SECTION 69(1) OF THE EMPLOYMENT ACT, 1955[1] - JUDICIAL MISUNDERSTANDING OF LEGISLATIVE INTENT

As a very wise man once observed, "words are the source of misunderstandings".[2] Whoever invented the saying, "silence is golden" must have experienced the trauma often accompanying the interpretation and understanding of the spoken word. Likewise with the written word. Perhaps, it would not be too incorrect to say that the written word gives rise to greater problems of interpretation, particularly when it is not possible to question and examine the author thereof face to face as to his precise intentions and exact purpose.

So it is with section 69(1) of the Employment Act, 1955 (hereinafter referred to as "the Act").[3] Basically, it is a provision which confers upon the Director-General of Labour the power to inquire into complaints and decide any dispute between an employer and employee. If the provision had been drafted as simply as it has been stated, there would have been little cause for the ensuing concern. However, the provision in full reads as follows:-

> **69(1):** The Director-General may inquire into and decide any dispute between an employee and his employer or between an employee and any person liable under this Act, or any regulations, order or other subsidiary legislation whatsoever made thereunder to pay any wages due to such employee where such dispute arises out of any term in the contract of service between such employee and his employer or out of any of the provisions of this Act, or any regulations, order or other subsidiary legislation whatsoever made thereunder, and in pursuance of such decision may make an order in the prescribed form for the payment by either party of such sum of money as he deems just without limitation of the amount thereof.

[1]Act 265.
[2]The Little Prince, Antoine de Saint Exupery, Piccolo Pan Books, in association with Heinemann, p. 67.
[3]This provision has been amended recently by the Employment (Amendment) Act, 1989, Act A716. The amendment incorporates some aspects of the decisions of the High Court and the Supreme Court regarding the interpretation to be given to section 69(1). However, this article will attempt to show that those interpretations were not correct in law in the first place.

How wide is the power conferred upon the Director-General by the Act? From a reading of the first few lines of section 69(1), it would appear that the Director-General is clothed with jurisdiction to "inquire into and decide any dispute between an employee and his employer...". However, problems of interpretation surfaces as one continues reading the rest of the provision. The problem emerges at the point when the provision talks about "any person liable under this Act, or any regulations, order or other subsidiary legislation whatsoever made thereunder to pay any wages due to such employee...". The question that arises here is whether the words "any dispute" in the first part of the provision actually mean what it says, (that is, any dispute) or whether it becomes referable to the second part of the provision as quoted above, that is a dispute regarding the payment of wages only. There are at least two Malaysian cases which have deliberated on this point.

The first is the Supreme Court decision in *Asia Motor Co (KL) Sdn. Bhd.* v *Ram Raj & Anor.*[4] The Respondents in this case were sales representatives employed by the Appellant. Under the Wages Regulations (Shop Assistant) Order 1970[5] the Respondents were entitled to be paid a statutory minimum remuneration of $250/- per month, and as they were paid less than this they made a complaint to the Director-General of Labour claiming sums owed to them. As a result of the complaint, the Director-General, acting under section 69 of the Employment Act 1955 issued a summons to the Appellant and an inquiry was held, at the end of which the Director-General made an order in terms of the complaint. The legality of this order was challenged in the High Court, Ipoh. Justice Annuar upheld the order and the case before the Supreme Court represented an appeal by the Appellant from the decision of the High Court.

In the Supreme Court, counsel for the Appellant had argued that the Director-General of Labour had no jurisdiction under section 69(1) of the Employment Act to entertain the Respondents' claim for statutory minimum remuneration,

[4] [1985] 2 MLJ 202.
[5] PU (A) 97/1970.

because the Wages Council Act, 1947 (being the parent statute under which the Order was made) had made provisions for a complete machinery to enforce the statutory minimum remuneration. Counsel further argued that the jurisdiction of the Director-General under section 69(1) is only confined to disputes under the Employment Act and not disputes which arose under other statutes such as the Wages Council Act, 1947.

