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Ruj Kami : MP.1: 5/3-914/05(39)

Tarikh : 15 Januari 2008

SERAHAN TANGAN

Puan Baljit Kaur a/p Naranjan,
GBH Bathroom Products Sdn. Bhd.,
238, Jalan Segambut,
51200 Kuala Lumpur

Encik A. Sivananthan,
Kongres Kesatuan Sekerja Malaysia (MTUC)
Wisma M.T.U.C.
10-5, Jalan USJ 9/5T
47620 Subang Jaya, Selangor

Tuan,

Kes No. : 5/3-914/05

Pertikaian Diantara: ASSOCIATION OF MAYBANK CLASS ONE OFFICERS (AMCO)
Dengan : MALAYAN BANKING BERHAD

Dengan hormatnya saya merujuk perkara di atas.

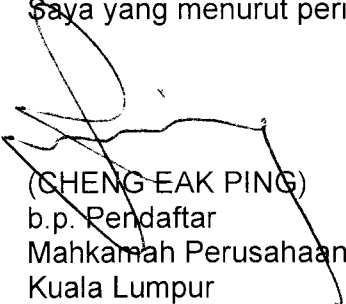
- 2. Sukacita dimaklumkan bahawa Mahkamah Perusahaan telah pun membuat keputusan mengenai pertikaian ini sebagaimana **Award No: 42 Tahun 2008 bertarikh 8 Januari 2008**. Disertakan bersama-sama ini sesalinan Award tersebut untuk makluman dan tindakan tuan.

Sekian, terima kasih.

“BERKHIDMAT UNTUK NEGARA”

“Pekerja Produktif Negara Kompetitif”

Saya yang menurut perintah,


(CHENG EAK PING)
b.p. Pendaftar
Mahkamah Perusahaan Malaysia
Kuala Lumpur

THE INDUSTRIAL COURT OF MALAYSIA

CASE NO. 5/3 – 914/05

BETWEEN

ASSOCIATION OF MAYBANK CLASS ONE OFFICERS (AMCO)

AND

MALAYAN BANKING BERHAD

AWARD NO. 42 OF 2008

Before:

TUAN CHEW SOO HO	- CHAIRMAN
PUAN BALJIT KAUR A/P NARANJAN	- PANEL MEMBER FOR EMPLOYERS
ENCIK A. SIVANANTHAN	- PANEL MEMBER FOR EMPLOYEES

Venue : The Industrial Court of Malaysia, Kuala Lumpur

Date of Reference : 25.7.2005

Date of Hearing : 9.2.2007, 19.3.2007 (CH), 11.4.2007 (CH), 14.5.2007 (CH)
: 17.7.2007 – Written Submission of the Bank
: 10.8.2007 – Written Submission of the Union

Representation : Mr. T. Ramalingam from Messrs Ramalingam & Co.,
Solicitor for the Union

: Mr. T.M. Varughese from Messrs T.M. Varughese & Co.
Solicitor for the Bank

Reference :

This is a dispute under Section 26(2) of the Industrial Relation Act, 1967 between **Association of Maybank Class One Officers (AMCO)** (hereinafter referred to as "the Union") and **Malayan Banking Berhad** (hereinafter referred to as "the Bank").

AWARD

Facts of the Case

The dispute between the Association of Maybank Class One Officers (AMCO), the Union and the Bank is with regards to the disciplinary action taken by the Bank against one of its Union members named Tong Yee Shen (hereinafter referred to as the Claimant) who was punished with stoppage of his annual increment for 2 years with effect from 1 July 2004.

The Claimant commenced employment with the Bank with effect from 1 November 1993 as a Trainee Officer. He was confirmed and subsequently promoted as a Credit Officer at Gemas Branch with effect from 1 September 1997. Effective from 6 May 1998, he was transferred to Bahau Branch vide the Bank's letter dated 13 May 1998 (COB p. 20) but vide its letter dated 21 May 1998, Claimant was transferred to Seremban Branch with effect from 28 May 1998 (CLB p. 19).

