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MINIMUM WAGE POLICY IN MALAYSIA AND LEGAL CHALLENGES IN THE HOTEL INDUSTRY

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ABSTRACT

The Minimum Wage Order, introduced by the Malaysian government, aims to protect employees' welfare and well-being by ensuring that wages are sufficient to meet the cost of living. This article evaluates the purpose of the latest minimum wage in Malaysia, particularly its role in helping employees cope with current living costs, while also examining the impacts of its implementation on both employers and employees in the hotel industry. Legal challenges surrounding the determination of basic wages in this sector are analysed through court rulings and legal precedents, with a critical analysis drawing on relevant literature, legislation, and case law. Our findings reveal that disputes in the hotel industry often arise over whether service charges should be treated as part of the basic wage, an issue that has repeatedly led to legal challenges and court interventions. In the *Crystal Crown Hotel* case, the Federal Court affirmed that service charges should not be counted as part of the basic wage, with the practical implication that hotel employees are entitled to a basic salary—protected under the minimum wage framework—in addition to service charges. By situating the minimum wage debate within case law and legal precedents, this article provides practical insights for policymakers, industry stakeholders, and legal practitioners, while offering original perspectives on strengthening wage protection and reducing conflicts in Malaysia's labour market.

Keywords: Minimum wage order, wage protection, hotel industry, service charges, Malaysia labour law.

INTRODUCTION

The concept of minimum wages dates back to the 19th century. The Constitution of the International Labour Organisation (ILO) includes a provision for an "adequate living wage," which refers to wages sufficient to maintain a fair and reasonable living standard, taking into account the specific time and location. The ILO Declaration of Principles and Programme of Action later recommended that wage policies should aim to ensure minimum living standards as part of a basic-needs development strategy (Matsaganis, 2020; Mun & Woo, 2021).

In Malaysia, the Wages Council Act (Act 195), enacted in 1947, was the first legislation introducing the MW. However, its scope of protection was limited. The "Minimum Wage Order" (MWO) is governed by the "National Wages Consultative Council Act 2011 [Act 732]" (NWCCA). According to Section 25(1) of the NWCCA, salary orders issued under the Act must be reviewed at least once every two years. This requirement ensures wages established by the Salary Order are periodically assessed and adjusted to reflect changes in economic conditions.

The first MWO was gazetted on 16 July 2012 and enforced on 1 January 2013. This order applied to all workers, except domestic workers. Initially, two distinct wage rates were enforced: "RM900.00 per month or RM4.33 per hour in Peninsular Malaysia, and RM800.00 per month or RM3.85 per hour in Sabah, Sarawak, and the Federal Territory of Labuan" (Minister of Human Resources, 2012). In 2018, the Ministry declared the standardisation of MW across "Peninsular Malaysia, Sabah, Sarawak, and the Federal Territory of Labuan to ensure uniformity nationwide" (Minister of Human Resources, 2018). The minimum wage was raised to "RM1,100.00 across Malaysia in January 2019, and in February 2020, it was further increased to RM1,200.00" (Mahyut, 2013). In May 2022, the "minimum wage was raised from RM1,200 to RM1,500 across all employment sectors in Malaysia" (Zulkifli & Mukhtar, 2022). In his budget presentation on October 18, 2024, the Prime Minister of Malaysia announced that the MW will be raised. The latest MWO 2024 raised the minimum wage from RM1,500 to RM1,700, effective 1st August 2025 (Attorney General's Chambers, 2024; Jalil, 2024).

The hotel industry is distinct from other employment sectors due to its unique structure for collecting service fees, a practice not found elsewhere (Gan, 2019). According to the Royal Malaysian Customs Department (RMCD, 2024), SC are additional fees applied to the cost of goods or services on a bill. In the hotel industry, however, the SC serves as an alternative to the tipping system, with the collected amount being distributed to the workers (Gan & Goh, 2014; Rus et al., 2017). This practice often leads to disputes regarding MW determination, as employers may attempt to incorporate the SC as part of the MW, while employees generally oppose this payment structure. Resolving these disputes requires a thorough examination of the definition and purpose of statutory MW. There are numerous precedent cases related to this issue, and recent court decisions have introduced changes that reflect a closer examination of these disputes.

Against this backdrop, the objective of this article is threefold: (i) to examine the purpose and impact of Malaysia's MW policy in light of the rising cost of living, and connecting it with the hotel industry; (ii) to examine the legal challenges faced by the hotel industry in implementing the MW, particularly concerning SCs; and (iii) to evaluate judicial approaches in resolving disputes on MW protection and implementation in the hotel industry.