The Supreme Court's decision was delivered by Lord President Salleh Abas. There are two levels of jurisdiction involved in the discussion regarding the Director-General's powers under section 69(1). The first question that had to be decided was whether the Director-General could inquire into and decide any dispute between an employer and his employee. This relates to the kind or nature of the dispute in question. Secondly, whether the Director-General could decide on disputes which arose under other legislations not connected with the Employment Act, in the sense that they do not constitute "any regulations, order or other subsidiary legislation" made under the Act.

With regard to the first issue, the Supreme Court decided that the Director-General had the jurisdiction to inquire into and decide the dispute because -

> ... the dispute in the present appeal is "a dispute between an employee and his employer" and that it is a dispute "to pay wages". We also hold that it is a dispute which "arose out of any term in the contract of service between such employee and his employer" because wages as a matter of law are terms which are dealt with in the contract of service".[6]

On the second issue, the Supreme Court likewise decided that the Director-General had the jurisdiction to inquire into and decide the dispute, even though the dispute was not a dispute under the Act or any regulations, order or other subsidiary legislation made thereunder. His Lordship Salleh Abas LP stated thus:

> Looking at the legislative scheme, we are of the view that whatever machinery provided by the W.C.A. is not intended to be either exclusive, or even exhaustive...

[6]per Salleh Abas LP, at p. 206.

> ... The W.C.A. is a complementary legislation to E.A. It cannot be regarded as a separate scheme of legislation but of necessity as an integral part of E.A., though the terms used in the two Acts are not the same, but interchangeably carrying the same meaning and concept. The difference, in our view, is nothing more than due to the difference of draftsmanship."[7]

The Court's decision on the first issue begs further explanation. It is quite unclear whether by observing that it is a dispute between employer and employee and it is a dispute "to pay wages", the Court meant that the Director-General's jurisdiction to inquire and decide is only limited to a dispute regarding the payment of wages. However, the Court seemed to remedy its vagueness on this ground by stating that it is at any rate a dispute which arose out of any term in the contract of service. Seen in totality, it can be concluded that the Supreme Court really offered no definite interpretation of section 69(1) with regard to nature of dispute which may be inquired into and decided upon by the Director-General. Since it is so clear that a dispute between an employer and employee regarding the payment of wages would be covered as a dispute regarding a term in the contract of service, there was little need for the Court to embark upon a lengthy deliberation with regard to the Director-General's jurisdiction to inquire and decide this dispute.

However, there is much to be said with regard to the Court's decision on the second issue. Having said that the dispute was a dispute regarding a term in the contract of service, the Court, in reply to counsel's submission, stated that the Director-General had the jurisdiction to decide the dispute although the dispute concerned the payment of statutory minimum remuneration, a concept found in the Wages Council Act, 1947. What it effectively means is that the Court has given a broad definition to the second level of jurisdiction conferred upon the Director-General by section 69(1) of the Act. The Director-General now has the power to inquire into and decide disputes which may arise under other labour statutes, and not just under the Act or "any regulations, order or other subsidiary legislation" made under the Employment Act itself. This is so even if that particular

[7]at p. 206.

statutue has its own machinery for the enforcement of any of its own provisions, which is precisely the case with the Wages Council Act, 1947. With respect, it is submitted that the Court's decision on this point is not borne out by the provision of section 69(1) itself. With regard to the Director-General's power to settle disputes, section 69(1) clearly states that such dispute is to arise either:

(i) out of any term in the contract of service between such employee and his employer, *or*
(ii) out of any of the provisions of *this Act*, or any regulations, order or other subsidiary legislation whatsoever *made thereunder*.

