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Intention of Parties Paramount in Interpreting Collective Agreements

Rajasekar K Suppiah & Ors v Malaysian Airline System Berhad & Anor
(Industrial Court Award No 1617 of 2019)

Where an employer and trade union have expressly agreed on particular terms and conditions of work, individual workmen should not be permitted to force a different interpretation thereafter.

The above case involved a long-standing dispute between a number of then-employees of Malaysian Airline System Berhad (**MAS**) in respect of their working hours, overtime and public holiday payments. In particular, the employees had challenged the implementation of a new shift roster that required them to work four 10.5 hour shifts per week, which they claimed did not comply with their terms of employment.

The employees' working hours were subject to the Collective Agreement between MAS and the Malaysian Airline System Employees' Union (**MASEU**), whereby it was agreed that the total number of working hours per week would not exceed 42 hours, excluding meal breaks.

Among other things, the employees alleged that the one-hour meal break should be included in the computation of working hours, asserting that they were often required to perform work during their meal breaks. The employees further asserted that pursuant to the provisions of the Employment Act 1955 (**the Act**), the meal break should be included by operation of law.

The Industrial Court, however, concurred with MAS and MASEU, and held that as it had been agreed between them when entering into the Collective Agreement that meal breaks should not factor into the calculation of working hours, it would be improper to reinterpret the Collective Agreement on the basis contended by the employees.

The Industrial Court further accepted the argument advanced by MAS that it could not be selective in applying the provisions of the Act, given that the Collective Agreement provided for fewer total working hours when compared against the Act. The Industrial Court agreed that it would, therefore, be contrary to equity and good conscience to force the inclusion of meal breaks when MAS and MASEU had already agreed on their exclusion, which had ultimately resulted in a more favourable outcome for employees in totality.

The Industrial Court was satisfied that there had been no breach of the Collective Agreement by MAS, and found that the employees had misinterpreted their shift rosters and the relevant formulas for overtime and public holiday payments. The Industrial Court further observed that with the burden of proof lying on the employees to establish non-compliance, it had been incumbent upon them to lead cogent evidence to support their case, which they had failed to do.

The company was represented by partner Dato' Thavalingam Thavarajah and senior associate David Tan Seng Keat of [Lee Hishammuddin Allen & Gledhill](#).

The Industrial Court award may be viewed [here](#).

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