of employees' medical benefit to immediate family members is **not uncommon** in the industry which the Company belongs (see comparison table at pages 54 to 56, COB-2).

[69] Medical benefit is also extended to the family members amongst other reasons for the employee's peace of mind. When an immediate family member is sick, it is likely to be a source of cause concern to the employee and which may in turn affect the employee's productivity and focus on his job. As such, the panel does not subscribe to the views of the Company that extending the medical benefit to the family members of the employees would defeat the purpose of granting the medical benefit under the first Collective Agreement. The issue of costs should not be a major consideration in this regard as the Company has committed itself to a maximum of RM1,000 per employee per annum under the existing Collective Agreement.

RULING OF THE COURT

[70] It is the unanimous decision of the panel that the outpatient medical benefit currently provided by the Company to its employees under Article 29(l) is extended to the immediate family members (spouse and children of the employees), subject to a maximum limit of RM 300.00 per annum, for the said family members.

[71] Accordingly, Article 29(1) of the 2nd Collective Agreement shall read as follows: -

> *All employees of the Company are entitled for medical benefit where employees are eligible to receive at the Company's expense, medical attention and treatment by a registered medical practitioner appointed by the Company or Government medical officer and it does not exceed RM 1,000.00 and up to RM 5,000.00 for 36 critical illness (as per attachment) per annum.* ***The medical benefit of RM 1,000 per annum is extended to the immediate family members (spouse and children) of the employee subject to limit of RM300.00 per annum for the family.***

ARTICLE 30 - SICK LEAVE a HOSPITALIZATION LEAVE

UNION'S SUBMISSION

[72] The Union's proposal for **clause 2 of this Article** is to reflect Employment (Amendment) Act 2022 section 60F (1) (bb) ie, Employees are entitled to 60 days paid sick leave (excluding the sick leave days stated in Article 30(1) in a calendar year) where hospitalization is necessary which shall take effect from 1.1.2023.

[73] **Clause 4 of this Article** in the 1st CA reads as: Employees are allowed to consult the Company doctor or any government clinics but if a medical certificate is not issued, the employee shall report for duty as soon as possible after consultation. The time taken-

off will be based on the time slip given by the appointed doctor or hospitals and shall be treated as unpaid time off. The Union's proposal is for the "unpaid time off" to be revised to read as *"paid time off."*

[74] The Union contends that this "unpaid time off" policy implemented by the Company is unfair to the employees who genuinely went to seek medical treatment. The employee has no control over whether he/she is to be issued with a medical certificate by the medical practitioner and the employee should not be penalised for seeking medical attention/treatment. Suffice that Article 30(4) reads; the employee shall report for duty as soon as possible after consultation. The Union states that the Company's fear if any that there will be abuse is unsupported with evidence. On the other hand, an employee who is not feeling well but avoids seeking treatment to avoid getting his salary for the day deducted, may become a safety risk to him/herself or other employees. COW-1 during re-examination explained that such time away at the doctors was treated as unpaid "to control the workers so as to prevent misuse". However, the Union submits before us that there was no evidence led by the Company of any misuse by the employees.

THE COMPANY'S CASE

[75] The Company states that there is no dispute to Article 30 except in paragraph 4. The Company will reflect the amendments to the Employment Act 1955 with regards to the separation of sick leave and hospitalization leave effective from 1.1.2023.

[76] The Issue in Article 30(4) is whether time off to consult a doctor should be treated as paid time off or unpaid time off in a case where no medical certificate is issued. Currently it is treated as unpaid time off.

[77] COW-1 testified that such time off is currently considered unpaid so as to prevent misuse and abuse of the paid time off. It is intended to prevent employees from using the time slip on the pretext of seeing the doctor but returning without a medical certificate given the size of the Company's workforce (over 2,000 employees). Whilst the Company has submitted to Court the instances of time-off taken by employees, we do not find the same helpful as the time slips for medical reasons are not separated from time slips for other reasons.

[78] UW-1 on the other hand stated in his evidence that employees have gone to the panel clinics to seek treatment but have been refused medical certificates on the grounds that a "quota" for the same had been reached that day. The Company contends that this is

something new and was not pleaded by the Union. COW-1 denied any knowledge of such "quota" being practiced in the Company's panel clinics.

[79] The Company submits before us that the unpaid time off is needed as a preventive measure against abuse of time off. As such, the Company wishes to maintain the status quo in paragraph 4 of Article 30.

ANALYSIS

[80] Purpose of the time slip is to monitor and control attendance of employees when they are away from their work place. Whilst time slips are utilized for various needs of the employees including time-off for seeking medical consultation and treatment, the Company's current practice of deducting the salary of an employee when the employee is not given medical certificate by the panel clinic is not sustainable.

[81] It is the panel's unanimous view that deductions of salary based on time slip issued by the **Company's panel clinic** (upon visit by the employee to the panel doctor) is irregular practice. In this regard, the Court has compared Article 30(4) of the Company with similar article in the Collective Agreement between the Union and TDK-LAMBDA MALAYSIA SDN. BHD. (COG. No. 248/2018) and NICHICON (MALAYSIA) SDN. BHD. for the period 01.01.2020 to 31.12.2022. Similar provision as regards salary deduction is not found in these 2 comparable Collective Agreements involving the same Union.

[82] Even though, the Company had in Appendix 1 to its submission stated the number of time slips issued in the last 12 months (November 2021 until October 2022), the Court finds that the time slips issued for medical appointment is not separated. The Court is thus unable to ascertain the actual number of incidences or if there is an abuse of the time slip as alleged by the Company. The Company's fears is not substantiated as such.

[83] We further noted that deducting salary when an employee visited the Company's panel clinic or a government medical practitioner might cause to prevent a sick employee from seeking medical consultation at the earliest. Post Covid 19 Pandemic, the Court is of the view that the Company ought to take precautionary measures to encourage its employees to seek early medical consultation and intervention in order to prevent spread of any illness or disease amidst its employees.

THE RULING OF THE COURT

[84] The Panel unanimously agrees that Article 30(4) should read as follows:-

> *"An employee who reports to q Government Medical Officer or a registered Medical practitioner appointed by the Company and who is not subsequently granted sick leave shall report for duty as soon as possible after the completion of the medical examination. The actual time taken off by the employee will be based on the time slip given by the appointed doctor or hospitals and shall be treated as paid time off."*

ARTICLE 39 - SHIFT ALLOWANCE

UNION'S SUBMISSION

[85] The Union submits that there is a clear discrimination between employees who work the Morning Shift and those who work on the Night shift. The employees are only paid Shift Allowance of RM8.00 per night when they work the Night Shift ie, 9.00 pm to 9.01 am.

[86] It is the Union's contention that Shift Allowance is usually paid to an employee who is required by the employer to work on rotating shift, to work irregular shifts or unsociable hours in recognition of the disruption that shift work can have on an employee's health, personal and family life.

[87] It is the Union's contention that Shift Allowance of RM8.00 per shift should be paid for working shift hours whether the Morning Shift or the Night Shift.

THE COMPANY'S SUBMISSION

[88] The Company on the other hand disagrees and submits that the quantum of this shift allowance proposed by the Union is the same as the night shift ie, RM 8.00. Shift employees in the Company work day shifts and night shifts every alternate week. They also work 4 days on and 2 days off. The Company submits that the 2 days off is sufficient for the employee to readjust his sleep patterns.

[89] The Company further submits that the Union has not produced any evidence to show that the Company's shift patterns have had any detrimental effect on any one of its employees and as such has not shown why the shift allowance has to be paid for the morning shift and how this RM 8.00 shift allowance would alleviate any detriment

suffered as a result thereof (if any).

[90] The Company too does not agree with the Union's proposal to pay a shift allowance of RM 8.00 for the morning shift as this will lead to double compensation. For example an, employee working on the night shift this week is being paid a shift allowance and when he changes over to the morning shift the following week he will also be paid another shift allowance.