By its letter dated 18 October 2002, the Bank issued a show cause letter to the Claimant alleging that Claimant had committed breaches of duty in the following two charges:

- "1. Between 9.7.1998 to 28.6.2001, you had signed/counter-signed/authorized 95 BAS against invoices where these BAS were

not paid upon maturity but instead rolled over between 7 to 9 times, thus breaching the requirements of SPI (B) AX1/4 dated 30.7.1992 on "Bankers Acceptances" which states that "On maturity of the BA, the BA amount should be debited immediately to the customer's current account irrespective of whether there is sufficient funds in the account or not and customer advised accordingly", and thereby exposing the Bank to financial risks.

2. Between January 1999 to 28.6.2001, you had signed/counter signed/authorized 80 BAs against invoices of the same amount as per the previous BAs which were submitted by GPSB (as per Appendix 1) but failed to conduct the required checking with the counter party to establish the genuineness of the trade transactions, thus breaching the requirement of Circular no. MS/PPC/98/0169 dated 17.12.1998 on "Attempted Fraud Involving Forged Documents Presented for Bankers Acceptance Financing" thereby exposing the Bank to financial risk."

Claimant through his letter dated 11.11.2002 had accordingly replied to the Bank's show cause letter concluding that he had been a victim of circumstances. See Appendix C to the Statement of Case.

The Bank being dissatisfied with the Claimant's said explanation had found the Claimant guilty of the 2nd Charge only. The Union asserted that the Bank had

by its letter dated 4 July 2003 informing the Claimant of the punishment of stoppage of his increment for 2 years, found the Claimant guilty of the 1st Charge of "Roll over of Banker's Acceptance (BAS) upon Maturity – Bahau Sales & Service Centre". (See Appendix A to the Statement of Case). The decision of punishment was made by the Bank's Establishment & Committee in accordance with the seriousness of the respective staff in their breaches or omissions in the conduct of their duties.

The Claimant had appealed vide his letter dated 20.10.2003 to the Bank to reconsider the aforesaid punishment. However, his appeal was declined; hence this trade dispute was referred to the Court by the Honourable Minister of Human Resources.

The Issues

The 1st issue before this Court is whether the Claimant was found guilty of the 1st Charge or the 2nd Charge as aforesaid resulting in his punishment of stoppage of 2 years increment.

If as contended by the Bank and if it is so found by this Court that the Claimant was found guilty and punished on the 2nd Charge, was it prejudicial, inequitable and/or an unfair labour practice that a wrong impression or a misperception was created by the Bank to the Claimant that he was punished as if he was found guilty of the 1st Charge.

The Law

When the Bank leveled the charges of misconduct or breaches of duty against the Claimant, it bears the burden to prove the Claimant guilty of the charge or charges and it is not the Claimant who must prove himself not guilty. See *Stamford Executive Centre v. Dharsini Ganeson* [1986] 1 ILR 101.

Evaluation & Findings

When this case was first called up for hearing on 1 November 2006 wherein counsel for the Bank sought an adjournment on ground that the Bank's main witness was on medical leave, this Court had pointed out to parties that from the Statement of Case the Claimant had pleaded that he was found guilty of the 1st charge but the Statement in Reply of the Bank had pleaded otherwise that he was found guilty of the 2nd charge. This Court in allowing the adjournment sought by the Bank had expressed that there was a need to resolve the issue of whether the Claimant was found guilty of which charge before the hearing of the case was to proceed. However, at the hearing on 9 February 2007, parties did not enlighten this Court on the matter raised by this Court earlier but proceeded on with the trial. This Court is now saddled with the duty to determine whether the Claimant was found guilty of which of the 2 charges leveled by the Bank against him.

