



CASE SUMMARY

**KESATUAN EKSEKUTIF BANK PERTANIAN MALAYSIA BERHAD, SEMENANJUNG V BANK
PERTANIAN MALAYSIA BERHAD
INDUSTRIAL COURT'S AWARD NO: 1152 OF 2021**

Introduction

1. This is an application filed by the Kesatuan Eksekutif Bank Pertanian Malaysia Berhad, Semenanjung (hereinafter referred to as the “**Union**”) pursuant to Section 56 (1) of the Industrial Relations Act 1967 to seek an order for non-compliance of Article 4 (Annual Salary Increment) of the Collective Agreement (Cognizance No. 179/2019) for the period of 1.1.2019 to 31.12.2021 between Bank Pertanian Malaysia Berhad (hereinafter referred to as the “**Bank**”) and the Union.
2. The Union represents employees of the Bank who are covered under the Collective Agreement (the Executives) (hereinafter referred to as the “**CA**”). The Bank is a financial institution and is commercially known as AGROBANK, a Government owned bank under the purview of the Minister of Finance.

Background Facts

3. On 3.4.2019, the parties entered into the CA with an intention for the CA to be effective for a period of 3 years from 1.1.2019 until 31.12.2021.
4. The salient terms of the CA are as follows:

“Artikel 4: Kenaikan Gaji Tahunan

- 4.1 *Kenaikan gaji tahunan untuk Eksekutif dalam semua kategori adalah ditetapkan pada 1hb Januari setiap tahun.*
- 4.2 *Jumlah kenaikan gaji tahunan Eksekutif akan dikira mengikut peratusan gajinya, seperti mana yang ditentukan oleh AGROBANK tertakluk kepada jumlah hari dia berkhidmat pada tahun penilaian prestasi dijalankan.*
- 4.3 *Eksekutif layak menerima kenaikan gaji tahunan pada 1hb Januari setiap tahun berdasarkan prestasi, sehingga dia mencapai tahap maksima julat gajinya, melainkan kenaikan gaji tahunannya ditunda atau ditahan.*

4.4 *Eksekutif baru yang telah berkhidmat kurang dari satu (1) tahun akan dibayar kenaikan gaji tahunan pertama apabila genap setahun dia bekerja. Seterusnya, Tarikh kenaikan gaji tahunan adalah pada 1hb tahun berikutnya.*

4.5 *AGROBANK dengan budibicaranya berhak memutuskan kelayakan Eksekutif untuk menerima kenaikan gaji tahunan beserta jumlahnya.*

4.6 *Bagi kegunaan klausa atau fasal ini, julat gaji bererti julat-julat gaji pokok yang berkaitan dengan gred peribadi Eksekutif.”*

5. By way of a letter dated 1.6.2020, the Bank informed its employees as follows:

- a. The Bank had achieved profit before tax of RM205.4 million for the financial year of 2019;
- b. The Board of Directors and the Ministry of Finance had approved the bonus payments for the financial year of 2019 to the eligible employees and the same had been duly credited into the employees’ account on 22.5.2020; and
- c. The Bank had decided not to grant annual salary increments to all its employees for the financial year of 2020.

6. Being dissatisfied with the Bank’s decision not to grant any annual increments for the year 2020, the Union lodged a complaint under Rule 24A(1) Industrial Relations Rules 1967 and Section 56(1) of the Industrial Relations Act 1967 for non-compliance with Article 4 of the CA on the part of the Bank.

Issues for the Determination by the Industrial Court

7. The issues to be determined by the Industrial Court are as follows:

- (a) Whether the payment of annual salary increment under Article 4 of the CA for the period of 1.1.2019 until 31.12.2021 by the Bank to its eligible employees is mandatory or discretionary; and
- (b) Whether the Bank had breached Article 4 of the CA when it did not grant the annual salary increment to its eligible employees for the year 2020.

The Union’s Contentions

8. The Union contended that even though it is the management’s prerogative or discretion to determine the criteria and quantum of increment, however, it is the

entitlement of the employees of Executives level to be paid salary increment every year under the contract. As such, it was argued that the Bank's decision not to grant salary increment is a breach of Article 4 of the CA.

9. The Union also contended that since the Bank had recorded profit earnings in its previous financial year, there was no reasons for the Bank to have decided not to grant salary increment to its eligible employees for the year 2020.

The Bank's Contentions

10. The Bank contended that it had decided not to grant annual salary increment for the year 2020 was not only applicable to the Executives, but to all employees of the Bank due to the unprecedented economic crisis caused by the COVID-19 pandemic.
11. Further, the Bank took the position that the decision was made in order to preserve the sustainability of the Bank's operation as well as livelihood of all of its employees in light of the uncertainty in the Bank's future financial position in light of the unprecedented economic crisis caused by the COVID -19 pandemic.

Decision by the Industrial Court

12. In respect of issue (a), the Industrial Court found that the payment of annual salary increment under Article 4 of the CA for the period of 1.1.2019 until 31.12.2021 by the Bank to its eligible employees is merely discretionary in nature as clearly and expressly provided under Article 4.5 of the CA in its plain and ordinary meaning. Further, a plain reading of Article 4.3 of the CA also reveals that the payment of annual salary is not an outright entitlement as it can be further deferred or withheld.
13. Following the Industrial Court's decision in issue (a) that the payment of annual salary is discretionary in nature, the Industrial Court went on to rule issue (b) in the negative, by reason of the following:
 - (a) As annual salary increment would become the Bank's future monthly commitment, and not just a one-off payment to its employees, as such the Bank's past profit is irrelevant in determining the payment of annual salary increment under the Contract.
 - (b) Due to the unprecedented economic crisis caused by the COVID -19 pandemic, that was the Bank's decision not to grant annual salary increment for the year 2020 was not only applicable to the Executives, but to all employees of the Bank.

(c) The Bank's decision was justified with good reason to preserve the sustainability of the Bank's operation as well as livelihood of all of its employees in light of the uncertainty in the Bank's future financial position in light of the unprecedented economic crisis caused by the COVID -19 pandemic.

14. Based on these reasons, the Industrial Court dismissed the Union's case for non-compliance of the CA under Rule 24A(1) Industrial Relations Rules 1967 and Section 56(1) of the Industrial Relations Act 1967.

Key Takeaways from the Case

15. Based on our reading and understanding of this decision by the Industrial Court, the key takeaways are as follows:

(a) The profits earned by a company in its previous financial year cannot be used as a basis for the employees to argue for an annual salary increment, especially when the payment of the annual salary increment is discretionary in nature. This is because annual salary increment is not merely a one-off payment but it will become a yearly commitment for the company in the coming years; and

(b) The economic crisis caused by the COVID-19 pandemic is a valid ground for a company not to provide annual salary increment to its employees. financial capability of a company to sustain the livelihood of all of its employees must be taken into consideration during the COVID-19 economic recession.

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