LITERATURE REVIEW

The following discussion will be mainly focused on the purpose and the implications of MW among employees and employers, as well as the legal challenges that arise during the implementation of MW policy within the hotel industry.

Purpose and Impact of Minimum Wages

Following the declaration and the enforcement of the MW policy, various studies have been conducted to examine challenges that arise or the implications of such statutory wages on the job industry (Shaari et al., 2013). These studies encompass various stakeholders, including employers, employees, and the economy. While there is a broad discourse on the effect of the MW, certain studies focus specifically on selected industries or target participants to explore both the challenges and consequences (Eh Wan & Mansur, 2023). These studies recognise that different industries may experience varying degrees of impact based on factors such as labour structure, profit margins, and adaptability.

Ismail et al. (2022) examined the adequacy of MW in urban and rural areas of Malaysia. Nevertheless, there is a noticeable ‘lacuna’ in the literature regarding the adequacy of the MW based on the latest (MWO) 2022, at the minimum rate of RM1,500.00 per month. This gap may be partly due to the potential adjustments to MW that could occur following government reviews. Therefore, the author has decided to compare and analyse the adequacy of the MW, considering the present circumstances.

On the other hand, Ling et al. (2014) specifically assessed the adverse effect and burden of MW legislation on “Small and Medium Enterprises” (SMEs), comparing the effects in the State with those in other countries. Although labour productivity increased, implementing a MW also led to reduced job opportunities for low-income workers. Considering these findings, the authors have decided to discuss the possible adverse impacts of MW laws on Malaysia's economy. Additionally, another article highlighted the positive effects of productivity initiatives in the manufacturing sector, such as increased productivity, motivation, and overall achievement (Nordin et al., 2020).

Furthermore, Ahmad et al. (2023) emphasised the positive aspects of minimum wage implementation, noting that it can effectively increase labour productivity in the Malaysian market by motivating workers. Rusly (2017) established the impact of MW on company cost structures, with a specific focus on the Malaysian childcare industry. More recently, Seow (2023) researched MW policies in other countries and offers recommendations to help SMEs manage the financial strain resulting from minimum wage policies. Other effects of the MW are the high cost of living on workers’ mental health were also studied (Wong et al., 2025). Given the lack of comprehensive discussion on the comparative impacts of MW policy on Malaysia’s economy and the absence of detailed analysis on the most affected industries, the authors aim to explore these aspects further.

Minimum Wages Standards, Policy, and Legislation

According to the ILO, MW has been defined as the “minimal amount that an employer is mandated to disburse to employees for work undertaken within a specified duration” (ILO, 2024). This amount is immutable and shall not be diminished by any collective agreement or individual contract. Moreover, this policy is crucial in ensuring the survival of the individual, particularly the low-skilled and low-income workers (Kek & Lai, 2023). Without such a policy, workers might face significant challenges in meeting their basic needs. A MW law is a statement that employers must raise the wages of the

employed workers who have lower wages to a certain minimum amount. Hence, the MW ensures the basic needs of workers (Senasi & Khalil, 2015) and also a higher living standard of the workers and guarantees them to be more affordable to goods and services (Senasi et al., 2021).

Besides, Article 5 of the Malaysian Federal Constitution can be deduced as indirectly correlating to the right to life. A broad interpretation of this right encompasses the right to livelihood, implying that deprivation of livelihood equates to deprivation of life. Thus, economic deprivation, such as low pay to the workers, amounts to a deprivation of life which violates the rights of the workers under the Federal Constitution. By setting a MW sufficient for employees to afford necessities, it has the potential to reduce income inequality and stimulate the country's economy (Filauro et al., 2023).

The MWO in Malaysia serves as a tool for reducing income inequality and alleviating poverty by increasing the pay of low-income earners. Nevertheless, effectiveness in practice may not always be consistent with theoretical expectations or assumptions. During implementation, obstacles or other variables may develop that limit its impact. As a result, ongoing discussion and concern are essential for MW to be effective. This enables it to attain its initial objectives precisely as intended (Ibrahim & Said, 2013). Addressing the concerns and refining the implementation process can ensure a more just and equitable societal situation and protect low-pay workers (ILO, 2024a).

Implementation of Minimum Wage Policy in the Hotel Industry

Ahmad et al. (2016) explained that introducing the MWO posed challenges for employers in Langkawi hotels, including low workforce productivity, financial difficulties in covering increased labour costs, and conflicting laws regarding the SC system. The use of the SC system and the differing payment structures added complexity to the hospitality industry during the introduction of the MW policy. Gan and Goh (2014) discussed issues arising from the “Guidelines on the Implementation of the MWO”, which allowed hotels to treat part or all of the SC as wages to meet their legal responsibilities. The authors described this as a grey area that will persist until the court resolves it, highlighting the intricate challenges of implementing MW policies within the hotel industry.