The Bank's Case

The Bank had called 3 witnesses. Its 1st witness (COW1) was the investigating officer attached to the Audit Division of the Bank. He investigated into the operations of Bahau Branch from 15 April 2002 to 16 August 2002. He said that Claimant was attached to the Bahau Branch from May 1998 to January 2002 as a Credit Officer and was subsequently transferred to Seremban Business Centre in February 2002. From his investigation, he found the counterparty companies namely Permata Sinaran Emas Sdn. Bhd. (PSESB) and Canggih Industries Sdn. Bhd. (CISB) to be both dormant and that they had the same registered office and same place of business. Consequently COW1 concluded that the Claimant had failed to conduct the required checking with the counterparty to ascertain the genuineness of the trade transactions and had thereby failed to comply with the requirement in the Bank's Circular MS/PPC/98/0169 dated 17.12.1998. Counterparty herein was the party engaged in the trade transaction with Gorise Plywood Sdn. Bhd. (GPSB) which was the Bank's customer granted a Banker's Acceptance (BA) facility to finance its sales of goods. When cross-examined, COW1 when referred to the details of the Roll-Over of the 18 BA as shown in COB p. 4 – 7 at the last column, said that he had no knowledge from the investigation as to which of the Bank Officers with their initials appearing at the last column had processed the BA and which one of them had authorized the said BA. He came to the conclusion that Claimant had failed to conduct the counterchecking because Claimant was one of the signatories and his initial appeared in the BA Register as the person attending to the transactions. The process of the Bank was that the authority to draw down was by the Branch Manager and the processing was done by the officer. He said there were times

when the BA was processed and authorized by the Branch Manager himself. On the status of the 2 counterparty companies PSESB and CISB, COW1 said that based on the company search, both the companies were dormant. He admitted he made mistake by not checking with the counterparty companies himself. He was however assisted by the Senior Account Manager from Seremban who visited the premises and confirmed the premises to be occupied by a lorry transport company but no such written report was given to him.

The Bank's 2nd Witness (COW2) was the then Secretary to the Group Staff Committee of the Bank which held the meeting on 17 June 2003 and had approved the punishment imposed on the Claimant as in COB p. 21 item 1 as follows:

"1. En. Tong Yee Shen PF 020121 (BG 51) be given a Stoppage of Increment for a period of two (2) years as he had authorized 80 BAs totaling RM12,657,000."

COB p. 22 – 28 was the recommendation dated 23 May 2003 to the Group Staff Committee from which the Group Staff Committee had approved the above punishment on the Claimant.

COW2 said the basis for the Claimant's punishment was the amount involved and the number of BAs authorized by him. The sum of RM12,657,000.00 was the amount that the Claimant had authorized the 80 BAs and not the value of

the BAs or the sum of loss to the Bank. According to the paper presented i.e. COB p. 22 – 28, COW2 said that there was no actual loss to the Bank in respect of the Claimant's alleged misconduct.

COW3, the Bank's 3rd witness was the Head of the Industrial Department of the Bank at the material time. He was 1 of the signatories who made the recommendation to the Group Staff Committee for the punishment of the Claimant vide COB p. 22 – 28 in which the Claimant was recommended to be punished in respect of the 2nd Charge. The Group Staff Committee had approved the recommendation and COW3 issued the letter of punishment to the Claimant vide the Bank's letter dated 4 July 2003 as in Appendix "A" to the Statement of Case. In cross-examination, COW3 said that they found the Claimant guilty of the 2nd Charge and found Claimant's explanation to be satisfactory in respect of the 1st Charge. He agreed that there were 18 BAs draw-down by GPSB in the Bahau Branch with the total value of the 18 draw-down of RM2.92 million. If the BAs were not redeemed, the actual damage to the Bank would be RM2.92 million. On the 2nd Charge, COW2 said that what was meant was the 80 occasions of the roll-over with invoices that the Claimant had authorized or signed and not 80 BAs and the sum of RM12,657,000.00 was the sum of the 80 occasions of roll-over but did not represent the loss to the Bank. On the heading of the letters in the Bank's letter of punishment – Appendix "A" annexed to the Statement of Case – issued by him to the Claimant, and the Claimant's letter of appeal – Appendix "D" in the Statement of Case – where it stated "Pemberhentian Kenaikan Gaji Bagi Tempoh (2)

