الجامعة الإسلامية العالمية ماليزيا
INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA
يونيرسيتي إسلام انتارابغسا ملايسيا

DISPUTE SETTLEMENT IN MALAYSIA WITH SOME OBSERVATION OF EMPLOYMENT LAW UNDER THE *SHARI'AH*

ABD. HAMID DATO' ABD. MURAD
G 9210861

THIS DISSERTATION IS SUBMITTED FOR
THE MASTER OF COMPARATIVE LAWS
DEGREE

KULLIYYAH OF LAWS
INTERNATIONAL ISLAMIC UNIVERSITY
PETALING JAYA
SELANGOR DARUL EHSAN
MALAYSIA

1994

Preface

This dissertation sets out the method of settling industrial disputes in Malaysia. The field of industrial relations is still relatively new area in Malaysia. This is the reason why there are not many outstanding decisions in this area. The industrial relations law are governed by two main pieces of legislations. They are the Industrial Relations Act, 1967 and the Employment Act, 1955. There are other legislations though they relate to industrial relations but they are seldom used in the field of industrial relations. The case-law provided in this dissertation reflect the sentiments of the courts in relation to settling industrial disputes. Though the Industrial Court has been set up to arbitrate industrial disputes, this court is not so easily accessible as the only means for the court to be "cloaked with jurisdiction" is through reference by the Minister of Human Resources. Finally, it is hoped that this dissertation provides an understanding of how industrial disputes are settled in Malaysia.

Abd. Hamid Dato' Abd. Murad
G 9210861
31st May, 1994

Acknowledgement

My salutations and praise for Allah subhanahu wata'ala for making it possible for me to complete this dissertation within the time limit and also giving me the ideas and inspiration which had enabled me to write this dissertation.

This dissertation is dedicated to my late father, Dato' Abd. Murad bin Sheikh Ismail, who has been an inspiration for me to write this dissertation. His support for me in my studies have helped me a lot. I am deeply grateful and satisfied that I have succeeded in completing this dissertation. Most of the reference that I used in completing this dissertation are from my late father's collection in Labour laws during his tenure of Chairman of the Industrial Court, Malaysia from 1982-1989. In fact, it was his idea that prompted me to do a research in the field of labour law. For that I am gratified.

My next appreciation goes to my dearest mother, Datin Hamidah bte. Hussain, who has supported me, psychologically and emotionally in completing the Masters of Comparative Law and also this dissertation. Her unrelenting supportfor me has been the catalyst for the completion of this dissertaion. I am deeply grateful for the support my mother has given me.

Acknowledgement also goes to my supervisor, Yg. Bhg. Tan Sri Prof. Dato' Syed Agil Barakbakh, has been very accomodating in assisting me complete this dissertation. Without his help and constructive comments, I would not have been able to appreciate how critical thinking can be very useful in completing any thesis or dissertation.

My thanks also to my uncle, Encik Zulkifli bin Hussain for helping me in printing the final copy of this dissertation. Last but not least, my thanks to my study-group friends; Major. Wan Normazlan Che Jaafar, Tuan Hj. Zainal bin Ithnin, Encik Ahmad Noordin bin Ahmad Mustafa, Encik Md. Nadzri bin Yusoff and Cik Ida Riswana bte. Idris for giving me the encouragement and support in completing the Masters programme and the dissertation.

Abd. Hamid Dato' Abd. Murad
G 9210861

Abstract

This dissertation basically describes the industrial relations system in Malaysia. It provides the mechanism of settling industrial disputes.

Chapter I consists of Introduction and Adjudication of Industrial Disputes. Under the sub-heading of Introduction, I have included the importance of industrial relations in the modern world. The sub-heading also describes how the market forces of demand and supply affect the treatment of employees by the employers. Problems faced by developed and developing nations are also discussed under this sub-heading. The importance of adjudicating industrial disputes is highlighted under this sub-heading. The Code of Conduct for Industrial Harmony is also discussed under this chapter.

Chapter II discusses the balance between productivity and social justice. Social justice is discussed in relation to the employee. In normal market forces, in order to increase profit, the cost of production should be reduced. One of the cost of production is wages. Social justice demands that the employee be paid fairly for the work he has done. However, from the viewpoint of the economist, in order to increase profit, the wages of the employees have to be maintain at a certain level so that it does not affect the profit. This chapter also discusses the historical aspect of the labour laws which were enacted before the Independence of Malaysia.

