

a

STANDARD CHARTERED BANK (M) BHD.

v.

STANDARD CHARTERED BANK OFFICERS' ASSOCIATION

b

INDUSTRIAL COURT, KUALA LUMPUR
MOHD NOOR YAHYA
AWARD NO. 480 OF 2000 [CASE NO: 3/1- 446/98]
11 SEPTEMBER 2000

c

INDUSTRIAL COURT: *Interpretation - Collective agreement - Terms and conditions of service - Whether "training" similar to "work" or "duty"*

d

This was an application pursuant to s. 33(1) of the Industrial Relations Act 1967 for an interpretation involving art. 20.3, art. 20.5, arts. 3 and 4, and arts. 24 and 25. The main issue before this court was whether the word "training" appearing in the agreement could be equated with "work" or "duty". The issue arose because, under the CA, the bank provided different benefits or allowances in respect of employees who are required to attend training and those who were required to undertake work or duty during the gazetted public holiday and rest day.

e

In order to understand what the intention of the parties was, the court had to look into the conduct of the parties leading to the dispute being subsequently referred to the court.

Held:

f

[1] In the present dispute, following the Supreme Court's decision in *Malayan Agricultural Producers Association*, any references to any other legislation was deemed irrelevant. Also, the court also need not look into the dictionary meaning of the words "work", "training" or "duty" in order to establish the intention of the parties.

g

[2] There is a difference between the interpretation of a collective agreement and an interpretation of an award. The interpretation of a collective agreement is an attempt to ascertain the intention of the parties.

h

[3] Both parties had a clear intention not only to include claims for attending training as a separate article in the CA but also not defining "work" or "duty" in the articles as including "training".

i

[4] Both parties had the intention to continue the existing practice with regard to "training". There is no ambiguity in the words "work" and/or "duty" appearing in the respective articles referred to requiring this court for its interpretation.

[5] "Training" does not equal to "work" or "duty" and as such those attending training should not be entitled to the benefits provided under arts. 20.3 and 20.5. However, if an employee is required to attend training on his designated rest day or on a company-approved public holiday, an alternative day off *in lieu* should be granted.

a

[Application dismissed.]

b

Case referred to:

Malayan Agricultural Products Association v. National Union of Plantation Workers
[1992] 3 CLJ 1336

For the bank - P. Jayasingam; M/s Zul Rafique & Partners
For the union - L.G. Seah; M/s Lobo & Assocs

c

AWARD

The bank and the union have entered into a collective agreement (the CA) which was deemed to have come into effect on 1 August 1997 and to continue to remain in force until 31 July 2000 and thereafter until superseded by a new agreement, pursuant to art. 4(4) of the CA. Both parties before the court have confirmed the CA had been given cognisance No. 73 of 1998 on 24 March 1998. It was deposited into court on 17 March 1998.

d

In the annexure to the application for interpretation which is form M, the association has listed the articles as follows:

e

Annexure

a) The parties have not resolved the matters hereinbelow under art. 5.1 of the collective agreement ("CA").

f

b) Article 20.3

On an officer within the scope of the CA being **required by the bank** to attend "training" on the said officer's rest day and or public holiday, the said officer ought to be compensated as per art. 20.3 for loss of that day of rest or leisure.

g

c) Article 20.5

On an officer within the scope of the CA being required by the bank to attend "training" on the said officers rest day and or public holiday, the said officer ought to be compensated as per the provisions of art. 20.5 and such "training" ought to be treated as "work" or "duty" within the meaning of that term in the said art. 20.5.

h

i

a d) Article 3 and 4

On an interpretation of these articles the Bank's Malaysian Instruction Circular ("M/C") No. 96/213 and 97/167 dated 6 November 1996 and 16 December 1997 respectively insofar as they are inconsistent with the

b

forementioned interpretation have been superseded and are therefore null and void with effect from the date of cognisance of the CA in 1998.

e) Articles 2.2, 7, 18.1 and 18.2

(i) On an interpretation of the aforementioned articles, the bank cannot implement its decision on the merit increment for 1998 because it had failed to **discuss** the matter with the union **prior** to implementation of the merit increment.