This practice raises questions over whether hotel employees, whose remuneration typically consists of low basic pay supplemented by SC and allowances, are genuinely receiving the MW. Both studies point to the persistent legal and practical uncertainties surrounding the integration of SC into wage structures, underscoring the challenges of applying the MWO fairly in the hospitality industry.

Although there is significant literature on MW from an economic and policy perspective, studies examining the MWO from a judicial standpoint remain limited, particularly regarding the interpretation and implications of judicial decisions such as the *Crystal Crown Hotel* case by the Federal Court. This gap motivates the present study, as the apex court’s ruling has significantly impacted the hotel employees.

METHODOLOGY

This study employs a qualitative approach, utilising literature reviews as a primary method. Key reference sources include books, journal articles, news stories, and theses authored by scholars on the topic of MW policy and its impact on the nation’s economy, both positive and negative. Most references are accessible online through databases such as LexisNexis, LawNet, and HeinOnline, provided by

Universiti Kebangsaan Malaysia (UKM). Additionally, non-legal websites like Google Scholar, Berita Harian, and New Straits Times are referred to for the latest information and societal issues. Physical references are also consulted at the Tun Sri Lanang Library (PTSL), UKM, and the UKM Law Library.

Primarily, this study is anchored on legal analysis, an approach that is common and adequate in legal research. Legal analysis enables the researcher to critically examine statutes, case law, subsidiary legislation, and authoritative commentaries to identify principles, resolve ambiguities, and evaluate the consistency of legal provisions. Legal research involves systematic examination of written laws and the interpretation and application of those laws to specific contexts, offering clarity on how the law operates in practice and how it may be improved (McLeod, 2020; Zimmermann, 2022).

Other than that, statistical data is quoted to strengthen the arguments presented in this paper. Secondary data from credible sources such as Bank Negara Malaysia (BNM), the Malaysian Cooperative Institute, the Department of Labour Peninsular Malaysia, and government-issued salary guidance reports are analysed. This data is instrumental in assessing the current MW levels relative to the living expenses and their impact on employers and employees. MW levels in other nations are also briefly discussed and compared to those in the Malaysian context.

Case law analysis is the primary method used for issues related to the enforcement of MW in the hotel industry. The study examines changes in court positions regarding the determination of MW through an analysis of both reported and unreported cases from the industrial courts and civil courts.

ANALYSIS AND DISCUSSION OF RESULTS

Minimum Wages and Cost of Living

According to the BNM Report, the suggested living wage is “RM2,700.00 for a single person, RM4,500.00 for a childless couple, and RM6,500.00 for a couple with two children” (Bank Negara Malaysia, 2018). This suggests a vast disparity between the statutory wage and the living salary. Moreover, the World Bank’s High-Frequency Phone Survey in 2022 indicates that approximately 70% of low-income households rated their financial situation as insufficient to satisfy their monthly necessities. Note that over 60% had no savings (Malaysia Economic Monitor, 2023). This indicates that low-income workers, including those earning the MW, struggle with their current financial status even in affording necessities (Azmi et al., 2023). They may even be unable to manage an emergency scenario due to insufficient funds.

Besides, the Department of Statistics Malaysia Household Expenditure Survey 2019 provided that the average monthly household consumption expenditure has a moderate growth from 2016 to 2019, from RM4,033.00 to RM4,534.00. The monthly expenditure per household in Malaysia includes various expenditures such as food, transportation, and housing (DOSM, 2020). Over time, there has been significant growth in spending, increasing 3.7% from 2019. In 2022, the DOSM survey shows that the average Malaysian household will spend RM5,150.00 monthly (DOSM, 2023). The increase in household expenditure further emphasises the financial strain that low-income workers might face due to the inadequacy of the current MW.

According to the poll conducted by the UCSI Poll Research Centre in 2023, people are particularly concerned about MW. The result shows that 89% of the participants are highly concerned about living

costs, aligning with Malaysia's increasing inflation rate. The most significant concerns among participants are the rising grocery and food costs due to the global food index increase from 95.1 in 2019 to 143.7 by late 2022 (UCSI, 2023). This concern is shared among working individuals and students (Eh Wan & Mansur, 2023). This further underscores the importance of MW, as it reflects widespread concern among the people regarding the escalating cost of living driven by economic factors.