[91] In support of its stance the Company highlighted the case of *Kesatuan Pekerja-Pekerja Dalam Perkhidmatan Perubatan dan Kesihatan Swasta v. Assunta Hospital* [2020] 1 ILR 510 [98] [Tab 5 CBA] wherein a similar claim for morning shift allowance was disallowed by the Industrial Court: -

> *"[87] After considering the evidence available before the court and the parties' submissions on this issue, the court opines that there is no sufficient justification for the union's proposal to insert a new Morning Shift Allowance and increase the Afternoon Shift Allowance. The union claimed that employees working in the morning shift experience inconvenience. But non-shift employees, for example, who have school-going children may also experience the same problems. The Morning Shift Allowance is an incentive for that category of employees to come in to work in the morning. For the hospital, the Morning Shift hours are between 7am to 2pm whereas for non-shift employees the working hours are from 8.30am to 5pm on weekdays. It is the court's considered view that there is not much difference in the Morning Shift hours when compared to the normal working hours of non-shift employees. Therefore, the court is unanimous in its decision to reject the inclusion of the union's proposal for art. 31.2 (a) in the Collective Agreement. Whereas the rate for the Afternoon Shift Allowance is maintained status quo."*
>
> *[emphasis ours]*

[92] The Company thus submitted that the status quo should be maintained for Article 39.

ANALYSIS

[93] The shift work has an effect on the mental wellbeing of employees. This is confirmed via research and studies. In the research entitled *Shift Work and Health : Current Problems and Preventive Actions by G.Costa (supra)*, it is stated that the majority of workers involved in rotating shift are subjected to continuous stress to quickly adjust to

the variable duty periods, which is partially and invariably frustrated by the continuous changeovers in working times. This is responsible for the "shift-lag" syndrome characterised amongst others by feelings of fatigue, sleepiness, insomnia, digestive troubles, irritability etc. Elsewhere in the same article, it is stated that shift workers often face irritability, nervousness and anxiety in relation to more stressful working conditions and higher difficulties in family and social life. Many surveys document that gastrointestinal troubles and diseases are more common in shift workers than in day workers.

[94] The Court in this regard accepts the submission made by the Union that shift work takes a toll on the employees irrespective of the shift timing. The Union submits that the rotating shift work schedule can really take its toll on employees, resulting in disrupted sleep patterns and impacting mental wellbeing, not to mention the disruption to their lives outside work. Irregular shift work is known to cause health issues and illnesses, such as sleep disorders, a poor diet and mental health problems including feelings of isolation and depression. Working when most people are sleeping or resting can take its toll on staff, as such, a shift allowance is paid in recognition of the detrimental effects working these hours can have.

[95] The Court has taken into consideration that the morning shift working hours in the Company is 12 hours including OT and it extends beyond the normal working hours of 8.00 to 17.00 hours. The shift hours of the Company for workers who are on morning shift extends into night, from 9.00 to 21.00 hours.

[96] As such, the Court is unable to agree with the Company's submission that there is no basis to pay shift allowance to the workers who perform the Morning shift in the Company. The panel too does not see how the payment of shift allowance for employees working the Morning Shift could become double compensation, as asserted on behalf of the Company.

[97] The principle of payment of shift allowance is to alleviate hardship faced by the rotating working hours and thereby there is no reason for the Company to avoid paying this allowance to the employees who work both the Morning Shift as well as the Night Shift given that these employees are required to work for 12 hours a day and are only able to leave their workplace after 9pm.

[98] Thus, the Court distinguishes the decision of the Industrial Court in the case of *Kesatuan Pekerja-Pekerja Dalam Perkhidmatan Perubatan dan Kesihatan Swasta v.*

Assunta Hospital [2020] 1 ILR 510 as in that case, the morning shift in the hospital was for 7 hours at a stretch and the shift working hours were between 7am to 2pm, whilst the non-shift employees of the Hospital worked from 8.30am to 5.00pm on weekdays. Thus, the Learned Chairlady had been justified in disallowing the shift allowance for those employees working Morning Shift in the hospital.

THE RULING OF THE COURT

[99] Based on the afore stated grounds, it is the unanimous decision of the Panel that a shift allowance of RM 5.00 is to be paid for employees who work the Morning shift.

ARTICLE 42 - UNIFORM AND PERSONAL PROTECTIVE WARE (PPE)

UNION'S SUBMISSION

[100] Clause 2 of this Article in the 1st CA that *"One (1) set of the new uniform will be allocated to all* ***employees after they complete 24 months' service*** *with the Company and they will continue to receive one (1) set every 12 months thereafter. Distribution date after 24 months and every 12 months will be based on the date the employee joined the Company."*

[101] The evidence was led by the witness for the Union that upon commencement of employment the employee was provided with 2 sets of Uniform. After the initial 24 months in service, the employee was to be provided with 1 set of new Uniform. On the 3rd year the employees although supposed to receive 1 set but did not receive any new Uniforms. Even when new Uniforms arrived, they were of the wrong size. In the event the Uniform got torn (due to wear and tear) it was replaced with "used" second-hand Uniforms.

[102] The Union's contention is that the initial 24 months wait is too long to be provided with another set of new uniform and ought to be reduced to 12 months. Hence it is proposed that Article 42 (2) read as follows: *"One (1) set of new Uniform will be allocated to all employees every 12 months from the date the employee joined the Company."*

THE COMPANY'S SUBMISSION

[103] The Company seeks to maintain Article 42. The Company submits that the current provision of 1 set upon completion of 24 months of service is adequate. Even though, the

newly joined employees need to wait for 2 years before receiving new set of uniform, the Company allows them to change defect uniforms to be replaced by used uniform that is in good condition.

[104] The Company further submits that that the cost of uniforms has increased because of the pandemic, where it now costs RM198 a set for male employee (RM93 before pandemic) and RM328 a set for female employee (RM143 before pandemic), in the event the Union's proposal is granted, the Company would have to incur a substantial amount of money in view of the fact that the Company has approximately 2,000 employees.

[105] In *Kesatuan Pekerja-Pekerja Dalam Perkhidmatan Perubatan dan Kesihatan Swasta v. Assunta Hospital (supra)*, the Industrial Court also rejected a similar request and said this: -

> *Article 37.1*
>
> *[88] The union proposed that art. 37.1 to read as follows:*
>
> *All employees who are required by the Hospital to wear uniforms shall be issued with three (3) sets of uniforms initially and thereafter two (2) set uniform annually, They will also be provided with two pairs of suitable footwear annually. The Hospital will determine the footwear suitable for the different categories of uniformed staff.*
>
> *[89] The revision by the union in art. 37.1 is that all employees are to be given two sets of uniform annually for the purpose of ensuring the employees are given sufficient sets of uniform and further to ensure they appear tidily at work. This is also to reflect past long standing practice in the hospital. UW2 gave evidence that the uniforms supplied to the employees were insufficient. Due to his job scope, sometimes he had to receive a patient who was bleeding and his uniform will be stained. He would have to wear the stained uniform until he went home. If he could not get the stained uniform to be washed the next day, he would have to wear his old uniform. He complained that sometimes it also takes a long time for them to get a replacement uniform, for example, due to wear and tear.*
>
> *[90] The hospital did not agree to the union's proposal because under the present Agreement uniforms are supplied to staff on wear and tear basis or earlier if the uniforms are worn off ahead of the 12 months. As such, there was no necessity for any changes to be made. The hospital proposed for status quo on this provision. Below is an example of the recently concluded collective agreement of*

Fatimah Hospital on uniform:

> *Fatimah Hospital 8th CA (1 April 2016 - 31 March 2019) signed on 18 November 2016. Article 20.1, employees who are required by the hospital to wear uniforms shall be issued with:*
>
> > *i. Two (2) sets of uniforms renewal according to normal wear and tear*
> >
> > *ii. One (1) new uniform every year (refer to pp. 71- 72 of C0B2).*
>
> *[91] From the evidence, the court is of the view that the hospital's proposal on art. 37.1 is fair and reasonable. Hence, the court unanimously decides that the provision of this article as per the 12th Collective Agreement is maintained. Nevertheless, taking the cue from UW2's complaint about the length of time taken to get a replacement uniform, the hospital should improve on this process so as to ensure that the employees at all times have the required uniform when they are at work."*

[106] Thus, the Company submits that the current provisions on Uniforms and PPE are adequate. The Company therefore prays for Article 42 to remain status quo.