c

(ii) Therefore the bank's implementation of the 1998 merit increment discretion is null and void and ought to be exercised **again** in accordance with art. 18.2 of the CA.

d

In the course of submission by the parties the court was informed that the association has decided to abandon item (e) to the annexure relating to the interpretation of arts. 2.2, 7, 18.1 and 18.2. Therefore the remaining items for the interpretation by the court are items (b), (c) and (d) relating to arts. 20.3, 20.5, 3, 4 and arts. 24 and 25.

e

The issue before the court and for the court to decide as submitted by the learned counsel for the bank and which the court agrees is whether, "training" can be equated with "work" or "duty". The dispute arises because the bank provides under the CA different benefits or allowances in respect of employees who are required to attend training and in respect of employees who are required to undertake work or duty during the gazetted public holiday and rest day. For ease of reference the disputed articles are reproduced below.

f

3.3 Work on rest day and public holidays

g

The bank may request an officer to work on a rest day/public holiday. An officer who is required to work on a rest day/public holiday shall be entitled to a meal allowance of RM35 after four hours of work and RM70 after seven hours of work. The bank shall grant substitution of the rest day/public holiday up to a maximum of 1½ days.

h

20.5 Outstation duty

An officer who is required to work in any branch other than in the branch where he normally works shall be entitled to a subsistence allowance subject to the conditions specified hereunder:

i

(a) Outstation duty

For duty in Semenanjung Malaysia involving up to a distance of 15 kilometers from normal place of work, an officer shall be entitled to payment of transport, parking and toll charges, where appropriate.

(b) Duty involving travel beyond 15 Kilometers and not requiring overnight stay

(i) For duty in Semenanjung Malaysia involving travel beyond 15 kilometers from normal place of work and not requiring overnight stay, an allowance of RM35 in addition to the payment of transport, parking and toll charges where appropriate.

(ii) For the purpose of this paragraph, "duty" means work that involves a duration of four hours or more inclusive of travelling time from and to the normal place of work.

(c) Duty involving travel beyond 15 Kilometers and requiring overnight stay

(i) For duty in Semenanjung Malaysia and Sarawak involving travel beyond 15 kilometers from normal place of work and requiring overnight stay, free hotel accommodation of the bank's choice and a daily subsistence allowance of RM70 will be paid, excluding the day of return to the normal place of work in addition to the payment of transport, if applicable or if the officer chooses not to be accommodated at a hotel of the bank's choice and make his own accommodation arrangement, a daily allowance of RM140 will be paid. Daily travel claims are limited to and from the officer's chosen place of stay to the branch or to and from the hotel to the Branch, whichever is the nearer. Laundry expenses will not be provided in this instance.

(ii) Duty in Sabah

For duty in Sabah involving travel beyond 15 kilometers from normal place of work and requiring overnight stay, free hotel accommodation of the bank's choice and a daily subsistence allowance of RM80 will be paid, excluding the day of return to the normal place of work in addition to the payment of transport, if applicable or if the officer chooses not to be

a

b

c

d

e

f

g

h

i

a accommodated at a hotel of the bank's choice and made his own accommodation arrangement, a daily allowance of RM160 will be paid. Daily travel expenses are limited to and from the officer's chosen place of stay to the branch or to and from the hotel to the branch, whichever is the nearer. Laundry expenses will not be provided in this instance.

b

(iii) Day of return to normal place of work

c An officer who is returning to his normal place of work after an outstation duty will be entitled to the daily subsistence allowance of RM70 or RM80 as the case may be, provided he returns to his normal place of work/residence after 6.00p.m.

Rates stated above shall be at all times similar to NO rates.

d

(iv) An officer is entitled to a daily telephoned call to his family whilst an outstation duty at the bank's expense not exceeding three minutes per call.

3. Effective date and duration

e This agreement shall be deemed to have come into effect on 1 August 1997 and shall continue to remain in force until 31 July 2000 and thereafter, until superseded by a new agreement, pursuant to art. 4(4) hereunder.