Chapter III confines the discussion of employment law on Malaysian shores. It describes the labour laws during the Colonial administration up to the present legislations. The method of dispute settlement, in Malaysia is also discussed in this Chapter. The functions and purposes of the Industrial and Labour Courts are also discussed.

Chapter IV deals with the concept of discretionary power of the Executive. The Industrial Court is said to get its jurisdiction when the Minister of Human Resources (formerly Minister of Labour) refers the trade dispute to it. Otherwise, the court has no jurisdiction to decide on the matter. The concept of discretionary power involves the

principles of natural justice. These principles are also discussed in this Chapter.

Chapter V in concerned with the concept of employment under the Islamic law. It also discusses the arbitration procedure under the Shariah. The discussion of the concept of employment law by the four major schools, *viz*. Hanafi, Shafi'i, Maliki and Hanbali, is also included. This Chapter ends with the discussion of arbitration as contained in the Medjelle, a civil code enacted during the Ottoman Empire.

Table of Contents

Table of Cases

H

J

K

L

M

N

P

S

T

U

W

Table of Statutes

1. Federal Constitution of Malaysia.
2. Industrial Relations Act, 1967.
3. Employment Act, 1955.
4. Interpretation Act, 1967.

CHAPTER I

INTRODUCTION

The employer-employee relationship begins when a person employes another. Employer-employee relationship, or commonly known as labour relations, is that part of the management job which is concerned with the workers or employees. The employer of a firm has to select the most suitable employee, train him and look after the necessary welfare arrangement of the employee he has hired. The system of employer-employee relations in any country can be viewed in its socio-political-economic background. Countries having agricultural background normally experience industrial unrest at the begining of the industrial transformation of the country. Gradually, as big industries emerge more and more employers become conscious of the need for a better industrial relations between them and their employees. Developing countries normally experience industrial indiscipline and labour unrest which cause losses to the industries. Therefore, in Third World countries which are experiencing industrial transformation, the area of industrial arbitration is of utmost importance. The employers in industries in the Third World countries realise that without capable employees or workers, their industries will be crippled and sooner or later the industry will be doomed. Thus, industrial relations between the employer and

employees should be viewed critically so that industrial unrest would not disrupt the industries in the developing countries. Much has been said and reported about the industrial unrest in the developed countries like the United States of America, the United Kingdom etc. These economies have experienced various industrial unrests which on certain occasions have crippled the economy and brought it to a halt.

The subject of employer-employee relationship has gained great importance in the context of fast development process, technological advancement and rapid industrialisation in the world[1]. The labour force has come to assume such a character that it is to be reckoned with in the modern age. It is a *sine qua non* for healthy development and increased productivity of a country or a nation[2]. The labour force in developed and developing nations are striving to make their presence felt in the industry. In developed nations and in certain developing countries, the labour force has developed into an organisation that warrants respect. Therefore, in order to prosper in the economic field, the relationship between the employers and employees is most important. Mutual understanding between these two forces will determine whether labour unrest will

---

1 Mr. Justice Irshad Hasan Khan, *Employer-worker Relation and Adjudication of Labour Disputes*, 10th Lawasia Conference, (1987).

2 *Ibid.*

dominate the economic field or not. If there is no mutual understanding between the employers and their employees, then the economic growth of the country is set to charter on a rough voyage towards economic growth. On the other hand, if there is give and take attitude between the employer and their employees, the situation will more or less be based on mutual understanding and co-operation. Such an atmosphere is bound to create a congenial situation in all the fields of activity involving the deployment of labour force. It goes without saying that the condition of economic activity greatly depends on the relationship between the employers and their employees. In cases where the relationship is cordial, economic growth of the industry will be healthy. The organisation which experiences no or less industrial unrests is surely a healthy atmosphere for greater productivity and output. In such a case, industrial unrests poses no or little problem for the particular organisation. As has been stated earlier, industrial harmony is the key factor in economic growth. Therefore, organisations in the economy will have to strive hard to achieve this status. Most governments in the developed and a majority of them in the developing countries have formulated codes of conduct regulating the relationship between the employers and their employees. The codes in the various countries have been formulated so that the situation in the labour sector will be such that it encourages industrial harmony and peace.

