

Law In Brief

Landmark case on minimum wage in Malaysia... Does it include service charge? ...

The facts: A trade dispute arose between Crystal Crown Hotel & Resort Sdn Bhd (Crystal Crown Hotel Petaling Jaya) ("the Hotel") and Kesatuan Kebangsaan Pekerja-Pekerja Hotel, Bar & Restoran ("the Union") on the issue of the salary structure of the Hotel's employees.

The judgment, reported as *Kesatuan Kebangsaan Pekerja-Pekerja Hotel, Bar & Restoran Semenanjung Malaysia v Crystal Crown Hotel & Resort Sdn Bhd*, fully supported by the Malaysian Trades Union Congress ("MTUC") is now a precedent which ought to be followed by those in the hospitality industry.

The issue/dispute: The dispute began when the hotel employees had insisted for their salaries to be in line with the Order and for such wage to be separated from the 10% service charge¹ imposed on the billings of the hotel's customers.

Minimum wages in Malaysia The National Minimum Wages initiative ("the Policy") was announced by the Malaysian Prime Minister, Dato' Najib Razak in his budget speech on 15 October 2010. It is one of the Government's policy instruments vide the New Economic Model which looks to rectify the wage-setting mechanism for low-income workers.

¹ In Malaysia, a 10% service charge is imposed on all bills paid by customers for the services rendered. Out of the 10%, 1% is kept by the hotels for administrative charges and the remaining 9% is given to the employees of the hotel. Distribution of the service charge amongst the employees is highly dependent on the type of business the hotel runs as well as the number of employees, within the scope of the collective agreement.

The Policy raised the basic wages of all employees to a minimum of MYR900 in Peninsular Malaysia and MYR800 in East Malaysia², and was extended to foreign workers beginning 1 January 2014.

The Minimum Wages Order 2012 ("the Order") commenced on 1 January 2013 for employers with more than five employees, and 1 July 2013 for employers with five or fewer employees.

The Order does not apply to apprentices or to domestic servants as defined under section 2 of the Employment Act 1955, section 2 of the Sabah Labour Ordinance and section 2 of the Sarawak Labour Ordinance.

The decision: The Industrial Court held that an employee shall be paid the minimum wage, in accordance with the Minimum Wages Order 2012, over and above the service charge imposed, and that the hotel would retain 10% of the total service charge imposed on all its monthly bills and the remaining 90% to be fully distributed to all employees covered in relation to the award.

The court also held that every employee, with effect from 1 October 2013, should be paid according to the new outlined salary structure with the exception of part-timers, temporary, casual as well as retired employees.

² Sabah, Sarawak and Labuan

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