The issue of inadequacy is especially prominent in urban areas where the cost is much higher than in rural areas. This is because the living cost varies between developed and underdeveloped locations due to changes in economic activities and infrastructure (Ismail et al., 2022). For instance, a noticeable difference can be observed when comparing the cost of living in Klang Valley and Sarawak. Findings from a survey "conducted by the Employees' Provident Fund in collaboration with the Social Wellbeing Research Centre" (SWRC) indicate that the Klang Valley is the most expensive area to reside in Malaysia. According to the study, an individual relying on public transportation and residing in the heart of the Klang Valley would require a minimum of RM1,930.00 per month to cover basic living expenses. The cost of living will be higher if he owns transportation, around RM2,600.00. SWRC (2023) stated, "a family with one child will have a living expense of RM5,980.00, while a family with two children needs approximately RM6,890.00".

There is still an enormous disparity between Malaysia's current MW of RM1,700.00 per month and the cost of living, particularly in urban areas (Latimaha et al., 2020). This difference raises significant concerns about the adequacy of MWs, especially given the continued rise in living expenditures nowadays (Abd Hadi et al., 2023; Wahab et al., 2018). Hotels are predominantly concentrated in urban and metropolitan areas such as Kuala Lumpur, Penang, and Johor Bahru. Hence, the costs of living in such locations are among the highest in Malaysia. Many hotel employees earn close to or below the MW, particularly room attendants, cleaners, bell staff, and food and beverage workers. As the data above indicates, the statutory MW of RM1,700.00 falls significantly short of Bank Negara's living wage estimates and the DOSM's household expenditure figures (Azan et al., 2020).

This gap means that hotel workers in urban centres often face financial strain, struggling to meet basic necessities. Moreover, the rising costs of food, transportation, and housing, particularly acute in cities with high tourist demand, exacerbate the financial vulnerability of hotel employees. Thus, the inadequacy of the MW is not an abstract policy issue but one that directly affects the livelihood of hotel workers. This highlights the urgent need for legal and policy reconsideration of the MWO. In addition, the service charges should not be counted as part of the MWs, as this method will reduce the hotel employees' take-home salary.

Implication of Minimum Wage Policy on Employees and Employers

Positive Impact of Minimum Wage

The enforcement of MW will affect various sections of a nation's economy, including wages, income, economic output, and society in terms of income inequality (Shaari et al., 2013). The primary objective of setting a MW is to reduce poverty, particularly in developing countries. Generally, MW is more relevant to the low-skilled workers. In contrast, the others are still entitled to wages based on wage regulation. Hence, this concept can be deemed a 'safety net' protection for those workers. Additionally, it protects the workforce from being poor. It reduces the wage disparity between high-income workers and low-income workers.

MW motivates the workers to strive for higher quality job performance, increased commitment, and enhanced organisational competitiveness (Nordin et al., 2020). It can positively impact job quality and skill development among workers. Low-skilled workers are predominantly affected by MW policies as they comprise the primary group of MW earners (Buana & Budiman, 2022). Over time, these workers are likely to develop a greater passion for their work and thereby reduce absenteeism and job hopping, ultimately leading to better quality work (Martinez & Martinez, 2021). These positive impacts are often accompanied by increased productivity among workers.

Apart from the low-income workers, the positive implications of the MW extend to all workers, including increased wages. The Economic Outlook 2024 report states that average monthly salaries and wages have increased by 5.8%, reaching RM3,212.00 per employee in 2022. The World Bank predicts that part of the contributing factors behind this is the revised minimum wage of RM1,500.00. Therefore, the MW aims to protect low-income workers and also to improve the wage structure in the country and industrial relations. In this context, determining the ‘fair’ and reasonable MW fixing is required. According to the Economic Review (2019), the MW in Peninsular Malaysia increased by 5%, while Sabah and Sarawak experienced a higher increase of 14.1%. This demonstrates that equalising MW across all states has escalated wage growth in Sabah and Sarawak. Hence, this can ensure balanced development across Malaysia, no left-out state, and guarantee unity.

Other than that, implementing a MW has diverse effects on a country’s economy, ranging from addressing issues such as poverty reduction and income inequality to motivating workers and ensuring high productivity and job quality (Azmi et al., 2023). Although there is an initial cost increase for employees, the long-term positive impact is paramount. In the upcoming review of the MWO, it is imperative to identify an optimal level that simultaneously enhances the economic well-being of low-income workers and promotes long-term social and economic stability for the entire country.

Hotel employees, particularly those in positions such as housekeeping, food and beverage service, and front-line operations, often earn at or near the minimum wage level (Rusly et al., 2017). Implementing the MWO must not be manipulated by the employer, for example, by some hotels. The manipulation arises from the accounting as MWs vis-à-vis the SCs. For example, if an employee were paid RM1,700 inclusive of SCs, the employer would argue that the statutory MW had been satisfied. This practice was detrimental to employees because it effectively absorbed the SC—which ought to be an additional benefit derived from customer contributions—into their basic wage, thereby reducing their rightful take-home pay. The *Crystal Crown Hotel* ruling clarified this issue, affirming that the MW must consist of basic wages alone, with SCs payable on top. This interpretation better reflects the protective intention of the MWO, ensuring hotel workers receive both a guaranteed statutory wage and their share of SCs.