Developed and developing countries are often posed with the problems of indutrial disputes. This necessarily involves a lot of money and such a condition is certainly not a good one for the economy as a whole. In order to prosper, the economy needs stability so that the investors, be they foreign or local, have a certain level of confidence in the country that they are investing. Hence, the area of industrial relations are of great importance. Industrial relations may be defined as the study of the relations between employers, employees and their trade unions[3]. As a discipline, industrial relations is part of personnel management. Flippo defines personnel management as "the planning, organising, directing and controlling of the procurement, development, compensation, integration, maintenance and separation of human resources to the end that individual, organisational and societal objectives are met[4].

In other words, to study industrial relations is to study the relationship between workers and their employers. Thus, the scope of industrial relations is much wider than the end product that the worker produces at the end of the day. It involves his health, welfare and most of all his income. The employee has to work in order to enjoy the income he gets from working for the employer. The income he

---

3 Dunston Ayadurai, *Industrial Relations in Malaysia Law and Practice* (1992) Butterworths, p. 3.

4 Flippo, EB, *Personnel Management*, 6th ed, Mcgraw Hill Singapore, 1984.

earns from working for the employer will normally go the sustaining himself and his family. The forces of economics play an important role in deciding whether it is feasible to maintain a large group of workers or otherwise. Thus the theory of supply and demand of a particular product will determine whether a particular industry will remain in business or otherwise. If it remains in business, then the workers will enjoy the benefits that come along with the responsibility of work. On the other hand, if the industry is forced to close down as a result of the non-feasibility if that industry, the industry will be forced to terminate the employment of its workers. This exercise is normally known as retrenchment practice.

An industry is an organisation. Therefore, the workers are part of the organisation. Most people work in one kind of organisation or the other. There are various kinds of organisations. They can be small, medium and big in size. Various organisations operate in a different environment or climate. As such, there can be various methods of settling disputes between the employers and employees. On top of the various sizes of organisations, the policies of the government are crucial to the development of the country's industry. A forward-looking labour policy can encourage the growth of the industry in a particular country. On the other hand, if the labour policies of the country is restrictive, the growth of the industry can be hampered. The practices,

attitudes and values of the three forces, *viz.* employers, employees and the government, will affect the type of industrial relations system a particular country will have. The industrial climate will directly affect the acceptance or rejection of the industrial and labour policies of a government. The labour environment is dynamic and is continuously changing. This means that managers, trade unions and other actors in the industrial relations system will have to cope with disputes over what is appropriate and what is not[5]. However, industrial relations standards vary from country to country and from the private and the public sector.

Every country has its own labour laws[6]. These laws govern the relationship between the employers and employees. They may differ from country to country. Nevertheless, the objective of the various labour laws in the countries in this world remain the same, *i.e.*, to safeguard the well-being of the working-class. The employer-employee relationship in any country should be viewed in a broad context, taking into account the country's social, cultural, economic and various other factors. Modern employer-employee relationship allows for standard practices for the relationship so that the aims and objectives the

---

5 Marilyn Aminuddin, *Malaysian Industrial Relations*, McGraw-Hill Book Co, p. 2.

6 H.K. Abdul Hye, Worker-Management Relations and Adjudication of Labour Disputes, 10th Lawasia Conference 1987.

organisation will be achieved. This is considered essential for two basic reasons. Firstly, the organisation has an obligation to provide security and protection for its employees. Secondly, it needs established rules and laws that govern its operations and regulate the behaviour of its employees in the execution of their duties[7].

The disputes between employers and employees arise due to a variety of reasons. The reasons can be economic or non-economic. Economic reasons normally relate to low income and wages, unjust dismissal, retrenchment, refusal to recognise trade unions *etc*[8]. On the other hand, non-economic reasons include political causes, encouragement by speculators whose interests has been to raise prices by stoppage of work and production and inter-union rivalries, *etc*.

Thus, there is a need for harmonious relations between the employers and employees which is necessary in order for the country to prosper and advance in its status in this world. In order to achieve this, there has to be some discipline in the workforce. The management in any organisation is responsible for the discipline of its workers or employees. Therefore, in many organisations today, if not most, there are rules and regulations laid down for the conduct of the employees. The purpose of this

---

7 *Ibid.*
8 *Ibid.*

disciplinary rules and regulations is clear. It is needed so that the workers are clear as to what behaviour is accepted and what is not. If these rules and regulations are breached, the worker or employee who breached it will suffer it consequences. However, if they are to be fully effective the rules and procedures need to be accepted as reasonable by those who are to be covered by them. Management should therefore aim to secure the involvement of employees and all levels of management when formulating new or revising existing rules and procedures. In Malaysia, the Code of Conduct for Industrial Harmony outlines the procedure for disciplinary action as follows:

> (i) An employer should ensure that a fair, effective and expeditious procedure exists for dealing with diciplinary matters. Such procedure may be established in consultation with the emplyeees' representatives or trade union. The employer should define and make known to each employee the rules of work and the disciplinary action which may follow it if they are broken. Penalties should be graduated according to the seriousness of the offence. An employee should not, except in cases of gross misconduct, be dismissed for first offence.

