

Shearn Delamore & co.

**Impact of the Covid-19
Pandemic on Collective
Agreements**



Shearn Delamore & Co

7th Floor

Wisma Hamzah Kwong-Hing,

No 1, Leboh Ampang

50100, Kuala Lumpur, Malaysia

T: 603 2027 2727

F: 603 2078 5625

E: info@shearndelamore.com

W: www.shearndelamore.com

The Industrial Court in Malaysia is an important institution that is established under the **Industrial Relations Act 1967** to hear and decide on disputes in relation to the terms and conditions of employment in a collective agreement.

In a collective agreement dispute, salary adjustments, increments and bonuses are usually the hotly contested articles. The Industrial Courts are usually guided by a set of principles in deciding on such financial-related articles. Three key considerations are:

1. the financial ability of the employer to pay,
2. parity of terms in similar industries, and
3. the financial impact of the Court's decision on the employer, industry and country as a whole.

The question that many employers have been pondering is the impact of the Covid-19 pandemic on collective agreement disputes.

The recent Industrial Court Award in **Kesatuan Sekerja Industri Elektronik Wilayah Utara Semenanjung Malaysia ("the Union")** and **Panasonic Automotive Systems Malaysia Sdn Bhd ("the Company")** (Award No. 1711/2020) sheds some light on this illuminating issue. In the said case, the Industrial Court has recognised the impact of the Covid-19 pandemic on businesses and employers.

In the dispute, the Union had demanded for a 10% across-the-board salary adjustment, contractual bonus, and a 10% annual increment to all eligible employees. The Industrial Court was not convinced by the Union's argument and ruled as follows:

- a. that no salary adjustments are to be awarded;
- b. that no contractual bonuses are to be awarded; and
- c. that the annual salary increment is fixed at 5%.

In coming to the decision, the Industrial Court had recognised the current challenging business environment, which has been exacerbated by the Covid-19 pandemic and the Government's enforcement of the Movement Control Order (MCO). The Court agreed that the foregoing factors had contributed to the drastic decline in business.

It is also interesting to note that the Court was prepared to take into account the impact of the Covid-19 pandemic to the business environment even though there is no indication in the Award that the employer had adduced evidence of financial hardships.

It is noteworthy to highlight the following reasoning given by the Industrial Court:-

"In handing down this Award, the Court had taken into consideration the interest of members of the Union as well as the financial implications to the Respondent especially in this fragile economic climate caused primarily by the Covid-19 pandemic. As uncertainties loom, the Court remains cautious in its decision with the interest of both parties in mind."

Whilst this decision has received criticisms from the trade unions, it must be noted that under Section 30(4) of the **Industrial Relations Act 1967**, the Industrial Court is statutorily obliged to have regard to the public interest, the financial implications and the effect of the award on the economy of the country, the industry concerned, and the probable effect in related/similar industries

This refreshing decision reflects that the Industrial Court is mindful of the commercial and economic realities when adjudicating industrial relations disputes to ensure its obligation to act according to equity, good conscience and the substantive merits of the case.

In the current dire financial climate ravaged by the Covid-19 pandemic, job preservation is equally important. This is indeed a welcomed and sound decision in the present circumstances.

With that being said, it is important for the employers to continue fulfilling their legal obligations towards their employees, as it is unlikely that the Industrial Court would allow employers to use Covid-19 as a carte blanche to avoid their legal obligations.

This article is co-written by:



[Sivabalah Nadarajah](#)
Partner/Head
[Employment and Administrative Law Practice Group](#)
sivabalah@shearndelamore.com
Tel: +603 2027 2866



[Raymond TC Low](#)
Partner
[Employment and Administrative Law Practice Group](#)
raymond@shearndelamore.com
Tel: +603 2027 2839



[Grace Chai Huey Yann](#)
Associate
[Employment and Administrative Law Practice Group](#)
chai.grace@shearndelamore.com
Tel: +603 3027 2680