Negative Consequences of Minimum Wage

Although MW policies can have various good impacts, opponents criticise the negative consequences that could outweigh the benefits if the government does not carefully consider the policy. High MWs benefit employees, but at the same time increase labour costs for employers. As a result, employers may reduce the number of job opportunities available to workers to manage the increased labour costs (Rusly et al., 2017). This indicates that the MWs’ straightforward impact is reduced employment ultimately leading to a high unemployment rate (Mun & Woo, 2021). Ramos-Herrera (2023) discovered that the rise in MW reduces overall unemployment. Nevertheless, Mahyut (2013) opined that a MW above market level can lead to higher unemployment. Therefore, according to Ramos-Herrera (2023) and Mahyut (2013), the MW should not be raised during high or rising unemployment.

The sector most impacted by the MW policy is the SME sector, which often faces difficulties in the labour-intensive sector (Autor et al., 2020). They are more vulnerable to making payments to workers than larger firms, especially when they have limited financial resources and tight budgets (Rashidi, 2024). Nevertheless, SMEs play a crucial role in promoting the growth of the economy by generating job opportunities (Adan & Hussain, 2021). In 2015, SMEs accounted for 65.5% of total employment. Therefore, increasing labour costs due to higher MWs can be particularly burdensome for SMEs. If the MW has been set excessively high, SMEs could cease operations due to their narrow profit margins of around 3% to 5% (Rusly et al., 2017).

Alternatively, Hurst et al. (2025) criticised that the short-term benefit of raising the MW does not ensure long-term success. Suppose there is a significant rise in the MW. In that case, it might negatively impact the employment sector and the welfare of low-income workers (Tin et al., 2014). As a result, despite numerous studies highlighting the benefits of MW, it is important not to overlook their potential negative impacts and their effect on the future. Fortunately, the Malaysian government has a precise prediction that even though it costs more in the short term, it will still benefit in the long run. This is proven by Malaysia's persistently low unemployment rate, which has averaged 3.3% over the last two decades (Bank Negara, 2012) despite the labour cost increase. However, continuous attention and research are essential to understand the latest economic situation when reviewing MWO.

Resistance to implementing MW is particularly evident in the hotel industry. Smaller establishments and those operating during periods of economic downturn often struggle with the increased wage bill. Employers in such situations bear the burden of maintaining operating costs, with employee wages constituting a significant share of expenses. Some hotels have resorted to cost-cutting strategies such as reducing overtime opportunities, downsizing their workforce, or relying more heavily on contract and casual workers to mitigate this burden.

Wage Systems in the Hotel Industry are Affected by Minimum Wage Policy

Implementing the MWO has posed significant challenges for Malaysia's hotel industry, where wages differ from those in other sectors. Studies estimate that compliance with the MWO may increase operating expenditures by 20% to 40% (Ahmad et al., 2016; Che Ahmat & Arendt, 2019), creating pressure on hotel managers to adjust their human resource practices (Balasingam et al., 2020). These financial implications have resulted in varied responses among hotels, depending on the payment structures they adopt (Mun & Woo, 2021; Rus et al., 2017; Shanmugam, 2016).

Under the Employment Act (EA) 1955, "wages" are defined in Section 2 as basic wages and all other payments in cash payable to an employee under a contract of service, but exclude items expressly listed in the Section. SCs, however, are not classified as wages. They are monies collected from hotel guests and distributed to employees, typically under collective agreements, according to a points system that reflects departmental roles and the importance of services rendered. In establishments that implement such agreements, SCs are intended as an additional benefit on top of MW.

Hotels have adopted two central systems to administer these payments. Under the *clean wage system*, employees receive a fixed salary package in which SCs are subsumed into the MW. This approach allows employers to comply with the MWO with minimal productivity or adjustments to working hours. However, it has been criticised as unfair because it denies employees the separate benefit of SCs. In contrast, the *top-up system* requires employers to pay the statutory MW in full, with SCs distributed on top (Balasingam et al., 2020). Although more burdensome for employers, particularly during low

seasons, this system enhances workers' take-home pay during peak periods when guest numbers—and therefore SC collections—are high, thereby better fulfilling the protective purpose of the MWO.