Since the Court is satisfied that the dispute in question is one which arose out of a term in the contract of service, the court should have let the matter rest. The problem arose when the Court tried to fit the dispute into the second limb, that is, as a dispute which arose out of any of the provisions of the Act. It is clear that the dispute regarding the payment of statutory minimum remuneration could not be classified as a dispute which arose out of any of the provisions of the Act, as the concept of a statutory minimum wage is absent from the Act. Neither could it arise under any of the subsidiary legislations made under the Act, because the Wages Regulations (Shop Assistant) Order 1970 (under which the employees were entitled to the statutory minimum wage) was made under the Wages Council Act, a totally different statute from the Employment Act. It may be that they are complementary, but it is submitted that the language of section 69(1) is clear on this point, that is, the dispute must be one which arises under "this Act" [the Employment Act], or any of its subsidiary legislations.[8]

[8]This aspect of the case is now taken care of with the recent amendment. It is now provided that the Director General may inquire into and decide any dispute between an employee and employer in respect of wages or any other payments in cash due to the employee under - (c) the provisions of the Wages Council Act 1947 or any order made thereunder ...

The second case which discussed and interpreted section 69(1) is *Nylex (M) Sdn Bhd* v *Alias bin Chek*.[9]

In this case, the respondent was an employee of the applicant and was dismissed from service for misconduct after a domestic enquiry. The respondent complained to the labour officer that his services were terminated without notice and claimed indemnity in lieu of notice and termination benefits. An enquiry was held under section 69(1) of the Act. At the enquiry the respondent claimed that the allegations against him were untrue. The applicant contended, *inter alia,* that the Assistant Director had no jurisdiction to hold the enquiry under section 69(1). The Assistant Director disagreed and held that under section 69(1) he had the power to enquire into and decide any dispute between an employee and his employer arising out of any term of the contract or out of the provisions of the Act or any regulation made thereunder. From this decision, the applicant appealed to the High Court.

In the High Court, Justice Harun Hashim decided that the Director-General had no power to inquire into and decide the dispute in question. This was because, according to the learned Judge, the powers of the Director-General (including an Assistant Director) under section 69(1) are limited to matters concerning *wages only*. As further explained by the learned Judge:

> This is made plain by the subsection itself if it is read (as it should be) as follows:-
>
> > "The Director-General may inquire into and decide *any dispute*[10] between an employee and his employer ... *to pay any wages due to such employee where such dispute arises* out of any term in the contract of service between such employee and his employer ... and in pursuance of such decision make an order ... for the payment by either party of such *sum of money* as he deems just without limitation of the amount thereof.

[9][1985] 1 CLJ 185.
[10]Emphasis is Judge's own.

> The words 'any dispute' must be read conjunctively with the words 'to pay any wages due'. That this is so is further emphasised by the words *'to such* employee' and 'where *such* dispute' that follow. And finally, the only order that may be made is the payment of *money*. This limited type of order will therefore only arise if the dispute concerns the payment of money or more particularly *wages*.[11]

After interpreting section 69(1) itself, the learned Judge sought to buttress his reasoning with the aid of other provisions of the Act, in particular the other provisions of section 69 and section 14. The learned Judge continued:

> I am fortified in my view by the other provisions of section 69. In subsection (2) the power is extended to claims for money for providing labour by a sub-contractor payable by a contractor. In subsection (3) additional powers are conferred on the Director-General with regard to *disputes* concerning *down-grading* or *suspension* of an employee under section 14 which reads -
>
> '(1) An employer may, on the grounds of misconduct inconsistent with the fulfilment of the express or implied conditions of his service, after due inquiry -
> (a) dismiss without notice the employee;
> (b) downgrade the employee; or
> (c) suspend him from work without payment of wages for a period not exceeding one week.
> (2) ...
> (3) ...
>
> It will be observed that *dismissal* under section 14(1)(a) has been purposely left out in section 69(3). If the legislature had intended to include disputes concerning dismissals, it need only say -
>
> 'any decision made by an employer under section 14'.[12]

The above represents an attempt by the learned Judge to give due interpretation to the powers of the Director-General under section 69(1) of the Act, in particular with regard to his jurisdiction as to the nature or type of dispute which may be inquired into and decided upon. If the reasoning of the learned Judge is correct, the consequences are quite shattering - the Director-General has the power to inquire