Follow us on:



www.shearndelamore.com

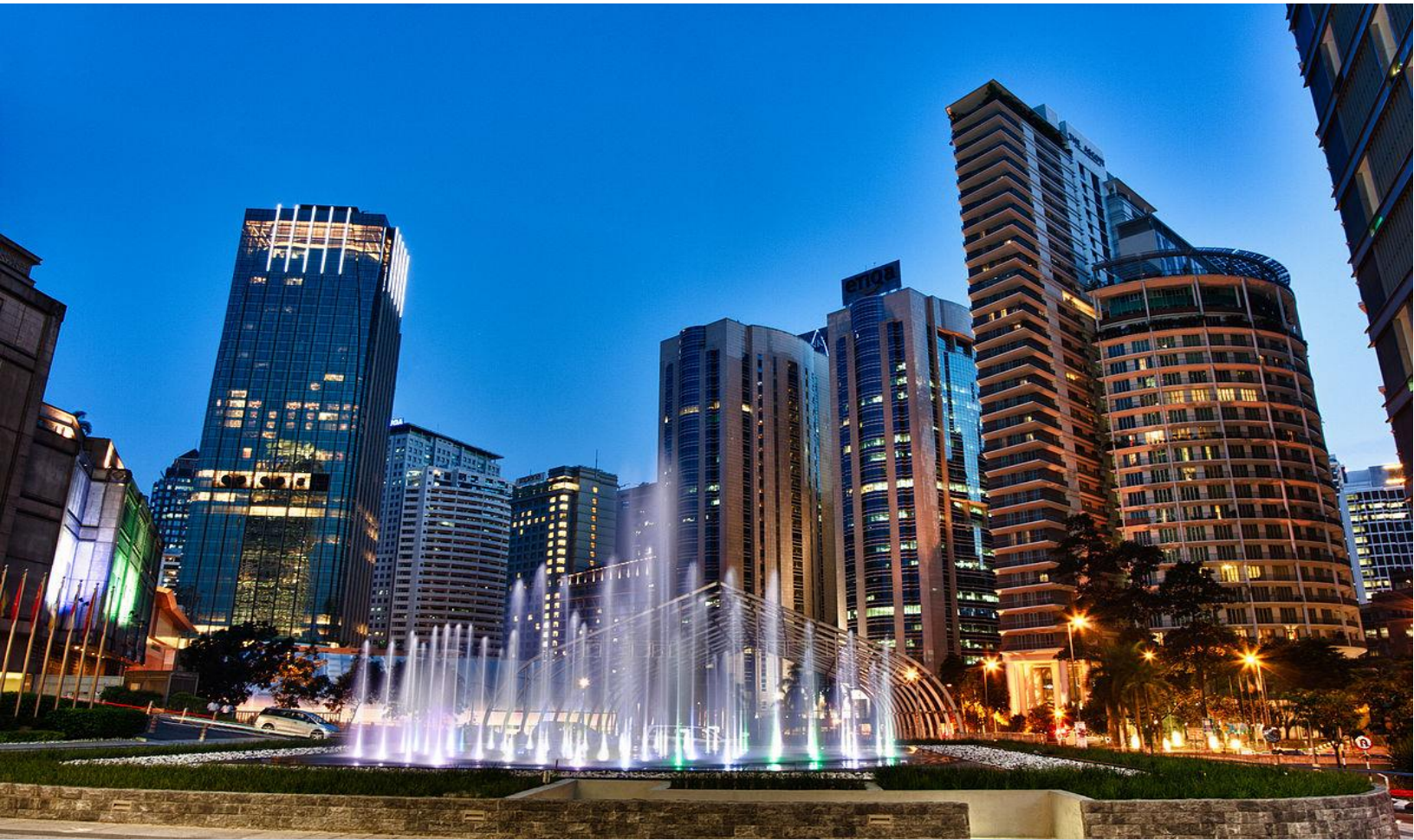


www.linkedin.com/company/94702

To subscribe to our legal updates, email us:



km@shearndelamore.com



Copyright © 2020 Shearn Delamore & Co. All rights reserved.

This Update is issued for the information of the clients of the Firm and covers legal issues in a general way. The contents are not intended to constitute any advice on any specific matter and should not be relied upon as a substitute for detailed legal advice on specific matters or transact.