Tahun – “Roll Over of Bankers’ Acceptance (BAs) Upon Maturity – Bahau Sales & Service Centre”, COW3 explained that they had used the title of “Roll Over of Bankers’ Acceptances” for the overall case but when they conveyed the decision of the Claimant’s appeal vide the Bank’s letter dated 25 February 2004 – Appendix “E” in the Statement of Case – they realized that they were not explicit to convey that the Claimant was only guilty of the 2nd Charge. So COW3 replied Claimant’s appeal letter by putting in the appropriate perspective using “Breaches in Processing of Bankers Acceptance (BAs) – Bahau SSC.” COW3 agreed that by the Claimant’s appeal letter (Appendix “D”), Claimant was thinking he was found guilty of the 1st Charge. He further agreed that the Claimant was thinking he was guilty of the 1st Charge and the Bank had punished him on the 2nd Charge basing on Appendix “D”. He disagreed that all the transactions as shown in COB p. 4 – 7 were genuine transactions. He said that the audit’s finding was that those transactions were not genuine and added that he had copies of the audit’s findings. For Bank Officers who handled BAs solely, they are known as Trade Bills Officers. Claimant was a Credit Officer at Bahau Branch. There were no Trade Bills Officers in Bahau Branch. COW3 would not know why a Credit Officer handled BAs in Bahau Branch. He asserted that all the transactions in COB p. 4 – 7 were not genuine transactions and that the Claimant had breached the procedure by his failure to make a call to the buyers to confirm whether they had indeed done such trade with the customer.

The Union’s/Claimant’s Case

The Union called its sole witness, the Claimant who testified that he was a Credit Officer in the Bahau Branch but he had to attend to GPSB being the Bank's BA customer because there was no Trade Bills Officer in Bahau. Claimant said he had no training or exposure in BAs transactions. Referring to the Bank's letter to him vide Appendix "A", Claimant said this letter cited the punishment imposed on him for allowing roll over of BAs. He explained that the Bank issued him a letter to show cause dated 18 October 2002 vide Appendix "B" annexed to the Statement of Case with 2 charges as stated above. He averred he was found guilty of the 1st Charge of roll over of BAs for which he had never committed. Claimant explained what was meant by roll over of BAs. Referring to the directive from the Bank's Corporate Banking Division dated 21 May 1998 (CLB p.1), Claimant said that this directive gave the Bahau Branch the consent to accept new commercial invoices and new BA draft, duly executed, to be accepted as settlement of the maturing BA. He contended that even the Bank's circular vide CLB p.9 said that new invoices could be accepted to set off maturing BA. From the transactions involving GPSB, the Corporate Banking Division had conducted several visits to the borrower's factory in Bahau. Claimant had no reason to suspect any wrong doing as the counterparty/purchaser was the same and the borrower (GPSB) had been given the BA facility by the Bank. As such, Claimant could not reject the customer's new invoices to set off the maturing BA for otherwise he would be acting against the Bank's directive. In cross-examination, Claimant explained that when he was in Bahau Branch, he had only 3 months of experience as Credit Officer. From 1998 till 2001 when he was in Bahau Branch, he had no

knowledge that invoices must be supported by delivery order. Claimant explained that he did not check the existence of the buyers of the invoices because the list of those buyers were approved by the Corporate Banking Division from the Head Office as GPSB was a corporate customer. In fact, the loan facilities were handled by the Corporate Banking Division and all approvals were granted by them. Similarly, all site visits to the borrower were conducted by officers from the Corporate Banking Division. Throughout Claimant's tenure in Bahau Branch, he said that it was not part of his duty to check on the purchasers of those invoices of GPSB. On the Bank's Circular vide COB p. 12 – 13, Claimant said that he had never seen it throughout his tenure in Bahau Branch.