[11] At pp 187, 188.
[12] At p. 188, emphasis is Judge's own.

into and decide disputes concerning *wages only;* where is the avenue of complaint for an employee whose grievance is not related to wages? A contract of service contains many important terms pertaining to the welfare and benefit of an employee, and wage or remuneration is only one of them. Similarly, the Employment Act contains numerous provisions which ensures that an employee who is covered under the Act would be the benefactor of a certain minimum standard of terms and conditions of employment which would confer upon him certain benefits and protection. What if a female employee has not been paid maternity benefits by her employer? If this benefit is provided for under the contract of service and guaranteed under the Act (as it is, under Part IX), how would such an employee seek to ensure that her employer complies with the contract of service as well as the provisions of the Act? It may be easily answered that she can have recourse to the Courts, but litigation consumes both time and money. If the Act itself provides a ready machinery which is cheap and can be easily utilised by the employee himself, it appears strange that the Court should oust the employee from taking advantage of a provision which, in all probability, is designed for his benefit and convenience. With respect, it is submitted that the judgment of the High Court in *Nylex* is without substance or merit. Similarly, the judgment of the Supreme Court in *Rajaratnam a/l Palaniandy* v *Amalgamated Properties & Industries.*[13] which approved in *toto* the judgment of the High Court in *Nylex* regarding the scope of section 69(1), is likewise untenable, for the reasons put forward below.[14]

[13][1988] 2 MLJ 363.

[14]Act A716, in amending section 69, now provides that the Director General may inquire into and decide any dispute in respect of wages or any other payments in cash due to an employee under -

(a) any term of the contract of service

(b)any of the provisions of this Act or any subsidiary legislation made thereunder, or

(c)the provisions of the Wages Council Act 1947 or any order made thereunder.

Under the new sub-section (3) to section 69, the Director General may inquire into and confirm or set aside any decision made by an employer under section 14(1) (i.e., to downgrade, dismiss or suspend an employee as a result of misconduct).

Looking Back

The difficulty surrounding the interpretation of section 69(1) arose when the section was amended in 1980. If the learned Judge in Nylex had the opportunity to interpret the section as it was first enacted, he would have had no difficulty coming to a decision regarding the exact scope of section 69(1). It is obvious that the provision was designed for the benefit and convenience of employees, so that should they have *any complaint* regarding *any matter* whatsoever connected either with the contract of service or any of the provisions of the Act, they may set in motion the machinery provided by the Act itself for settling such complaints or disputes, starting with a complaint under section 69(1). The section as it was first enacted, read as folows:

> **69(1)** The Commissioner may inquire into and decide any dispute between a labourer and his employer or between a labourer and any person liable under the provisions of this Ordinance to pay any wages due to such labourer where such dispute arises out of any term in the contract of service between such labourer and his employer or out of any of the provisions of this Ordinance, and in pursuance of such decision may make an order in the prescribed form for the payment by either party of such sum of money as he deems just without limitation of the amount thereof.[15]

From the above, it is quite clear that there are no limitations placed upon the type or nature of dispute which may be inquired into and decided by the Commissioner; he may inquire into and decide "any dispute". This dispute may arise between two sets of parties; first, between a labourer and his employer, or, secondly, between a labourer and any person liable under the Ordinance to pay wages to such labourer. The only qualification which the provision placed on the words "any dispute" appeared in the latter part of the provision itself, that is "*such* dispute"[16] [relating to "any dispute"] must arise either, first, out of any term in the contract of service between a labourer and his employer, or,

[15]FM Ordinance 38/55.
[16]Emphasis added.