Nevertheless, Shanmugam (2016) recognised the complexities of implementing MW policies within the hotel sector, particularly concerning the inclusion of SC as part of wages. Generally, the hotel workers received low wages due to the compensation provided by the SC system (Ahmad et al., 2016). This inclusion complicates wage calculations and compliance (Rus et al., 2017). The main primary key point to resolving this issue is understanding the legal aspects of the court's position. However, attention needs to be drawn to this issue as it has significant implications for both the financial health of hotels and the welfare of their employees.

Legal Aspects of Minimum Wage Implementation

As discussed above, the hotel industry faces numerous challenges when determining an employee wage system. Legal issues pertaining to MW are its definition, basic wage, and SC. One approach is to add SC as part of the salary to achieve the MW under MWO. Numerous cases exist about whether a hotel can add its employees' SC to the MW. Notably, the court's position has changed recently by referring to precedent cases. Hence, the discussion will be conducted by referring to those cases to understand the court's position, guiding hotel managers towards informed decision-making. Before starting the discussion on the position of the court, the meaning of the salary, MWs, basic wages, and SC shall be discussed first as a foundation for the discourse.

By referring to the EA1955, “wages” is interpreted as the “basic wages and any other cash payments made to an employee for the work performed under their contract of service” (Section 2). However, certain items are explicitly excluded from this definition, such as housing accommodation, travel allowance, medical attendance, Employees Provident Fund, retirement benefits, bonus, and others, which can be found under Section 2 of the Act. Similarly, the NWCCA defined wages in alignment with the definition provided in Section 2 of the EA 1955.

The MW, as defined under Section 2 of the NWCCA, is the basic wage set forth under Section 23 of the NWCCA. Section 23 of the NWCCA provides that the National Wages Consultative Council will recommend MW rates to the government. The Minister of Human Resources may issue an MWO through a government gazette notification based on the recommendation. While in compliance with Section 24 of the NWCCA, the MWO ensures that employees receive at least the MW by overriding any lower wages in employment contracts.

Other than that, while neither the EA nor the NWCCA explicitly defines basic wages, the term is used in both acts when defining wages and the MW, thereby allowing the concept of SC to be added as part of basic wages to meet the MW requirements. The concept of SC has been provided in the case of “*National Union of Hotel, Bar and Restaurant Workers, Peninsular Malaysia v. Masyhur Mutiara Sdn. Bhd*” [2014] 1 MELR 286 replaces tipping and ensures fair compensation for all employees, not just those in direct contact with guests.

Position of the Court

After knowing the definitions of the terms, it is essential to analyse the court's position to understand the court's ruling. In the case of “*National Union of Hotel, Bar & Restaurant Workers v. Sea View Hotel, Pulau Pangkor*” [1980] 1 ILR 222, the court justified the low wages of the employees by

acknowledging that they receive a share of the SC income. Hence, the court ruled that the SC could constitute a component of their wages.

Besides, in “*Thomas George a/l M.J. George v. Hotel Equatorial (M) Sdn. Bhd*”. (Labour Court Case No.: 813/94), the Labour Court Officer determined that SC, food, and shift allowances are not ex-gratia payments. Instead, they fall under the interpretation of wages in Section 2 of the EA and are not excluded by its definition. Therefore, the SC will be added to the basic wages to determine the Ordinary Pay Rate. Nevertheless, despite several amendments to the EA, the latest version still does not clarify the status of SCs. This has led to a continuous dispute on this issue.

Similarly, in the case “*Inter Heritage (M) Sdn Bhd v. Kesatuan Kebangsaan Pekerja-Pekerja Hotel, Bar & Restoran Semenanjung Malaysia*” [2018] 3 MELR 438, the court confirmed and followed the decision in the above case. The Court of Appeal affirmed that SC is part of “wages” and should be included with “basic wages” for all purposes. Further, the court adopted a purposive approach to determine the meaning of wages. The court viewed that since the NWCCA does not exclude SC from the interpretation of wages, the NWCCA has defined ‘wages’ as having the same meaning under the EA 1955. The SC should be included in the basic salary to establish the MW.

Furthermore, the court considered MWO 2012 while assessing whether the employer can revamp the salary after negotiation with the employee. The court, referring to Order 6 of the MWO states that it does not prohibit and explicitly allows wage restriction between employers and employees through negotiation if the amount of restructured basic wages complies with the MWO. Therefore, based on the above cases, it can be concluded that the hotel is allowed to restructure its payment system to fulfil its statutory obligations under MWO 2012.

