

Challenging The “Automatic Bonus” Myth: Industrial Court Affirms Performance-Based Discretion

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In Award No. 1830 of 2025, the Industrial Court dismissed a non-compliance complaint brought by Kesatuan Pekerja-Pekerja Perkilangan Perusahaan Makanan (the Union) against DCH Contract Manufacturing Sdn Bhd (the Company) under Section 56 of the Industrial Relations Act 1967 (IRA).

The dispute concerned the Company’s alleged failure to pay a bonus for the year 2021 to six union members pursuant to Article 26 of the 4th Collective Agreement (CA).

The Industrial Court held that the Company had not breached the CA and had lawfully exercised its discretion in withholding bonus payments from employees who received the lowest performance rating (Rating E).

The Company was successfully represented by the firm’s Senior Associate, Muhamad Sharulnizam bin Mohd Roni.

This decision provides useful guidance on the interpretation of bonus clauses in collective agreements, the scope of employer discretion in performance-based bonus schemes, and the evidential burden in Section 56 non-compliance proceedings.

Key Issues Before The Court

The Union alleged that the Company breached Article 26 of the Collective Agreement, which provides that:

“The Company will allocate two (2) months bonus to all employees, however the Company reserves the right to reduce the payment to employee who does not meet expectations...”

The central dispute was whether this clause created an automatic entitlement to a bonus for all employees or whether it created a qualified entitlement that allowed the Company to reduce or withhold the bonus based on performance. The Union argued that once the Company had allocated the two-month bonus pool, every employee was entitled to receive at least some portion of the bonus.

According to the Union, the Company’s discretion was limited to adjusting the quantum of payment and could not extend to denying the bonus entirely.

The Company, however, maintained that the clause must be read as a whole. It submitted that while the Company agreed to allocate a two-month bonus pool, it had expressly reserved the right to reduce payments based on performance. The Company further argued that the right to reduce payment necessarily included the discretion to reduce the payment to zero where employees failed to meet performance expectations.

Industrial Court’s Decision

The Industrial Court unanimously accepted the Company’s interpretation and dismissed the Union’s claim. The Court held that the bonus clause must be construed in its entirety. While the Company agreed to allocate a two-month bonus pool, it had expressly reserved the right to adjust payments based on employees’ performance ratings.

The Court further held that the right to reduce payment logically includes the ability to reduce the bonus to zero where an employee fails to meet performance expectations.

In the present case, the Court found that the Company had exercised its discretion fairly and consistently. The performance appraisal system was guided by a bell-curve distribution model, and there was no evidence of arbitrary or discriminatory treatment. Accordingly, the Court concluded that there was no breach of the Collective Agreement.

Clarification On Section 56 Non-Compliance Proceedings

The Court also reaffirmed established principles governing Section 56 of the Industrial Relations Act 1967. The Court emphasised that proceedings under Section 56 are purely enforcement proceedings. In such proceedings, the Industrial Court must confine itself strictly to the terms of the Collective Agreement and determine whether those terms have been breached.

The complainant, in this case the Union must therefore first establish that an actual breach or non-compliance of the Collective Agreement has occurred before any enforcement order by way of an Industrial Court Award of Non-Compliance can be granted. The Industrial Court is not empowered to create new rights or rewrite the terms of the Collective Agreement.

This clarification reinforces the principle that non-compliance proceedings cannot be used as a backdoor mechanism to renegotiate or reinterpret collective agreement provisions beyond their agreed terms.

Burden Of Proof On The Union

A decisive factor in the Court’s determination was the Union’s failure to produce sufficient evidence. None of the six affected employees were called to testify in support of the complaint. In addition, the Union’s only witness was not employed by the Company and therefore had no direct knowledge of the performance appraisal process.

The evidence before the Court also showed that the performance appraisals had been acknowledged and signed by the employees concerned. There was no substantive evidence suggesting bad faith, bias, or procedural impropriety in the appraisal exercise.

Applying the principle that the party asserting a claim bears the burden of proof, the Court held that mere allegations of unfairness were insufficient in Section 56 proceedings. A breach of the Collective Agreement must be strictly proven through credible evidence.

Key Takeaways For Employers

This ruling provides several important lessons for employers operating performance-based bonus schemes.

First, the decision confirms that bonus payments linked to performance appraisals do not automatically become guaranteed entitlements unless the collective agreement expressly provides for such entitlement.

Second, the case illustrates that bonus clauses in collective agreements must be interpreted holistically. Where a clause provides for a bonus allocation but also reserves the right to reduce payment, the employer may retain discretion to adjust or even withhold the bonus entirely, provided the clause is clearly drafted.

Third, the decision underscores the importance of maintaining transparent and consistently applied performance appraisal systems. Employers should ensure that performance ratings are properly documented and acknowledged by employees, particularly where bell-curve or distribution models are used.

Fourth, the case highlights the critical role of evidence in Industrial Court proceedings. Allegations of unfair treatment will not succeed unless they are supported by credible witness testimony and documentary proof.

Finally, the case serves as a reminder that collective agreements must be drafted with precision. If the parties intend to create a guaranteed minimum entitlement, the agreement must clearly and unequivocally provide for such entitlement in mandatory language.

Practical Implications

For employers operating in unionised environments, this decision reaffirms that performance-based bonus systems remain valid and enforceable, provided they are implemented fairly and in accordance with the terms of the collective agreement.

The decision also highlights the importance of careful drafting when negotiating collective agreement provisions. Clear language defining the scope of employer discretion can help avoid disputes over whether bonuses are discretionary incentives or guaranteed entitlements.

Employers may therefore wish to review existing collective agreement clauses relating to bonuses and performance appraisals to ensure that the intended level of discretion is clearly reflected in the wording.

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