secondly, out of any of the provisions of this Ordinance. It is to be noted that the above two qualifications upon the words "any dispute" still do not place any restriction or limitation upon the nature or type of dispute which may be inquired into. It is submitted that there cannot be any such limitation because then the result would be absurd. The jurisdiction conferred upon the Commissioner by the Ordinance is to decide upon *any dispute*, where such dispute arose either out of *any term* in the contract of service or out of *any of the provisions* of the Ordinance. If the words "any dispute" were to be construed as relating to a dispute concerning the payment of wages only, this would not be consonant with the fact that such dispute can arise out of *any term in the contract of service* or out of *any of the provisions of the Ordinance*. It is obvious, from the language used in section 69(1) itself, that the legislature intended the Commissioner to have a broad jurisdiction to settle any dispute which may arise, thereby providing a fairly complete machinery for an aggrieved employee which is cheaper and perhaps more expeditious than a court action.

Section 69(1) was amended in 1980,[17] and perhaps, it is with this amendment that the confusion began. Clause 31(a) of the Amendment Act inserted the words "or any regulations, order or other subsidiary legislation whatsoever made thereunder" immediately after the word "Ordinance" in section 69(1). That part of the provision should now read as follows:

> **69(1)** The Commissioner may inquire into and decide any dispute between a labourer and his employer or between a labourer and any person liable under the provisions of this Ordinance *or any regulations, order or other subsidiary legislation whatsoever made thereunder* to pay any wages due to such labourer where such dispute... ."[18]

The confusion that too many words can cause is obvious from the above provision. This confusion clearly led the learned Judge in *Nylex's case* to conclude that the words "any dispute" must be read conjunctively with the

[17]Amendment Act A497 of 1980, clause 31(a).
[18]Emphasis added, to show portion added by the 1980 amendment.

words "to pay any wages due." This conclusion was arrived at without the realization that by the terms of section 69(1) as it was first enacted, the words "to pay any wages due..." qualified the words "any person liable under the provisions of this Ordinance" and not the words "any dispute". The addition made by the amendment of 1980 does not in any way disturb the interpretation attached to section 69(1) as it was first enacted. According to paragraph 30 of the Explanatory Statement of the Bill which introduced Amendment Act A497 of 1980, the purpose behind clause 31(a) which amended section 69(1) was to "make it clear that the provisions of that subsection relate not only to disputes under the provisions of the Ordinance but also to disputes under the provisions of any regulations, orders or any other subsidiary legislation whatsoever made under the Ordinance". It is clear from this explanation that the amendment in no way qualifies the words "any dispute", so as to limit or restrict the jurisdiction conferred upon the Commissioner [now Director General] with regard to the nature or type of dispute which he may inquire into and decide upon. Its aim was in fact to further *expand* the jurisdiction, so that the dispute which may be inquired into is not restricted to disputes under the Ordinance alone, but would also include disputes which arise under the subsidiary legislations made under powers conferred by the Employment Act.

In *Nylex,* the learned Judge had decided that section 69(1) should be read thus:

> "The Director-General may inquire into and decide *any dispute* between an employee and his employer... *to pay any wages due to such employee...*"[19]

Reading the provision the way he did, the learned Judge had clearly misconstrued the whole meaning of section 69(1). He had left a material portion of the provision out of his reading. As explained, there are two sets of parties envisaged by the provision:

[19]Emphasis is Judge's own.

> i) an employee and his employer, *or*
> ii) an employee and any person liable under this Act, or any regulations, order or other subsidiary legislation whatsoever made thereunder to pay any wages due to such employee.

Without the 1980 amendment, this second set of parties would appear much clearer, that is, similar to section 69(1) as it was first enacted, which would read as any dispute between an employee and *any person liable under this Act to pay any wages due to such employee*. It is clear that the words "to pay any wages" is not meant to be read conjunctively with the words "any dispute". In fact, those words are to be read conjunctively with the words "any person liable under this Act...". This second set of parties which is envisaged by the Act and which was clearly present in section 69(1) as it was first enacted was totally left out from the learned Judge's reading of the provision. It is submitted that this represents a material error on the learned Judge's part which has given rise to an interpretation of section 69(1) which is totally at variance with what was intended by the legislature when it enacted section 69(1).