Nevertheless, the court's position was reversed in “*Shangri-La Hotels (M) Bhd v. Kesatuan Kebangsaan Pekerja-Pekerja Hotel, Bar & Restoran Semenanjung Malaysia & Anor*” [2019] 8 MLJ 710. The court analysed the definitions of wages, basic wages, and MW to determine whether the Industrial Court erred in ruling that the hotel is not entitled to use SC to meet the MW required by MWO 2012. The court had referred to the EA and NWCAA for definitions of wages and MWs. Additionally, the court provided further explanation for the interpretation of wages under Section 2 of the EA by referring to the case “*Lee Fatt Seng v. Harper Gilfillan (1980) Sdn Bhd*” [1988] 1 MLJ 245. It highlighted that the term “work done” signifies that remuneration must be for work performed under an employee’s employment contracts. Any payment not unrelated to work done or the employment contract is excluded from the definition of wages and therefore is not part of wages.

On top of that, the court referred to the interpretation of basic wages as provided in “*Decor Wood Industries (Terengganu) Sdn Bhd v. Timber Employees Union*” [1990] 1 ILR 423. In this case, basic wages are defined as wages without any additional emoluments that employees might receive through a bonus system based on their production. Note that basic wages also do not encompass additional supplements or allowances, such as housing or cost-of-living allowances, unrelated to the job category's specific tasks. With this clear understanding of the definitions, the court concluded that SC should not be treated as part of basic wages or MW under MWO 2012.

In this case, the hotel was prohibited from unilaterally treating SCs as part of MWs, even though a collective agreement had been signed. Any restructuring of wages must be undertaken through negotiations between employers and employees and requires proper approval. Significantly, using SCs to meet MW obligations would reduce the pool of funds available for distribution as SCs, which is

detrimental to employees and could even result in the eventual loss of this benefit. Accordingly, the court held that SCs do not form part of basic wages, and hotels are not permitted to rely on them to comply with MW requirements.

This position of the court in the afore-mentioned case was approved and followed in a recent case, “*Crown Hotel & Resort Sdn Bhd (Crystal Crown Hotel Petaling Jaya) v. Kesatuan Kebangsaan Pekerja-Pekerja Hotel, Bar & Restoran Semenanjung Malaysia*” [2021] 3 MLJ 466. In this Federal Court case, one of the issues is whether the hoteliers could use employees' SC to meet their statutory responsibilities for MW payments under the NWCCA 2011. This federal court case has provided an obvious explanation and interpretation. In dealing with the issue, the federal court has referred to sections 2, 23, and 24 of the NWCAA for interpreting wages and MW. After that, the court ruled that MW include the amount of money established by the State as the minimum sum required to be paid as a wage under a service contract or collective agreement.

The court discussed the meaning of basic wages, stating that the key concern is the terms of basic wages, which align with the earlier discussion on the definition of basic wages. Correspondingly, the court had established the two alternative meanings of “basic wages”. Under EA, it represents the contractual sum agreed upon by employers and employees in a collective agreement. Minimum Wage Order represents the minimum sum mandated by Parliament that all employees must receive, regardless of their individual contracts. It overrides individual employment contracts or collective agreements to ensure a bare MW is uniformly applied.

Per section 2 of the EA, the court opined that the SC constitutes a cash payment to an employee for work under his service contract. Hence, it does meet the criterion of ‘basic wages.’ Further, the court held that the basic wages do not include the SCs when examining the collective agreement entered into by both parties. In short, the hotel has no right to use any or all of the employees’ SC to fulfil their statutory duty to pay the minimum wage. This recent Federal Court decision holds a significant weight, marking its binding nature for future cases. The authors believe that this ruling will effectively mitigate inconsistencies in court rulings on this matter moving forward.

THE AUTHORS’ OPINION AND SUGGESTION

The authors agree with the court's recent ruling in the *Crystal Crown Hotel* case, both due to its binding authority as the latest Federal Court decision and its sound findings. The decision firmly asserts that the SC should not be included as part of basic wages to fulfil the MWO set by the government. Several compelling reasons that underpin the validity of this reason.

Firstly, the dual meaning of the basic wage is more reasonable. This interpretation aligns with established jurisprudence, which has considered the existence of the words ‘basic wages’ in both the definitions of wages and MWs. Therefore, a wide approach should be taken instead of the purposive approach in *Inter Heritage’s* case. The author therefore disagrees with the decision in the *Inter Heritage* case that ruled that items not explicitly listed or included by the definition will fall within the scope of wages and automatically be counted as part of the basic or MWs. Besides, the case of *Lord WBK Haulage Sdn Bhd v. Jamaludin bin Ismail* [2023] MLJU 3240 also highlights the importance of distinguishing between minimum wages and basic wages. This reaffirms that a prudent and broad interpretation shall be taken when defining these concepts to ensure fairness and clarity.