4. Modification and termination

f 1.1 During the period of this agreement, neither the bank nor the union shall seek to alter, modify annul or add to any of the provisions in any way whatsoever, except by an agreement between the parties.

g 1.2 Should new legislation supersede, vary, repeal or add to any of the provisions of this agreement, then the relevant provisions of this agreement shall be amended accordingly. However, if the benefits contained in this agreement are more favourable, then they will continue to apply, if so permitted by law.

h 1.3 Any variation of this agreement between the parties shall be jointly deposited by the parties with the Registrar of the Industrial Court within thirty days from the date on which the agreement has been entered into, provided that the variation agreement shall not take effect until cognisance has been taken by the Industrial Court. Any such variation agreement of which the Industrial Court has taken cognisance shall be binding on the parties from such date and for such period as

i

may be specified therein, but no such period shall commence earlier than the effective date of this agreement.

1.4 Either party may serve on the other not less than one hundred and eighty days' notice, in writing, to terminate the agreement with a view to negotiate on new terms and conditions of employment, but no such notice shall be served earlier than 1 February 2000. The party that serves the notice shall present to the other, proposals on new terms and conditions of employment. Negotiations shall commence not later than thirty days from the date of receipt of such proposals by the other party.

1.5 This agreement may be terminated by either party giving to the other six months' written notice but no such notice may be served earlier than 1 February 2000. In the event that the agreement is terminated in accordance with this clause, the provisions of this agreement shall, so long as the bank is in operation and the union is there to represent the employees employed therein, continue to be in force until and unless superseded by a new collective agreement or by an award of the Industrial Court.

Rest Day

Every officer shall be allowed in each week a rest day. Such a rest day (other than for those performing shift work) unless altered by prior notice, shall be Sunday or Friday of the week as applicable to each state.

Public Holiday

Every officer shall be entitled to a paid holiday on all gazetted Federal and State Public Holidays applicable to the state or Federal Territory in which he is stationed.

In *Malayan Agricultural Products Association v. National Union of Plantation Workers* [1992] 3 CLJ 1336 the headnote reads:

The parties in this case had entered into a collective agreement and this agreement was presented to the Industrial Court for a consent award which was granted and recorded. The Minister subsequently referred the interpretation of art. 8 of the award to the Industrial Court. Article 8 of the award provided that the provisions of s. 16 of the Employment Act 1955 should apply to employees covered by the said section in respect of the minimum number of days' work in each month. At the hearing before the Industrial Court the respondent raised a preliminary objection on the ground that the Industrial Court had no jurisdiction to hear the reference, as the reference letter of the Minister was void for uncertainty and/or *ultra vires* s. 33(1) of the Industrial Relations Act 1967 ('the 1967 Act'). The Industrial Court dismissed the preliminary

a objection. The respondent then applied to the High Court for a writ of *certiorari* to quash the award of the Industrial Court and this was granted. The appellant appealed.

His Lordship Harun Hashim SCJ (delivering the grounds of judgment of the court) had the following to say.

b Before parting with the case, we observe that Award No. 92/90 was in fact a collective agreement but instead of depositing it with the Industrial Court under s. 16 for cognizance so that it will have the effect of an award under s. 17, it was presented to the Industrial Court for a consent award which makes it an award under s. 30. We are of the view that the Industrial Court in this instance will have an initial difficulty in hearing a case under s. 33(1) because there is a difference in the interpretation of a collective agreement and the interpretation of an award. And the difference is this: the interpretation of a collective agreement is an attempt to ascertain the intention of the parties whereas the interpretation of an award involves ascertaining the intention of the court. And if it is an award, the interpretation placed on the award by the parties is irrelevant because only the court can pronounce its own intention. Who then is the author of art. 8?

For the reasons stated we dismissed the appeal with costs. Deposit to the respondent to account of taxed costs.

e It is clear that there is a difference between the interpretation of a collective agreement and the interpretation of an award. The interpretation of a collective agreement is an attempt to ascertain the **intention of the parties** (the emphasis is ours). What then was the intention of the parties when they sat to draw up the CA before finally executing and depositing it into court and later taken cognizance of by the court on 24 March 1998. This is the question this court has to ask itself.