ANALYSIS

[107] The Court notes that the Company ought to replace torn or worn out uniforms with new uniforms as far as possible as the uniforms reflect the Company's Corporate image and the employees' pride when wearing the uniforms in public view.

[108] The wearing of Uniform is mandated by the Company. COW-1 has in her testimony stated that the replacement of 2 sets of uniform every 12 months is unnecessary since the Company provides exchanges for torn/worn out uniforms. UW-1 has testified that the replaced uniforms are usually used or second-hand uniforms.

[109] Whilst being mindful of the cost of the uniforms, the Court is of the view that the Union's proposal which is for the Company to provide a new set of uniform every 12 months, to be reasonable.

RULING OF THE COURT

[110] The panel having considered the submission as well as the evidence of UW-1 and

COW-1 rules that Article 42(2) shall be:- One (1) set of new uniform will be allocated to all employees every 12 months from the date the employee joined the Company In the event of fair wear and tear, the Company ought to as far as possible provide replacement uniforms that are in good condition.

ARTICLE 43 - GROUP PERSONAL ACCIDENT INSURANCE

UNION'S SUBMISSION

[111] Clause 1 of this Article in the 1st CA provides that the Company may buy a group personal accident insurance policy to cover all employees at the insured amount of RM20,000.00 per employee. The Union had proposed that the insured amount be increased to RM30,000.00. The Witness for the Company (COW-1) had agreed to the suggestion put during cross- examination that the increase in the premium payable was not much and that the group personal accident scheme was to benefit the workers.

COMPANY'S SUBMISSION

[112] The Union is proposing to replace the existing Group Personal Accident Insurance policy with coverage of RM20,000 per employee with Group Term Life Insurance with 24-hour coverage of up to RM30,000 per employee.

[113] The Company submits that no cogent reasons have been given, or evidence was submitted by the Union on why such a drastic increase of coverage is necessary aside from a broad sweeping statement of UW-1 that it is now suitable to have such an increase.

[114] The Company submits that such a broad statement without the accompanying evidence cannot justify the Union's proposal, [see *PIHP (Selangor) Bhd v. Kesatuan Kebangsaan Pekerja-Pekerja Hotel, Bar & Restoran Semenanjung Malaysia & Anor (supra)*].

[115] During examination-in-chief, UW1 gave evidence there are employees who had accidents outside the office's premises but did not claim insurance. The Company submits as UW's evidence is not within his personal knowledge, nor did the Union produce any evidence to support this, UW1's evidence is nothing more than hearsay evidence and therefore, is inadmissible. The Company submits that the Union has failed to discharge the burden to justify its proposal.

ANALYSIS

[116] The Court has viewed the Comparison Table of group insurance provided by different companies in the same industries or region on **pages 90 to 92 of COB-2**. Based on the comparison, the insurance coverage provided by the RM20,000 is within the range of coverage provided by the other companies. The Union too did not submit any evidence in support of the need to increase the coverage. Furthermore, it is in evidence (C0WS1 Q7A18) that there have been no claims made in the past 2 years.

RULING OF THE COURT

[117] Based on the afore stated, it is the unanimous decision of the panel that Article 43 is to be retained as it is.

ARTICLE 45 - ACTING ALLOWANCE

UNION'S CASE

[118] As per the 1st CA, the acting allowance would be paid to the employee who is replacing an employee who is on maternity leave, long medical leave or prolonged illness. The entitlement is as per Title Allowance that is practiced by the Company.

[119] As per the Company's practice too, acting allowance is only paid to an employee who is replacing someone who is on maternity leave, long medical leave or prolong illness.

[120] It is the Union's contention that a daily Acting Allowance of RM10.00 per day ought to be paid to an employee who is required to perform the functions of an employee who is on a higher grade. This is to compensate carrying the burden of higher responsibility of a higher rank /grade and to commensurate rate for the job.

COMPANY'S SUBMISSION

[121] The Company submits that this proposal is unnecessary as the Company doesn't have a practice of getting employees to "act" in a position other than a Group Leader or Assistant Group Leader, who is on long leave. The Company already has a proper procedure whereby the employee who is replacing a Group Leader is entitled to claim RM140 as "Title Allowance" and RM100 is payable for Assistant Group Leader.

[122] As such, the Company prays for the status quo to be maintained.

RULING OF THE COURT

[123] It is the unanimous decision of the panel that the Status quo is to be maintained in so far as Article 45 is concerned as there is insufficient evidence before the Court in support of the Union's proposal.

ARTICLE 48 - ANNUAL SALARY ADJUSTMENT AND INCREMENT

UNION'S SUBMISSION

[124] The Union submits that annual increment is the reward for value added to the employee's skill and experience made on the presumption that with every year of working experience, the employee has become a better employee. For this he is rewarded with an annual increment. It is not related to the company's financial position as in the case of the salary revision granted once in three years.

[125] In Association of *Bank Officers, Peninsular Malaysia v. Malayan Commercial Banks Association* [1981] 1 ILR 136 (Award No. 54 of 1981) where the Industrial Court has stated:

> *It is thought in certain quarters that the annual increment granted to employees is intended to absorb inflation or rises in the cost of living. This is erroneous. Inflation or increasing living costs above the basic wage level is absorbed by either a Specific Relief Allowance (SRA) or a variable Cost of Living Allowance (COLA). In many salary administration systems, however, which are subject to periodic revision, increased cost of living over the past period is incorporated into basic pay at the time of revision to determine salary for the future period. To avoid further misunderstanding, we wish to state* ***that the annual increment represents the added value of the employee, in terms of skill and experience, to the employer. As a general rule, the quantum of the added value should not exceed 5% of salary per annum****. As far as possible, we have observed this principle in determining the rates of annual increments in this Award after taking into account existing incremental rates in banks, the union's proposal and that of Association's counter proposal.*

[126] The Union submits that the Company refers to this Article as **Annual Salary Adjustment And Increment**, the system put in place ie, a base up and performance evaluation based increment, is in effect *payment for the added value of the employee, in terms of skill and experiencet to the employer* and hence it is only "Annual Increment" as

it is generally known. There is in effect no salary adjustment per se to absorb inflation or rises in the cost of living.

[127] The Union asserts that the Company is financially capable and it is a fact that the Company has been making good profits without fail. The Union's proposal is that an annual increment of **3% base up** and the balance increment rate be based on the increment rate prescribed in the table at Article 48 (6).

[128] As to **Salary Adjustment**, the Union submits that the Court has to take into account the following factors in deciding on the question of wage structure and wage increases as established in Industrial Law:-

(i) wages and salaries prevailing in comparable establishments in the same region;

(ii) any rise in the cost of living since existing wages or salaries were last revised; and

(iii) the financial capacity of the company to pay higher wages/increases

[129] According to the Union, the Company for the past four (4) years the Company had made substantial profits. The Net profit for the financial year ended 31 March 2017 was RM81.763 million (page 12 COB-1) and for financial year ended 31 March 2018 was RM10.011 million. The Net profit for the year ended 31 March 2019 was RM63.671 million (page 40 COB-1). The Net profit for the year ended 31 March 2020 was RM45.832 million (page 79 COB-1). Subsequent to the 31 March 2020 financial year end, the Company paid out Dividend of RM60.050 million to its shareholders. Over and above the profits the Company declared, the Company has also made provisions for depreciation and paid taxes. The Company's Witness COW-1 agreed to the suggestion put during cross-examination that the Company was in sound financial situation.

[130] In 2017, the Company's revenue was RM763 million and in 2018 was RM927 million (page 12 COB-1). In 2019, the Company's revenue was RM856 million (COB-1 page 49) and in 2020 it was RM831 million (COB-1 page 88). The Company's Net Cash from Operating Activities was RM156.5 million in 2019 and RM151.7 million in 2020 (page 92 COB-1).

[131] Based on the financial capability of the Company it is submitted that the Company can afford to grant a salary adjustment of 10% across the board.