Court's Findings

From the evidence adduced by the Bank's Witnesses and documentary evidence such as the recommendation put up by the Bank's Head of Human Resource and Head of Industrial Relations vide COB p. 22 – 28, it is quite apparent that the recommendation on the Claimant's case was for the punishment in respect of the 2nd Charge as can be seen in COB p. 28 2nd paragraph. COW3 also expressed that the Bank had found the Claimant not guilty of the 1st Charge but guilty of the 2nd Charge. The approval of the recommendation for punishment of the Claimant as indicated in COB p. 21 referred to the "stoppage of increment for a period of two (2) years as he had authorized 80 BAs totaling RM12,657,000." As the 1st Charge referred to

signing/counter-signing/authorizing 95 BAs, it is reasonable to infer that the approval of the punishment in respect of the Claimant vide COB p. 21 was pertaining to the 2nd Charge which involved signing or authorizing 80 BAs. This Court would thus conclude that the Claimant was indeed found guilty and punished on the 2nd Charge.

Having so found that the Claimant was punished on the 2nd Charge, it leads to the 2nd issue whether the Claimant was prejudice or that it was inequitable and/or an unfair labour practice perpetrated by the Bank on the Claimant. Claimant had all through this case maintained that he was found guilty and punished for the aforesaid 1st Charge of Roll over of BAs. Quote apparently, the Bank's letter of punishment to him vide Appendix "A" in the Statement of Claim had undoubtedly used the title of "Roll Over of Bankers' Acceptances (BAs) Upon Maturity – Bahau Sales & Service Centre" which connotes to the Claimant the impression that he was punished for the allegation in the 1st Charge. This can be easily seen from the Claimant's letter of appeal to the Bank, Appendix "D" where the Claimant only referred to the 1st Charge in his appeal and was totally silent on the 2nd Charge. The Bank through COW3 was well aware of this. By COW3's evidence, he expressed that the Bank realized that they were not explicit to convey to the Claimant that he was in fact found guilty of and punished for the 2nd Charge and not the 1st Charge. By referring to Claimant's said letter of appeal, COW3 even endorsed that the Claimant was thinking he was guilty of the 1st Charge whereas the Bank had punished him on the 2nd Charge. Ironically, the Bank having detected or realized the wrong impression it

had created to the Claimant in informing or conveying its decision to punish the Claimant, had failed to take any measure, in all fairness to the Claimant, to rectify its mistake or the misperception it had created. The Bank attempted to submit that the said letter of punishment should not be read basing on its title alone but by reference to other documents. However, no evidence of any other documents which indicate that Claimant was found guilty of the 2nd Charge was adduced by the Bank that it had supplied to the Claimant. From the Claimant's view point, what he had was merely his show cause letter followed by the Bank's letter of his punishment. This Court has also scrutinized the whole of this letter of punishment (Appendix "A") but finds no word, phrase or sentence in its contents to envisage or to be even able to draw a reasonable inference that the punishment imposed was in relation to the 2nd Charge. Indeed, this Court would incline to conclude by reading Appendix "A" that the Claimant was punished for the 1st Charge as Claimant had perceived. The 2nd Charge pertains to the Claimant's failure to check with the counterparty to establish the genuineness of the trade transactions but not a single work of such main ingredient of the 2nd Charge was ever mentioned in the contents of Appendix "A". This Court therefore finds that the Claimant was indeed misled by the Bank to perceive that he was punished for the 1st Charge. COW3 said that upon the Bank realizing the wrong impression it had created, it had in the Bank's letter of rejection of the Claimant's appeal vide Appendix "E" annexed to the Statement of Case altered the title in the letter to "Breaches in Processing of Bankers' Acceptance (BAs) – Bahau SSC." This Court cannot understand why the Bank could not use the ingredient of the 2nd Charge to say expressly that it was the