(ii) The disciplinary procedure should be in writing and be made known to each employee. The proceedings should be conducted in accordance with the rules of natural justice and should:

(a) provide for employee to be informed, in writing, of the misconduct;

(b) specify who has the authority to take what form of disciplinary action;

(c) provides for full and speecy consideration by employer of all the relevant facts;

(d) give the worker the opportunity to state his case and the right to be represented by his workers' representative or trade union official;

(e) in the case of less serious offence, provide, in the first instance, for a warning by the employee's immediate superior;

(f) in the case of more serious offence, provides for a formal warning in writing, setting out the circumstances and the disciplinary action to which an employee will be liable if he commits a further offence and require a copy of this record to be given to the

employee and if he so wishes to his employee's representatives or trade union official;

(g) provides for a right of appeal against disciplinary action to a higher level of management not previously involved[9].

As can be seen, the Code of Conduct for Industrial Harmony provides the procedures when dealing with industrial disputes between employer and employee. The main object of this Code is to protect the employees from being victimised and unfairly exploited by the unscrupulous employers. When such victimisation and exploitation takes place, the atmosphere in the industrial sector will be disrupted and this will hit the economy of the country. In modern industry, the traditional personal man-to-man relationship between employer and employee is rapidly disappearing. The tendency now is for employees to work through groups, in the form of trade unions rather than individuals[10].

---

9 Syed Ahmad Idid, *The Law of Domestic Inquiries and Dismissals*, (1989), pp. 6-7.

10 Wu Min An, *The Industrial Relations Law of Malaysia* (1985), p. xvii.

Adjudication of Labour Disputes

Adjudication of labour disputes need special attention to avoid pernicious impact on the productivity and economic growth. The State is burdened with the responsibility of providing the mechanism for settling disputes between the employers and employees. It is an ardous task which is placed on the shoulders of the government of the day to ensure that such mechanism exists. Such a mechanism has to be formulated in such a way that to a layman it does not appear partial. The adjudicating body should be impartial in dispensing its duty of adjudicating the arbitration. It is an onerous duty of the State to provide an elaborate and balanced mechanism for the dispute-resolution process[11]. The relevant legal provisions and procedures must be such that it does not operate to the advantage of one party and disadvantage of the other. This, undoubtedly, proves instrumental in avoiding unrest and unhealthy trends in the production sector and ensures a smooth sailing of matters to the benefit of both the employers and the workers. This concept of impartiality is embodied in the principles of natural justice which is inherent in any legal system. In other words, the parties which come to the arbitrator should be placed on equal footing. It is, then, the duty of the presiding arbitrator to ensure that there are no

---

11 *Ibid*, see footnote 1.

circumstances which exists which indicate the opposite situation exists.

Adjudication is the "judicial" concept of arbitration as distinguished from its "political" conception, which is commonly understood as voluntary arbitration[12]. Adjudication views industrial disputes and conflicts from a legalistic point of view and acribes to the adjudicator the task of judging the merits of the conflicting issues in terms of fixed standards of what is "right" and "wrong"[13].

An employee has the right to know the terms and conditions under which he is employed and the rules of discipline which he is expected to follow. Most of the employees today are members of a trade union of a particular industry. The primary role of a trade union is to protect the members from being exploited by their employers. When the employees are being exploited indiscrimately, it will lead to industrial unrest and this situation is certainly bad for the economy. Thus there is a need for adjudication. Therefore, the employers need to upgrade their knowledge about industrial relationship because the field of industrial relations is dynamic and not static. When labour relationship is poor, strikes may occur. This will directly

---

12 Dr. B. R. Patil, *Employer Worker Relations and Adjudication of Labour Disputes in India,* 10th Lawasia Conference (1987).

13 *Ibid.*