[132] The Union highlighted to us the case of *Kesatuan Eksekutif Airod v. Airod Sdn Bhd & Anor* [2016] 1 LNS 888, wherein Su Geok Yiam J cited with approval the case of *Kesatuan Kebangsaan Pekerja-Pekerja Hotel Bar dan Restoran Semenanjung Malaysia v. MTB Realty Sdn Bhd, Renaissance Melaka Hotel* [2003] 6 MLJ 420, where in, at p. 431, Faiza Thamby Chik J, held as follows:

> *Capital expenditure and mere provisions should not be taken into account in ascertaining financial capacity of the respondent. The law in this area is clear ie, that there should be no deduction for provisions for income tax, revenues and depreciation when ascertaining the financial capacity of a company.*

THE COMPANY'S SUBMISSION

[133] The Company meanwhile submitted that this Court maintains the current provision in the First Collective Agreement.

[134] According to the Company, it already practices a system of reviewing and adjusting salary in the month of April on an annual basis taking into account rising costs of living as well as the individual employee's performance rating. There are two components in the Company's annual salary review, which is the **"Base Up"** and the increment. The Base Up is a **fixed rate which takes into account costs of living and was fixed at 2% in the 1st Collective Agreement**. This means that the total salary adjustment over the life of the 1st Collective Agreement was 6% in total.

[135] The Company further submits that the increment based on the employee's performance according to the table in Article 48 will be added to the base up to form the total salary. Adjustments are made across the board for star performance as well as poor performers. This system has been working well thus far and the adjustment made (base up + increment) is currently comparable, if not better than the other electronic companies in the same region.

[136] The Company further submits that the average increase in Consumer Price Index (CPI) between May 2017 to April 2020 is -0.918% (*pages 98 to 105 of COB-2*). This means that the cost of living in the preceding wage period of this current 2nd Collective Agreement had dropped. Applying what is commonly known as the "Harun J.'s formula", which has been used to calculate the salary adjustment based on the increases in the CPI during the three-year preceding wage period, the Company submits before us that there is no requirement for any salary adjustment to be made in this 2nd Collective Agreement as

there had been an average **decrease** in the CPI for the preceding wage period.

[137] Notwithstanding any adjustment being necessary, the Base Up system continued to apply and all employees continued to receive adjustments in April 2021 and recently in April 2022. UW1 had confirmed this during cross examination:

> "CS : Kamu setuju atau tidak walaupun tiga CPI ini menunjukkan kemerosotan, pada setakat ini, pihak syarikat telah memberikan base up 2 kali. Satu kali dalam bulan April 2021, dan April 2022.
>
> UW1 : Ya."

[138] All employees will receive yet another 2% adjustment in April 2023 bringing the total adjustment over the life of the 2nd Collective Agreement to be 6%.

[139] The Company submits that the Union's 10% proposal is excessive and in light of the CPI, the annual adjustment by way of Base Up of 2% is sufficient and appropriate.

ANALYSIS

[140] The Company has implemented its own method of rewarding employees based on a fixed Base Up and Performance Related annual payment. The Court observes that the Company has a system for reviewing and adjusting salary on an annual basis in April, taking into account rising costs of living as well as the individual employee's performance rating. The current Article 48 of the 1st Collective Agreement has **two components** in the annual salary adjustment ie, The "Base Up" and the increment. The Base Up is at 2% in the 1st Collective Agreement, which means that total salary adjustment over the past 3 years was 6%, of which the employees have already received 2% each in April 2021 and 2022. The remaining 2% salary adjustment is to be paid in April 2023. Based on evidence before the Court, the Court is of the view that the proposal made by the Union of 10% salary adjustment across board is not justified by CPI and there is already salary adjustment of 2% per annum based on the fixed Based Up implemented in the Company. Thus, the Union's proposal for Salary Adjustment of 10% across the board is disallowed.

[141] The panel is of the unanimous view that that the present system of **two components** made up of the annual salary adjustment or the fixed "Base Up" and the increment be maintained. However, in view of the fact that the average range for increment of the employees in the Company is presently around 4% (for performance rated as B), and given the Company's financial position, the Court allows the Union's

proposal to revise the fixed Base Up to 3%. The increase of the Base Up to 3% will yield an increment of around 5%, for average performance, which is reasonable in our view.

THE RULING OF THE COURT

[142] Based on the evidence before the Court, it is the unanimous decision of the panel that the Base Up be increased to 3% and the balance increment rate remains as prescribed in the table at Article 48(b).

ARTICLE 50 - SALARY SCALE

UNION'S SUBMISSION

[143] The Union submits that based on **COB-2 page 97** and the testimony of COW-1 during cross-examination it was established that the Company's Salary Scale was far below what the industry / comparable companies were offering, (see *FEC Cables Sdn Bhd, Panasonic Manufacturing Sdn Bhd, Carrier International Sdn Bhd, Johnson Controls, York (Malaysia) Manufacturing and Daikin Refrigeration (M) Sdn Bhd*).

[144] On 1 May 2022, MWO 2022 came into operation. The Order has increased the minimum monthly wage of employees to RM1,500. The MWO Order applies to all employees.

[145] Accordingly, the revised Salary Scale proposed by the Union following the MWO 2022 is as follows:

JOB GRADE	BASIC SALARY	RANGE
SR. TECHNICIAN	2,262.00	2,262.00 - 4,300.00
TECHNICIAN	2,012.00	2,012.00-3,312.00
ASST. TECHNICIAN	1,800.00	1,800.00 - 2,750.00
SR. OPERATOR	1,700.00	1,700.00 - 2,750.00
OPERATOR	1,500.00	1,500.00- 2,062.00

[146] It is to be noted that as per the Salary Scale in the 1st CA **(COB-1 page 147)** the Basic Salary of 4 out of the 5 Job Grades was below the RM1,500 Minimum Wages introduced by the 2022 MWO.

THE COMPANY'S SUBMISSION

[147] With the MWO that came into effect on 01.05.2022, the Company has made the necessary adjustments to comply with the said Order. The Company has also made an

adjustment to the maximum for Operators from RM1,650 to RM2,000 as was confirmed by COW-1's testimony. The Company referred to the document marked as Exhibit COB-4 for the proposals for the Salary Scale to be applicable to the 2nd Collective Agreement. The Court noted that COB-4 differs in terms of the Union's proposal from paragraph 18.3 of the Union's submission. The Union's proposal following the MWO 2022 is as stated in paragraph 145 hereabove.

[148] The Company submits before us that the salary ranges proposed by the Company is reasonable and that the salary ranges proposed by the Union is too wide and with maximums which are too high.

[149] UW-1 had said in his evidence, with reference to the salary range of an operator, that it would take roughly 8 years before an employee hits the maximum. COW-1 had further explained that once an employee hits the ceiling and is a good performer he will be promoted to the next level.

[150] It is submitted by the Company that the salary ranges proposed by the Company are reasonable and comparable since the Company is based in Kelantan and all its employees are local employees. The Company is the largest employer in the state. It is further submitted by the Company that the cost of living in Kelantan is lower compared to the other states in the West Coast and that the employees' cost of living is further cushioned by the Company's superior perks, 24-hour canteen, free transportation to its employees from their homes within a 30km radius to the Company's premises 24 hours 7 days a week if they are working and free parking for all employees. The Company also budgets a substantial amount annually for welfare events and programmes for the benefit of its employees and their families.

[151] The Company therefore submits that this Court accepts the Company's proposal on the salary ranges as reflected in COB-4.

ANALYSIS

[152] Ordinarily, employees in higher grade will have "legitimate expectation" that their salary range will reflect their levels. Following the MWO 2022, if the Company does not adjust the maximum salary scale it may lead to disharmony and lower the morale of the senior employees who have been serving the Company for longer than a newcomer in the Company who will be earning close to what the senior employees in the Company are paid.

[153] The panel has in this regard too reviewed the minimum and maximum salary ranges of employees in similar industries as at page 97 COB-2 whilst taking into account the Company's existing benefits and location. The Company's wages are lower as a result of its location in Kelantan and the lower cost of living in the East Coast.

RULING OF THE COURT

[154] It is the panel's unanimous decision upon considering all the factors and submissions of both the Union and the Company that the Salary Scale of the Company pursuant to Article 50 be adjusted to reflect the changes brought about by MWO 2022 and it shall be as below:-

JOB GRADE	MINIMUM	MAXIMUM
SR TECHNICIAN	2000	3750
TECHNICIAN	1800	3000
ASST TECHNICIAN	1600	2600
SR. OPERATOR	1550	2500
OPERATOR	1500	2000

CONCLUSION

[155] In handing down the Award the Court has taken into account the submissions by both parties bearing in mind also the provisions in s. 30(5) as well as the principles set out in s. 30(4) of the Industrial Relations Act 1967. The Court too extends its gratitude to the Panel members who had rendered their expert assistance and full cooperation to the Court in handing down this Award.