Second, it aligns with the intention behind the government's implementation of minimum wages. The introduction of the MWO undoubtedly burdens all employers, including the hotel industry. Therefore, the employer is barred from claiming that complying with such a policy will bear more financial responsibility. This stance is supported by the Crystal Crown Hotel case, where the court deemed the restructuring of wages by including service charges as unjust enrichment. The court aptly concluded that such actions are unsustainable and untenable, particularly when considering the financial burden as a justification.

Under MWO, the hotel is obligated to pay in accordance with the MW as determined by the government. By treating the SC as part of the MW, the hotel is evading responsibility and perpetuating unfairness and injustice towards employees. This contradicts the government's introduction of the MCO, which aims to improve the living standards of employees. This is because it might reduce the wages to what they currently earn. Therefore, it is imperative to safeguard the rights of the hotel employees, who are also vulnerable workers.

Thirdly, the SC is the money that will be paid to the workers by the customer for their work done, implying that it initially belongs to the employees. Drawing from the precedent case of *Inter Heritage*, the SC is intended to replace the practice of tipping. As a result, these funds are contributed by customers, instead of the employer, with the intention of replacing the tips. This underscores the clear distinction between the obligation to pay basic MWs, as doing so would essentially involve using the employees' money to cover their salaries. Therefore, payments shall be made in addition to their basic MW. Similarly, in the Crystal Crown Hotel case (2020), the hotel is expressly prohibited from utilising the SC to satisfy its obligation in paying basic minimum wages, as doing so would essentially involve using the employee's money to cover their salaries. Therefore, payments shall be made in addition to their basic minimum wage.

Fourthly, the authors' perspective is strengthened through the lens of equity and trust. In this context, the hotel merely functions as a trustee, as the employees pay the SC for their work done instead of the traditional tipping system. This principle finds reinforcement in the case of *P.A. Pereira & Anor v. Hotel Jayapuri Bhd. & Anor* [1986] 2 MLJ 1, where the court affirmed that the SC represents money paid by the customer to employees, with the hotel acting solely as an agent to distribute these funds to employees later. Thus, the hotel is a trustee for this money, and the workers are beneficiaries. Under the general principle of equity, they are prohibited from utilising the money without the permission of the trustor. Any attempt by the hotel to use these funds to fulfil its obligations under the MWO would constitute a breach of trust, as the hotel has used the money for its own purposes and detrimentally affects the interests of the beneficiaries.

As in the case of *Hotel Equatorial (M) Sdn. Bhd v. National Union of Hotel, Bar & Restaurant Workers, Peninsular Malaysia* [2005] ILJU 51, the court has also described the hotel as a trustee and the employees as the beneficiaries. Hence, this shows that the hotel is not allowed to use the money from the SC to become part of the wages, as the money belongs to the employees.

The MWO has a 'ripple effect.' Once a MW is paid to a new employee, senior employees expect their salaries to increase to maintain a disparity between their wages and those of new employees. Without such adjustments, senior employees may feel dissatisfied. However, increasing salaries across the board would burden employers financially. It is recommended that the government implement a 'flexible wage policy' to address this issue. It is recommended that future MW policies consider the disparities in living standards and costs between different states or geographical locations. For workers living in

large cities like Kuala Lumpur, earning a MW based on a uniform MWO rate can be more complex and burdensome than for those in smaller districts. Implementing different minimum salary rates based on each locality or place of work will ensure more equitable treatment for all workers in Malaysia.

CONCLUSION

Under the MWO, government reviews are conducted every two years. Following Malaysia's last MW review in 2022, a review was carried out in 2024. The outcome was the current MWO, effective in 2025. The current MW (year 2025) is RM1,700.00 per month. The rise of the current MWO rate is commendable. However, it is still short of the rising living costs. The current minimum wage (year 2025) is RM1,700.00 per month. This undermines the effectiveness of the policy, as rising living costs still fail to ensure citizens a basic standard of living. This insufficiency precipitates negative attitudes and also profoundly affects the mental health and overall well-being of workers. The government must immediately increase the regional MW, especially in urban areas such as Kuala Lumpur and Selangor, where the cost of living is substantially higher than the rural areas.

Implementing MW faces practical challenges, particularly in the service industry, such as the hotel sector. The ambiguity surrounding the definition of basic wages under both the EA and the NWCCA has led some employers to exploit the SC system to comply with the MW mandates, which will infringe on workers' rights. Disputes have always arisen on this issue and the court's position is wavering. It is excellent news that recent legal decisions have prohibited such practices by the hotel employers. However, continual governmental efforts are essential to amend the pertinent provisions and eradicate any ambiguities to ensure comprehensive worker protection.

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