In order to understand what the intention of the parties was the court has look into the conduct of the parties leading to the dispute being subsequently referred to the court.

g In the light of the decision in *Malayan Agricultural Producers Association v. National Union of Plantation Workers* case any references to any other legislations are irrelevant. The court also need not look into the dictionary meaning of the words "work", "training" or "duty" in order to establish the intention of the parties.

h It is admitted that the word "work" is not defined in the CA and so also the word "training". It has been submitted by the learned counsel for the Association that the Malayan Commercial Banks Association (MCBA) had circulated this circular dated 12 May 1998 (See p. 17 of UBD) to all its members and based on this circular the word "training" has been accepted as

i

“work” in so far as the Malayan Commercial Banks Association is concerned. The bank *vide* circular No. 98/98 (M/C 98/98) (see p. 13 of UBD) dated 11 July 1998 which was issued later than the MCBA Circular has laid down guidelines concerning training claims. Before this guidelines (M/C No. 98/98) was issued the bank has issued a circular dated 16 December 1997 (M/C No. 97/167) (see p. 3 of UBD) wherein the bank laid down the guidelines concerning training claims. This circular M/C No. 97/167 was discussed at the standing committee meeting held on 23 April 1998 (see p. 6-8 UBD). It is to be noted that even at this stage the issue of “training” being “work” or “duty” was never raised by the association. This is the situation after the cognisance of the CA. Both parties were concerned with the training claims and circulars concerning training claims.

There were circulars issued by the bank for the period prior to the cognisance of the CA (i.e. 24 March 1998). The circulars are M/C No. 96/213 (see pp. 1-2 of UBD) and M/C 97/167 (see pp. 3-5 of UBD) and both related to guidelines concerning training claims. The association was throughout fully aware of these circulars and guidelines. It has been submitted by the learned counsel for the bank Encik P. Jayasingam that the practice of the bank for many years has been to provide benefits and allowances in respect of training which the employees were required to undergo *vide* circulars issued by the bank from time to time and that the employees were aware of this. Over the years, the benefits have changed and the allowances have changed to basically improve and upgrade the benefits as and when necessary to take into account inflation. He has submitted that M/C No. 96/213 dated 6 November, 1996 was in existence during the life of the previous collective agreement. There was no dispute whatsoever over the years on the issue of training and benefits and allowances *vide* circulars. When the current CA came into existence for the period 1997 to 2000 obviously the training issue was never an issue which the parties have thought as being necessary to be included in the CA. It is obvious that the parties were satisfied with the current procedures available with respect to how training should be treated. We agree with the submission made by Encik P. Jayasingam except to that part where he says that the benefits and allowances have changed to basically improve and upgrade the benefits as and when necessary to take into account inflation and would add further that the parties had negotiated and concluded a few other collective agreements before this CA and that the issue of “training” to be a separate issue or to mean “work” or “duty” had never been brought up by the association even though a few circulars had been issued by the bank concerning claims for attending trainings. Thus both parties had a clear intention not only not to include claims for attending trainings as a separate article in the CA but also not defining “work” or “duty” in the articles as

a

b

c

d

e

f

g

h

i

a including “trainings”. Both parties had the intention to continue the existing practice with regard to trainings. There is no ambiguity in the words “work” and/or “duty” appearing in the respective articles referred to the court for its interpretation. We have also considered the submission made by the learned counsel for the association L.G. Seah and for the reasons given above we have

b to reject the interpretation by the association as appearing in the annexure to the application in form M. We opine that “training” is not equal to “work” or “duty” and as such attending training should not be entitled to the benefits provided under arts. 20.3 and 20.5. However, if an employee is required to attend training on his designated rest day and a company approved public holiday an alternative day off *in lieu* should be granted. Accordingly the

c application by the association be and is hereby dismissed.

d

e

f

g

h

i