[156] The signed Agreed Articles marked as **"Appendix A"** is annexed to this Award and they shall form an integral part of this Award in respect of the 2nd Collective Agreement between the parties herein.

HANDED DOWN AND DATED THIS 5th DAY OF APRIL 2023

(RAJESWARI KARUPIAH)
CHAIRMAN
INDUSTRIAL COURT MALAYSIA,
KUALA LUMPUR

Appendix A

LIST OF AGREED ARTICLES FOR THE 2ND CA BETWEEN ROHM-WAKO ELECTRONICS (MALAYSIA) SDN. BHD. AND KESATUAN SEKERJA INDUSTRI ELEKTRONIK WILAYAH TIMUR SEMENANJUNG MALAYSIA (KSIEWTSM)

PART-I

STATUTORY

ARTICLE 1 - PARTIES TO THE AGREEMENT

1. This agreement is made between Rohm-Wako Electronics (Malaysia) Sdn Bhd, hereinafter called "The Company" on the one part, and Kesatuan Sekerja Industri Elektronik Wilayah Timur Semenanjung Malaysia, being a Trade Union of employees registered pursuant to the Trade Union Act 1959, hereinafter in this agreement referred to as "The Union" on the other part, wherein it is agreed that the terms and conditions of employment herein shall be observed by the Company on the one part and by the Union on the other part.

2. In case either the Company or the Union changes its name or merges with other Companies or Organizations, to the effect that the Company or the Union is wholly or partly absorbed by the Company or. Organizations, the articles of this Agreement shall continue to cover both parties to whom this Agreement was applicable at the time the change of name or merger took place.

ARTICLE 2 - TITLE

This agreement shall be entitled the Rohm-Wako Electronics (Malaysia) Sdn Bhd and the Kesatuan Sekerja Industri Elektronik Wilayah Timur Semenanjung Malaysia 2nd Collective Agreement.

ARTICLE 3 - SCOPE OF AGREEMENT

1. This agreement shall be applicable to all confirmed employees who are employed in the Company but does not include those employed in a

i. Managerial capacity;

ii. Executive / Officer / Supervisory capacity

iii. Confidential capacity

iv. Security capacity

2. In the event that the scope of a category of an employee is ambiguous in nature, the Union and the Company shall enter into negotiations without delay to determine the scope in respect of such employee.

ARTICLE 4 - EFFECTIVE DATE AND DURATION OF AGREEMENT

1. This agreement shall take effect from **1st May 2020** and shall remain in force and be binding on the Company and the Union for a period of three (3) years until **30th April 2023** and shall continue to remain in force thereafter until and unless superseded by a new Collective Agreement.

ARTICLE 5 - PREAMBLE

1. The objectives of this Agreement are;

i. To achieve a sound and just relationship between the Company, the Union and its members;

ii. To establish and maintain a machinery for the prompt and equitable settlement of grievances;

iii. To establish and maintain satisfactory terms and conditions of employment,

2. With these objectives in mind, both parties to this Agreement affirm their mutual desire to create a relationship of mutual respect and agree to implement the provisions herein. If by reason of any unforeseen occurrence or development, the operation of this agreement is likely to cause any inequitable hardship to one or more parties and is contrary to the spirit of this agreement, the parties concerned shall immediately negotiate in good faith and use their best endeavor to resolve it.

ARTICLE 6 - INTERPRETATION AND ARBITRATION

1. This agreement shall supersede ail other agreements on conditions of employment entered into previously by the Company insofar as matters covered by this Agreement are concerned.

2. Where any term existing in the current individual contract or service or employment of those employees within the scope of this Agreement is in conflict with the provisions of this Agreement, the provisions of this Agreement shall prevail.

3. Words imparting the masculine gender shall also include the feminine gender except where the context dearly indicates otherwise.

4. Words implying the singular number shall include the plural number and *vice versa*.

5. Any reference to the word “employee” in this Agreement shall also mean “workman” and *vice versa*.

6. Any dispute relating to the implementation or interpretation of this Agreement shall be referred to the Industrial Court for a decision in accordance with the provisions of the Industrial Relations Act 1967 unless settled by negotiation between the Company and Union.

7. This agreement shall be construed as an agreement entered into by the Union for and on behalf of the employees of the Company who are covered by the scope of this agreement and the employees of the Company shall be bound collectively and severally by the terms of this Agreement.

ARTICLE 7 - MODIFICATION AND AMENDMENT TO AGREEMENT

1. During the period of this agreement, neither the Company nor the Union shall seek to vary, modify, annul, or add to any of its terms in any way whatsoever save by mutual agreement of the parties or by operation of law.

2. In the event of both parties agreeing to vary any of the terms of this Agreement, both parties shall jointly deposit such variation of the terms of the Agreement with the Industrial Court for its cognizance within one (1) month from the date of the agreement on the said variation which shall be binding on the parties from such date and for such period as may be specified in the variation Agreement.

ARTICLE 8 - TERMINATION OF AGREEMENT

1. Either party may serve on the other, three (3) months' prior written notice to negotiate on new terms and conditions of employment and other related matters but no such notice shall be served earlier than three (3) months before the expiry of the Agreement.

2. The party that serves the notice shall also submit proposals on terms and conditions of employment for negotiation. In the event of delay or deadlock in negotiations, the provisions of the current terms and conditions of employment shall prevail until superseded by the new terms concluded between the parties or by an award by the Industrial Court.

3. In the event of deadlock in negotiations for a new agreement, the matter shall be referred to the Ministry of Human Resources for conciliation and if unsuccessful referred for arbitration by the Industrial Court in accordance with the provisions of the Industrial Relation Act 1967.

ARTICLE 10 - RECOGNITION OF THE UNION

1. The Company recognizes the Union as the exclusive collective bargaining body in respect of and on behalf of those who come within the scope of this agreement on matters relating to the terms and conditions of employment applicable to such employees

2. The Company shall not restrain those covered by this agreement from joining the Union.

3. Non-Union members who are covered by the scope of this Agreement will not receive any better terms and conditions of employment than those laid down in this Agreement.

4. After this agreement has been signed, the Company undertakes to inform ail those employees covered by this agreement that their terms of employment shall be governed by the provisions of this Agreement.

5. The Company shall recognize the right of the Union to make representations with respect to the Company's action which are contrary to or tend to diminish the value of the provisions of this agreement and to bargain collectively.

6. A copy of all official memo correspondences from the Company to the employee shall be extended to the Union except those which are deemed Private and Confidential by the Company.

ARTICLE 11 - RECOGNITION OF THE COMPANY

The Union recognizes the right of the Company to operate and manage its business for which it is registered by law.

ARTICLE 12 - LANGUAGE AND COPIES OF THE AGREEMENT

1. This Agreement shall be prepared in English and Bahasa Malaysia. In the event of any question over the interpretation of this Agreement, the English version shall be authoritative and final.

2. Those covered within the scope of this agreement shall be given a copy each of the said Agreement in both English and Bahasa Malaysia by the Company.

ARTICLE 13 - CHECK OFF

1. The Company agrees to collect Union monthly subscriptions from the wages of each Union member who has authorized the Company to do so in accordance with Section 24 of the Employment Act 1955 and to remit such subscriptions to the Union monthly, provided that:

i. A workman who is a member of the Union authorizes the Company in writing in the prescribed form (as in **Appendix A**) to deduct his monthly union subscription from his wages and to remit the same to the union monthly.

ii. In the event that the monthly subscription rate is being increased or decreased, the Union shall inform the Company of such a change with the copy of the sanction letter from Director General of the Trade Union Department, Ministry of Human Resources.

iii. Nothing shall prevent the workman from withdrawing his consent at any time during the duration of the Agreement by serving the Union 30-caiendar days' notice in writing.

iv. The Company shall stop deducting the Union subscription of its members upon being notified by the Union to do so.

v. The Company shall continue to make such deductions so long as the authorization remains in force.