Claimant's failure to check with the counterparty to establish the genuineness of the trade transactions that he was punished. Instead, the Bank preferred to use the phrase "Breaches in Processing of Bankers' Acceptance" which did not appear in any of the 2 Charges. If the Bank's show cause letter to the Claimant (Appendix "B") is referred at its second page, the Bank said that "it is hereby alleged that you had committed breaches of the duty in that: ..." followed by the 2 charges. Thus, the breaches of duty were in respect of both charges and when the Bank used the word "Breaches in Processing", to this Court, it does not necessarily convey that it was the 2nd Charge that the Claimant was punished. The question is whether the Claimant was prejudice by the Bank's wrong impression in informing him of what he was punished. The Claimant had submitted in the positive. From the evidence before this Court, this Court must agree with the Claimant's submission for simple reason that had the Bank informed the Claimant correctly of the charge he was punished, the Claimant would have forwarded his appeal basing on the 2nd Charge instead of the 1st Charge ignoring the 2nd Charge in total as in the present case. In addition, by not rectifying the error, the Bank cannot be said to have considered any appeal from the Claimant in the sense that his appeal was not pertaining to the charge for which he was found guilty and punished. When the Bank punished the Claimant for the 2nd Charge, the appeal anticipated must by necessity relate to the 2nd Charge. Thus, when the Claimant unconsciously failed to appeal against the decision on the 2nd Charge, it could only be construed that his right to appeal against that decision was defeated. The rejection of Claimant's appeal is therefore not only prejudicial to the Claimant but it is definitely an error and an

unfair labour practice actuated on the Claimant when the Bank failed to expressly inform the Claimant the correct charge he was punished and to render him the fair opportunity to appeal against the correct charge before the Bank proceeded to consider the Claimant's proper appeal with his correct reasons of appeal. It is only fair labour practice that when an error had been detected as to any charge leveled against an employee and his punishment, the employer should withhold any further action such as hearing or deliberating on the employee's appeal on a different allegation of charge until the employee has been duly informed of the error followed by the rectification so that he could submit his appeal on the proper and correct grounds. The Bank had failed to accord the Claimant with such a fair opportunity which is in violation of the principles of natural justice where the Claimant must be given the full opportunity of being heard which must necessarily include the hearing of his appeal against the finding of his guilt and his punishment as his right of appeal is specifically provided in Article 14 (C) of the Collective Agreement between the Bank and the Union vide Cog. No. 40/2003 effective from 1 March 2002. How could the Management of the Bank be said to have given due consideration of the points highlighted by the Claimant in his appeal as stated in the Bank's letter Appendix "E" when he was totally silent in the 2nd Charge which he was found guilty and punished? COW3 being the Head of the Industrial Relations and well aware of the error created did not enlighten the Management of the said wrong impression created vide the Bank's letter Appendix "A" and had failed to proceed to rectify such misperception. Even if COW3 had not drawn the attention of the Management of the perceived error,

if the Management had truly given due consideration to the Claimant's appeal, it would have definitely noticed or detected the peculiarity that the Claimant's appeal was solely in relation to the 1st Charge for which he was found not guilty and not a strand of evidence or ground was uttered in respect of the 2nd Charge. Could the Bank's Management be said to have given due consideration to the Claimant's appeal and in particular to the points highlighted by the Claimant in his appeal letter which had no bearing to the 2nd Charge? If the Claimant had been rendered the opportunity to appeal against the 2nd Charge with any grounds that he might have advanced, would the Management allow or reject his appeal or vary the punishment? The answer is not known undoubtedly but the tangible doubt is that there is a possibility that the outcome may be different. This existing doubt must be resolved in favour of the Claimant.

In equity, good conscience and the substantial merits of the case, this Court finds that it is inequitable and an unfair process or a bad labour practice for the Bank to have intentionally or inadvertently informed the Claimant that he was found guilty of 'roll-over of the BAs upon maturity' which categorically referred to the 1st Charge thereby inducing him not to appeal against the 2nd Charge for which he was found guilty and punished and consequently depriving him of his right of being heard in his appeal. On this ground alone, this Court will allow the Union's claim and set aside the finding of guilt and punishment imposed on the Claimant.