There are at least two cases decided much earlier which could have aided the learned Judge in coming to his decision. In *Nadchatiram Realities (1960) Ltd* v *Muniammah,*[20] the respondent had lodged a claim for maternity allowance from the appellants, her employers. The appellants were summoned to attend the hearing of the claim but failed to do so. The Junior Assistant Commissioner heard the respondent and made an order. The appellants applied to have this order set aside. The issue before the court was whether the Assistant Commissioner had the power to entertain the application under section 69(1).

The High Court held that the Assistant Commissioner was empowered to entertain the application under section 69(1), as an enquiry into any dispute between the employer and the female labourer with respect to maternity allowance falls within the second limb of the subsection although the subsection does not specifically provide for it. The "second

[20][1967] 2 MLJ 147.

limb" referred to by the Court was read out by the learned Judge who delivered the judgment, Justice Ismail Khan, as follows:

> "where such dispute arises ... out of any of the provisions of this Ordinance, and in pursuance of such decision may make an order ... for the payment ... of such sum of money ...".

Therefore, a dispute regarding maternity allowance can be entertained under section 69(1), as it obviously relates to a dispute arising out of a provision of the Act itself. It is submitted that this represents the proper interpretation of the provision which accords with the intention of the legislature when it drafted the provision.

In *Yap Kim Chan* v *Yap Sow & Ors,*[21] the dispute centred on the alleged dismissal of the employees. The employer had contended that he never dismissed them but that they had stopped work of their own accord. The Junior Assistant Commissioner had ordered the employer to pay the employees a sum of money, being wages due in varying amounts to each of them, by reason of their wrongful dismissal. The case represents an appeal by the employer against the decision of the Assistant Commissioner.

In the High Court, the issue centred on section 72 of the Act, regarding whether other complainants should be joined in one complaint, and therefore, section 69 was never raised. However, it should be noted that in this case, the complaint lodged by the employees under the Act related to their *dismissal.*

Conclusion

Perhaps, this whole episode would serve as a valuable lesson to Parliamentary draftsman: properly punctuate your sentences! A comma immediately after the word "thereunder" in section 69(1) would perhaps be helpful, as it would highlight the fact that there is a second set of parties envisaged by the Act, and that the words "to pay any wages due" qualifies this second set of parties, and not the words "any dispute".

[21] [1960] MLJ 293.

Further, a reference to other provisions of the Act would fortify this conclusion. The Act does envisage a person liable for the payment of wages other than the employer. For example, under section 31 regarding the priority of wages over other debts, the Act talks of a "person liable under any of the provisions of this Act to pay the wages due to any employee...". Further, under the second proviso to the same section, the Act envisages that a person liable for the payment of wages may be the employer or "a principal". In section 73, regarding the issue of a prohibitory order by the Director-General to third party, it is clearly stated that:

> 73(1) Whenever the Director-General shall have made an order under section 69 against any employer *or any person liable for the payment of any sum of money to any employee* or sub-contractor for labour...".[22]

Therefore, it is quite clear that apart from the employer, the Act envisages another party against whom an employee may have cause to complain against, that is, a person who is liable for the payment of wages to such employee under the Act, regulations, order or other subsidiary legislation made thereunder.

Part XV, under which section 69 is placed, is headed "Complaints and Inquiries". Section 69(1) is the empowering provision; it is the key which unlocks all the doors. Other provisions under Part XV relate to the procedure in the Director-General's inquiry and a glance at those provisions reveal a meticulousness that could hardly be said to be necessary if the intention of the legislature under section 69(1) was to confer upon the Director-General the power to inquire into and decide upon disputes concerning wages only. It is obvious that the machinery provided under Part XV was meant to be adequate for the settlement of various kinds of dispute which may arise in an employer-employee relationship. If this is not so, then the Employment Act must be a piece of legislation with little value and much less use to the people to whom it was designed to benefit.

[22]Emphasis added.

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