ARTICLE 14 - EXISTING BENEFIT

Notwithstanding the provisions of this Agreement, total existing benefits provided by the Company and not superseded by this Agreement shall continue to remain in force.

PART II

EMPLOYER - UNION RELATIONS

ARTICLE 15 - LABOUR - MANAGEMENT COUNCIL

1. It is the objective of the Company to ensure that good Labour Management relations prevail in the Company by working together with the Union to improve the social status of the Union members and the Company's growth. The Company believes that the Union members' status and the Company growth are synonymous and with this intent, a Labour-Management Council (LMC) shall be established.

2. The membership of this Council comprising of four (4) members each from each party where those representing the Management of the Company shall be appointed by the President of the Company and the representative of the Union shall be appointed by the Union.

3. The LMC shall hold its meeting at least once in three (3) months to discuss matters of mutual interest pertaining to employment matters.

4. The LMC meeting can be requested by the Company or the Union and agreed to by both parties.

5. Attendees to these meetings during their normal working hours will continue to be paid their normal wages / salaries.

6. No overtime shall be paid if the meeting is held outside the attendees' normal working hours.

7. Minutes of these meeting shall be prepared by the Company and duly signed by both parties and a copy forwarded to the Union.

ARTICLE 16 - GRIEVANCE PROCEDURE

1. Purpose

It is the desire of both parties to this Agreement that any grievance arising between union member/s and the Company be settled as equitably and as quickly as possible. In pursuance of this mutual desire, it is agreed that grievances will be dealt with according to the following procedure with the aim of reaching agreement at the lowest possible level and maintaining continuous good relations between both parties. For harmonious relations, all parties shall endeavor to resolve any problem or complaint before resorting to this grievance procedure.

2. Definitions

A grievance is an employment related complaint which the employee concerned brings to the attention of his immediate superior and which is subsequently not settled by his superior to the satisfaction of the employee.

3. Procedure

Stage 1 Any employee alleging that he has a complaint may lodge it in written form as shown in **Appendix B**, with his superior with a copy forwarded to the Head of Department and the Union.

Stage 2 If within seven (7) working days, it has not been resolved to the satisfaction of both parties, the employee concerned accompanied by an officer of the Union shall resolve the matter with the Company's Human Resource Department Manager.

Stage 3 If the matter has not been resolved within seven (7) working days, the matter may be referred to any personnel designated by the Company.

Stage 4 if the grievance is not resolved after invoking Stage 3 within seven (7) working days then the matter may be dealt with in accordance with the provisions of the Industrial Act 1967,

4. Extension of Time Limit

At all stages of this procedure where a time limit is specified, such time limit may be extended by agreement between the parties.

5. Paid Time Off

The Company shall grant paid time-off to any one (1) Union Committee member to enable them to attend to member's grievances in the Company's premises.

ARTICLE 17- LEAVE ON TRADE UNION BUSINESS

1. A member of the Union's Executive Council intending to carry out his duties or to exercise his rights as an officer of the Union shall be granted paid leave with pay, on application, to represent the members of the Union in relations to industrial relations matters concerning that member's company subject to duration of the leave applied for is for a period that is no longer than what is reasonably required for the purposes stated in the application.

2. The Company shall grant members of the Union's Executive Council and the Union's Worksite Committee paid leave for the purposes of attending courses, programs and/or seminar which have been approved by the Company subject to a maximum of 2 persons attending a course, program or seminar at any one time and subject further to a maximum of 10 days per person in any one calendar year. Such leave granted shall not be offset against their annual leave entitlement.

ARTICLE 18 - NOTICE BOARDS

1. The Notice Board shall be made available for the purpose of Union communication.

2. All notices put up by the Union shall be at the sole responsibility of the Union, not the Company.

3. A copy of any notice that is intended to be put up on the Notice Board shall be forwarded to the Human Resource Department at least one (1) clear working day prior to the intended action.

4. The Union Area Committee Secretary and Human Resource Department will each keep a key to the Notice Board.

5. Union must submit an application one (1) week in advance in order to use the meeting room to conduct a meeting which shall be subject to the room availability.

6. The Company reserves the right to withdraw or cancel the application with reasonable reasons.

PART III

TERMS AND CONDITIONS OF EMPLOYMENT

ARTICLE 19 - APPOINTMENT AND PROBATIONARY PERIOD

1. All newly engaged employees shall serve a probationary period of not more than three (3) months.

2. An employee who has successfully completed his probationary period will be given a letter of confirmation by the Company. In the event that the employee does not receive his letter of confirmation after the expiry of the probationary period, he shall not be deemed to have been confirmed in his employment.

3. Upon confirmation of a probationer by the Company, his service with the Company shall be deemed to have commenced from the date of his entering in the service of the Company as probationer.

4. Probationers will be paid not lower than minimum wage of salary scale applicable to the employee concerned.

ARTICLE 20 - NOTICE OF VACANCY AND PROMOTION

1. The Company's policy is to promote suitable serving employees who are qualified to fill the vacancies from lower grades to higher grades including executive positions, However, the Company reserves the right to engage any person from outside the Company if in the opinion of the Company, no existing employee is considered suitable.

2. The Company shall affix on the company notice board for a period of seven (7) days, a notice of all vacancies which it intends to fill. However, the seven (7) days period may be shortened, depending on the urgency of the need to fill the vacancies.

3. The criteria for promotions will be qualified by merit, qualifications, seniority, ability and capability.

4. Upon promotion to a higher grade or post, the employee's salary shall be adjusted to a minimum of one increment of the current salary. In cases where the promotion is more than one grade or post, the employee's salary shall be adjusted to a minimum of two increments of the current salary.

5. Promotional increments are in addition to the normal increment in April.

6. When an employee, whose promotion from lower grade to higher grade renders him excluded from the scope of the union representation, he shall have the right to accept or reject such promotion.

ARTICLE 21 - NOTICE OF TERMINATION

1. EMPLOYEE ON PROBATION

Either the Company or the employee may at any time during the probationary period terminate the employment relationship by giving 24 hours' prior notice in writing or pay in lieu thereof.

2. CONFIRMED EMPLOYEE

Either the Company or the employee may terminate the employment relationship by giving thirty (30) days' prior notice in writing or pay in lieu of such notice. At the discretion of the Company, the notice period may be off-set against the employee's annual leave entitlement which he has not taken.

ARTICLE 23 - OFF-DAY AND REST DAY

1. In a calendar week, normal working hours employees shall have Rest day of one (1) whole day and not less than 24 hours. However, employees who are engaged in shift work, shall be given a Rest Day of not less than thirty (30) hours CONTINUOUSLY.

2. Employees who work overtime on a Rest day (exceeding normal working hours) shall be paid not less than two (2) times their normal hourly rate of pay.

ARTICLE 24 - OVERTIME

1. An employee may be required by Company to exceed the limit of working hours as per section 60A (2) Employment Act 1955.

2. Payment for overtime work done on normal work days shall be as below:

$$\text{Rate per hour} = \frac{\text{(Basic monthly salary + Monthly Contractual Allowances)}}{\text{26 days / 7.25 hours}}$$

3. Where an employee is required to work in excess of his 8 hours of work on a normal workday, he shall be paid One and a half (1.5) times the ordinary rate of pay.

4. For continuous overtime work which exceeds midnight, the employee will be granted paid time-off on the following working day according to the working hours exceeded.

For example:-

Employee A is required to work from 12:00 to 2:00 on 11th, so this employee is entitled for paid time-off of 2 hours on 11th if his / her working hour starts on 09:00 am so he/ she can enter work at 11:00 on 11th.

5. For continuous overtime work which exceeds midnight, the employee will be granted paid time-off on the following working day according to the working hours exceeded. Employees who are responding to on-call by his superior can make mileage claims during that period and be entitled to call up claim RM10 per call.