Even if this Court were to find that the Bank is able to prove the 2nd Charge against the Claimant for which this Court has reservation, by virtue of the fact that the accused employee was not categorically informed of what allegation of charge he was found guilty and punished but cast a wrong impression that he was found guilty and punished for a charge whereas he was in actual fact found guilty and punished for a different charge with yet no corrective measure being taken to rectify the error, this Court finds that it is inequitable and an unfair labour practice for the Bank to affirm that its finding of guilt and punishment of the Claimant to be justified or in accordance with proper process. An employee must be told not only of what allegations of charge he is to face but also what charge or misconduct that he is found guilty and punished. This Court cannot accept that the Claimant was charged with 2 charges but was punished with 1 which via the Bank's communication to him, he believed to be Charge 1 whereas the Bank had on the other hand found him guilty and punished him on Charge 2. It defies equity and fair labour practice albeit a violation of the principle of natural justice to do so. In addition, the Bank also failed to comply with Article 14 (B) of same Collective Agreement to hold a domestic inquiry against the Claimant before any punishment was meted out on him. This Court will still hold in equity and good conscience that the Union's claim should be allowed.

Remedy & Award

The Union had pleaded vide paragraph 7 in its Statement of Case that the Claimant's salary increment was RM180.00 per month from 1 July 2004 and similarly a monthly increment of RM180.00 from 1 July 2005 which were the relevant periods of the Claimant's 2 years stoppage of increment. The Bank had not disputed this increment rate vide its Statement in Reply. From the Bank's letter of punishment to the Claimant – Appendix "A" annexed to the Statement of Case – it was also expressed that the stoppage of increment for a period of 2 years was to commence from 1 July 2004 and Claimant would resume to obtain his increment from 1 July 2006. On this undisputed amount of increment and the period of the stoppage, this Court hands down the following award:

1. The finding of guilt and punishment on the Claimant is hereby to be set aside;
2. The Bank is to reinstate the Claimant's increments for the 2 years commencing from 1 July 2004 to 30 June 2006 calculated as follows:

$$\begin{aligned} & \text{RM180.00} \times 12 \text{ (From 1 July 2004 to 30 June 2005)} + \text{RM360.00} \\ & \times 12 \text{ (From 1 July 2005 to 30 June 2006)} \\ & = \text{RM2,160.00} + \text{RM4,320.00} \\ & = \text{RM6,480.00}; \text{ and} \end{aligned}$$

3. Claimant had also quantified the increment to his 3 months bonus for each respective year in his Witness Statement CLW1 – S Q & A 33 which the Bank did not challenge nor dispute. This Court can conclude that Claimant had been paid 3 months bonus for each respective years which means that he would have received the bonus with the increment for the year from 1 July 2004 to 30 June 2005 and the year from 1 July 2005 to 30 June 2006. This Court finds it equitable to award the Claimant the difference in his bonus for these duration of 2 years calculated as follows:

$$(RM180.00 \times 3) + (RM360.00 \times 3)$$

$$= RM540.00 + RM1,080.00$$

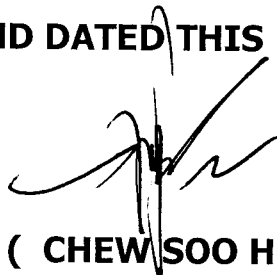
$$= RM1,620.00$$

This Court notes that the periods of 2 years referred to by the Claimant in his answer to Q & A 33 in CLW1 – S were from 1 June 2004 to 31 May 2005 and 1 June 2005 to 31 May 2006 respectively which differ from the periods as stated by the Bank vide the letter of punishment – Appendix "A" or as stated above. To avoid any confusion or argument over which were the correct dates for the 2 years stoppage of increment of the Claimant, this Court holds that the dates that are in the official record of the Bank pertaining to the Claimant's service should be construed as the correct dates for this purpose. In any way, whatever may be the dates they do not affect

the above quantum of the arrears of increment in salary and bonus of the Claimant.

Lastly, the Bank is hereby ordered to pay to the Claimant the total sum of RM8,100.00 (RM6,480.00 + RM1,620.00), less any statutory deduction, if any, within 30 Days from the date of this Award hereunder.

HANDED DOWN AND DATED THIS 8 OF JANUARY 2008



**(CHEW SOO HO)
CHAIRMAN
INDUSTRIAL COURT MALAYSIA
KUALA LUMPUR**