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Trade Union Cannot Represent Ex-Employees

Malaysian Airline System Employees' Union Peninsular Malaysia (MASEU) v Malaysia Airline System Berhad (Industrial Court Award No 926 of 2018)

| by David Tan Seng Keat |

Last week, the Industrial Court rejected a claim for the payment of an attendance allowance. The claim was brought by the union on behalf of some 2,000 former employees of the airline.

In reaching its decision, the Industrial Court upheld a challenge raised by the airline against the standing of the union to pursue the claim on behalf of the former employees. Although they were in the employment of the airline at the time the dispute arose and when it was referred to the Industrial Court, the termination of their employment in August 2015 meant that the former employees could no longer be considered members of the union, given that employment with the airline was a precondition for membership with the union. As they had ceased to be members during the pendency of the trade dispute, the union no longer had the right to espouse their claim.

The attendance allowance had been paid by the airline for some nine years before it was discontinued in September 2012. The Industrial Court held that the allowance was not a contractual entitlement that was binding on the airline, on the grounds that:

- (a) the allowance had originated as a temporary assistance benefit; and
- (b) it had been expressly excluded from the various collective agreements between parties over the years.

The court rejected the union's argument that the attendance allowance fell within the definition of "existing benefits" in the collective agreements, accepting earlier cases which had held such clauses to be very limited in scope.

The airline was represented by associate David Tan Seng Keat of [Lee Hishammuddin Allen & Gledhill](#).

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