ARTICLE 26 - ANNUAL LEAVE

1. Each employee shall be entitled to paid leave as follows:

On completion of:

Less than two (2) years of Services	- 08 working days per annum
2 years continuous service but less than	- 12 working days per annum
5 years 6 years continuous service but less than 8 years	- 16 working days per annum
8 years continuous service but less than 11 years	- 18 working days per annum
11 years continuous but less than 15 years	- 20 working days per annum
15 years continuous service and above	- 22 working days per annum

2. The Company shall grant and the employee shall take his annual leave not later than 12 months after the end of every 12 months continuous service. Annual leave shall be calculated from 1st January each year. A workman who has not completed 12 months continuous service as at 1st January of the following year shall be granted annual leave on pro-rate basis up to the end of such year (where the calculation of the annual leave arises at as fraction of a day, the Company shall grant a full day's leave).

3. If a public holiday falls on the day while an employee is on annual leave, sick leave or compassionate leave, the employee will be entitled to additional leave.

4. In the case of resignation, retrenchment, retirement or death, annual leave shall be paid, calculated on the proportionate basis.

5. Any leave entitlement applied by employee and not approved by the Company at the end of the year shall be substituted with pay *in lieu*.

6. Employees are permitted to apply for half (½) day annual leave.

7. Annual Leave shall, except with the expressed permission of the Company, be taken in accordance with an annual leave roster to be drawn up at the beginning of each calendar year. The wishes of each employee as to the time annual leave shall be taken will be given due consideration, provided that the granting of such leave does not disrupt the efficient operation of the Company's business.

ARTICLE 27 - COMPASSIONATE. CONGRATULATORY AND PATERNITY LEAVE

1. An employee may be granted paid leave on any or all of the following ground:

	Category	Description	Leave	Claims
Compassionate Leave and Comassionate Claims	1.1.1	Death of immediate family members (inside state- Kelantan) such as:-	Three (3) working days	RM200.00
		a. Employee's husband / wife	Three (3) working days	
		b. Employee's biological children	Three (3) working days	
		c. Employee's father / mother	Three (3) working days	Rm100.00
		d. Employee's mother-in-law / father-in-law	Three (3) working days	Rm100.00
		e. Employee's brother, sister younger brother or sister, grandfather, grandmother or grandchild	Three (3) working days	No
	1.1.2	Death of immediate family members (outside state- Kelantan) such as:-	Four (4) working days	RM200.00
		a. Employee's husband / wife	Four (4) working days	
		b. Employee's biological children	Four (4) working days	
		c. Employee's father / mother	Four (4) working days	RM100.00
		d. Employee's mother-in-law / father-in-law	Four (4) working days	RM100.00
		e. Employee's brother, sister younger brother or sister, grandfather, grandmother or grandchild	Four (4) working days	No
Congratulatory Leave and Congratulatory Claims	1.2.1	Legal Newborn Child	2 working days (male employees)	RM100.00
		Start from the first baby until fifth baby (alive)		
		Eg: if employees delivered twin babies, it is considered first and second child where, employees are entitled for 60 days Compassionate Leave but (2) Compassionate Claims. Due to this, for future delivery employees only have balance of three (3) children.		
	1.2.2	Marriage of employees (for first husband or wife according to law and custom)	Five (5) working days	RM100.00
		Definition: Registered marriage before employee's join date with Company is considered legal according to law and custom. Due to this, the following marriage will not be entitled for Compassionate Leave		
	1.2.3	Marriage of (employee) legal child	Two (2) working days	No

2. The Company will contribute a maximum sum of RM2.000.00 as a sympathy gift in the event of the death of an employee. Such sum will be paid to a person nominated by the employee in the nomination form.

3. For administrative convenience, every employee shall submit to the Company the names and particulars of relatives as stipulated in clause (1) above as well as to keep the Company informed of any subsequent changes.

4. Employees will be required to furnish proof (in the form of documents) before the Company can give the leave and claims provided in this Article.

5. With effect from the date of the Employment (Amendment) Act 2022 coming into force, male employees under category 1.2.1 in the table above shall be entitled to seven (7) days consecutive days of congratulatory leave (or paternity leave).

ARTICLE 28 - EXAMINATION LEAVE

An employee who is requested by the Company to go for examination shall be entitled to Business Trip or Training Trip leave of a day according to the Company's policy in RWEMSE 39001 (Business and Training Trip Allowances Claims Regulation).

ARTICLE 31 - PROLONGED ILLNESS

1. For an employee who has served the Company for a continuous period of three (3) years or more, and who is suffering from tuberculosis, leukemia, paralysis or cancer or any other prolonged illness which, in the opinion of the Company, renders him unable to perform his duty, shall be granted, in addition to his sick leave entitlement, prolonged illness benefit as follows :

i. first 3 months	- Full pay sick leave
ii. a further consecutive 3 months	- 3/4 pay
iii. a further consecutive 3 months	- 1/2 pay
iv. a further consecutive 3 months	- 1/2 pay
v. a further consecutive 3 months	- without pay

2. If at the end of fifteen (15) months as in (1) above, the employee is still unfit for work, he will be medically boarded out and shall be eligible for payment for termination and layoff benefits.

3. An employee shall not be eligible for the above benefit in the following circumstances:

i) Confinement or miscarriage;

ii) Mental cases which have been certified by a Government doctor in charge of mental cases;

iii) Illness, injury or disablement arising from any proven participation in or attending any hazardous sport, pursuit or pastime, attempted suicide, the performance or any unlawful act, exposure to any unjustifiable hazards except when endeavouring to save human lives, provoke assault, the use of drugs not medically prescribed, illegal abortion measures, excessive use of alcohol, or any breach of the peace or disorderly conduct.

ARTICLE 32 -DISABLEMENT

The Company will endeavor to provide alternative employment for any workman who suffers disability due to sickness or accident subject to circumstances prevailing at the time and where alternative employment is provided, the terms of employment and the pay shall be in accordance with the grade in which the alternative employment is categorized.

ARTICLE 33 - MATERNITY LEAVE

1. (a) Every confirmed female employees of the Company are entitled to sixty (60) days paid maternity leave.

(b) With effect from 1st January 2023, every confirmed female employees of the Company are entitled to ninety-eight (98) days paid maternity leave.

2. Application for maternity leave shall be made by the employee not less than thirty (30) days before the estimated delivery date.

3. Maternity leave may commence only after the 22nd week of pregnancy. Miscarriage before 22nd week of pregnancy shall not be considered as normal sick leave unless the employee has medical certificate or sick leave from the Company doctor or by a government medical officer.

4. Any absence of work due to any illness during the first 22 weeks shall be considered as absent unless the employees have medical certificate or sick leave from appointed medical practitioner or by medical officer.

5. All female employees are entitled to receive RM 100.00 compassionate gift for the birth of a legal child up to fifth child only as per Article 27 clause (1).

ARTICLE 34 - RETIREMENT

1. Employees' retirement age is 60 years old. Any employee who reach the retirement age base on date of birth shall retire from employment.

2. The date shown in the identity card of the employee concerned shall be deemed to be the age for the purpose of determining the retirement age; if only the year of birth is stated, then it will be assumed that the employee's date of birth shall be 31st December of the year shown in the identity card.

3. The Company may at its discretion, offer re-employment on an annual basis to an employee who has retired on such terms as the Company may decide.

ARTICLE 35 - RETIREMENT BENEFITS

The Company shall contribute 1% of the basic salary to the Employee's Provident Fund (EPF) as retirement benefit. This contribution is in addition to the Company's statutory EPF contributions as specified under the EPF Act 1951.

ARTICLE 36 - RETRENCHMENT

1. Retrenchment shall apply to any employee whose services Is terminated;

a) due to plant closure

b) due to plant relocation

c) declared redundancy, ie, whose service is surplus to the Company's requirement; or

2. The company shall inform the Union, the department, job categories and grades of employee to be retrenched one (1) month before the retrenchment takes places.

3. The principle of the Code of Conduct for Industrial Harmony on retrenchment shall apply. In carrying out the retrenchment exercise, as far as practicable, the principle of 'last in first out' shall be adopted. Due consideration may also be given to employees who elect to be retrenched.

ARTICLE 37 - RETRENCHMENT BENEFITS

1. In the event an employee is retrenched, such employee shall be given prior written notice as provided in Section 12 of Employment Act.

2. In addition to receiving the above notice, the employee shall be eligible for retrenchment benefits as provided in Regulation 6 of the Employment (Termination And Lay-Off Benefits) Regulations 1980.

ARTICLE 38 - OUTSTATION DUTY ALLOWANCE

1. An employee who is requested by the Company to go for training or for outstation business trip shall be entitled to an allowance of a day according to the Company's policy in RWEMSE 39001 (Business and Training Trip Allowances Claims Regulation).

2. All employees who are required to travel on company business are required to use company transport. Employees may claim for the cost for the use of a taxi by providing the original receipts of payment.

3. An employee required to travel overseas on official duty, shall be granted an overseas.outfit allowance of RM 450.00 on his first “oversea” business / training trip except to Singapore.

4. An employee shall be given the OVERSEAS OUTFIT ALLOWANCE after three (3) years from the date of his first trip and subsequently after every three (3) years from the previous overseas trip.

ARTICLE 40 - TRANSPORT ALLOWANCE

1. The Company shall provide free transportation from various designated locations to the Company premises and back. Employees who are staying outside of the designated transport routes but wish to use the Company transportation are required to make their own way to the nearest pick-up point.

2. Employees are required to follow the transport schedule diligently to avoid any incidence of missing the Company transport provided.

3. The Company shall provide free parking to all employees on first come first serve basis’.

ARTICLE 41 - CANTEEN SUBSIDY & MEAL ALLOWANCE

1. Every meal served in the canteen has already been subsidized by the Company.

2. In addition, each employee will receive a meal allowance of RM 50.00 per month.

ARTICLE 44 - SAFETY & HEALTH

1. It is mutually agreed that all parties bound by the provisions of this agreement shall strictly adhere to the Occupational Safety and Health Act 1994 and the Factories and Machinery Act, 1967 and any subsidiary legislations, regulations and amendment relating thereof.

2. In recognition of the above, it is hereby mutually agreed that a Central CSR Committee shall be setup comprising Area Committee Representatives as shall be nominated by the Union and the Company Representatives.

3. The Company and the Union shall fully encourage and render all assistance to the Central CSR Committee to function effectively for the well-being of ail employees concerned.

4. All accidents, incidences and near-misses in the plant shall be reported to the Central CSR Committee and relevant authorities as soon as possible upon such occurrence. The Central CSR Committee will investigate these accidents impartially and recommend remedial measures to prevent future occurrence.

5. If in the opinion of the Company Doctor, it is necessary for a specific employee to undergo a medical check-up, the Company shall do so at its expense,

ARTICLE 46 - HAJ OR PILGRIMAGE

A. Leave Application Guideline for UMRAH

1. Employees are required to inform and submit leave application to their Department Head/Division Head upon registration for umrah with any agency.

2. Every employee is entitled to submit a leave application for umrah, ONCE in 5 years.

3. Employees are also required to inform their Department Head/Division Head of the expected travelling date and period for the umrah.

4. Each division or department has discretion to establish the quota for the number of employees who are eligible for Umrah at any one time based on the capacity of the employees' headcount in that division or department.

5. Leave applications must be accompanied with the evidence of approval and date for umrah from the agency that is responsible in coordinating the umrah travel.

6. Leave applications must be firstly be approved by the Department Head/Division Head and Production Head Quarters (PHQ), and then subsequently approved by the President upon receiving notification from PHQ.

7. Leave applications will not be approved if the employees fail to comply with the conditions stated above or did not get the approval from the parties mentioned in paragraph 8 above.

B. Leave Application Guideline for PILGR1MAGE/HAJ

1. Employees are required to inform their respective Department Head/Division Head of the expected date and period for pilgrimage

2. Leave applications for the haj/pilgrimage must be made six (6) months in advance before the departure date to Mecca unless the employee is notified with late confirmation of less than six (6) months by Tabung Haji or any other agencies. The employee must show the evidence of this to the management.

3. Applications must be accompanied with the evidence of approval and date for pilgrimage/haj from Tabung Haji or other agencies that are responsible in coordinating the haj travel.

4. Leave applications must be approved by the Department Head/Division Head and Production Head Quarters (PHQ), and then must be approved by the President upon receiving notification from PHQ.

5. Leave application will not be approved if the employees fails to comply with the conditions stated above or did not get the approval from the parties mentioned in Paragraph 4 above.

6. Every employee is entitled to submit a leave application for pilgrimage / haj, ONLY ONCE during the period of his/her services with the company.

7. Every employee is entitled to one day of compassionate leave after returning from pilgrimage.' The leave needs to be utilized right after completing the pilgrimage. However, the compassionate leave application must be applied for before the employee begins the leave for Haj.

ARTICLE 47 - SALARY ADVANCE

The Company shall provide to all employees a festival advance of 30% of their monthly basic salary once a year to all employees for Hari Raya Aidilfitri if the festival falls on 15th onwards. The payment shall be made at least 7 days prior to the festival day.

ARTICLE 49 - BONUS

1. The bonus shall be paid subject to the employee's performance, period of service with the Company and profitability of the Company.

2. The bonus, if given, shall be paid in December.

3. The calculation of Bonus is based on the evaluations carried out twice for one (1) full year which is from 1st October to 30th September.

4. Employee falling under any of the following situations/conditions shall not be paid the Bonus.

4.1.1 Employees under probation.

4.1.2 Employees who have already tendered their resignation notice at the time bonus is paid.

4.1.3 Employees who have received two (2) or more warning letters.

4.1.4 Employees who have received one {1) suspension letter or more.

4.1.5 Employees who have received one (1) demotion letter or more.

4.1.6 Employees who were late in or early leave without prior approval for ten (10) or more times.

4.1.7 Employees who have received four (4) or more reminder letters.

APPENDIX A

ARTICLE 13 CHECK OFF

DEDUCTIONS ON UNION SUBSCRIPTION FROM WAGES

Name of Employee :

_____

Identity Card No. :

_____

Address :

_____

_____

_____

I, _____ a member of the Kesatuan Sekerja Industri Elektronik Wilayah Timur Semenanjung Malaysia, until further notice, hereby authorize the Company to deduct my subscription of RM _____ per month from my salary with effect from _____ and remit same to the said Union.

_____ _____

(Signature of Employee) (Date)

APPENDIX B

GRIEVANCE PROCEDURES FORM

Employee is requested to use this Grievance Procedures Form when raising a complaint and must observe the Grievance Procedure steps as outlined in Article 16 of the Collective Agreement

---

STEP I

Name of Complainant :

Service No. :

Department / Section :

Name of Immediate Superior :

Description of Complaint :

Place / Date :

Witness if any :

Date complaint raised to Immediate Superior :

Signature of Complainant :

Action Taken By Immediate Superior :

Date Immediate Superior communicated to the Complainant :

Complainant comments / Remarks :

Signature of immediate Superior :

_____

Signature of Complainant :

_____

IF THE GRIEVANCE IS NOT RESOLVED TO THE SATISFACTION OF BOTH PARTIES WITHIN SEVEN (7) DAYS, THE EMPLOYEE CONCERNED MAY REFER THE GRIEVANCE TO THE HUMAN RESOURCE DEPARTMENT FOR RESOLUTION

STEP 2

Description of Complaint :

_____

Date complaint raised to HR Department :

_____

Signature of Complainant :

_____

Action taken by HR Department :

_____

IF THE GRIEVANCE IS NOT RESOLVED TO THE SATISFACTION OF BOTH PARTIES WITHIN SEVEN (7) DAYS, THE EMPLOYEE CONCERNED MAY REFER THE GRIEVANCE TO THE GENERAL MANAGER FOR RESOLUTION

STEP 3

Department / Section :

_____

Name of General Manager:

_____

Description of Complaint :

_____

Date complaint raised to General Manager:

_____

Action taken by General Manager:

_____

Date General Manager communicated to the Complainant :

Signature of General Manager :

Signature of Complainant :

IF THE GRIEVANCE IS STILL UNRESOLVED AFTER SEVEN (7) DAYS THEN IT MAY BE RESOLVED IN ACCORDANCE WITH THE INDUSTRIAL RELATIONS ACT 1967.

HOWEVER BOTH PARTIES MAY EXTEND THE TIME LIMIT IF SO DESIRED BY MUTUAL CONSENT.

For Approval :-

Messrs Prem & Chandra	**Messrs Josephine, L K Chow & Co.**
Solicitors for the Union	**Solicitors for the Company**