

**KINGDOM OF CAMBODIA  
NATION RELIGION KING**

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**THE ARBITRATION COUNCIL**

**Case number and name: 01/07-Supreme**

**Date of Award: 12 February 2007**

**ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

**ARBITRATION PANEL**

Arbitrator chosen by the employer party: **Ouk Ry**

Arbitrator chosen by the worker party: **An Nan**

Chair Arbitrator (chosen by the two Arbitrators): **Ang Eng Thong**

**DISPUTING PARTIES**

**Employer party:**

Name: **Supreme Garment Pty, Ltd.**

Address: Deum Mean Village, Deum Mean Commune, Ta Khmao District, Kandal Province

Telephone: N/A

Representative:

- Mr. Lim Eng                      Head of the Administration Department

**Worker party:**

Name: **Federal Union of Solidarity (FUS) and local Union of Solidarity at Supreme Factory**

Address: N/A

Telephone: N/A

Representative:

**Worker Representatives**

- |                      |                                  |
|----------------------|----------------------------------|
| 1. Mr. Lim Bora      | Officer of FUS                   |
| 2. Mrs. Thong Phalla | President of Union of Solidarity |
| 3. Mr. Hun Nhen      | Officer of Union of Solidarity   |
| 4. Mr. Mam Seyha     | Officer of Union of Solidarity   |
| 5. Mr. Ouk Thavrith  | Worker delegate                  |

Name: **CLUF and local CLUF at Supreme Garment Factory**

Address: # 788, Street 474, Sangkat Boeung Trabek, Khann Chamkamorn, Phnom Penh

**Worker Representatives**

- |                       |                       |
|-----------------------|-----------------------|
| 1. Mr. Khin Sokhorn   | Officer of CLUF       |
| 2. Mr. Seng Meng Hong | President of union    |
| 3. Mr. Ly Chhun Deth  | Worker representative |
| 4. Mr. Penh Ratha     | Worker representative |

Name: **CUF at Supreme Garment Factory**

Address: N/A

**Worker Representatives**

- |                       |                        |
|-----------------------|------------------------|
| 1. Mr. Loy Lon        | President of union     |
| 2. Mr. Chean Sok Long | Secretary of the union |
| 3. Mr. Em Sarorn      | Worker representative  |
| 4. Mr. Sak Chamroeun  | Worker representative  |

**ISSUES IN DISPUTE**

(In the non-conciliation report)

The workers demand that the company provide each of the 300 workers with accommodation fees in the amount of US\$20 per month for the period of their two-month suspension. The employer party does not agree to the demand. However, the company agrees to provide US\$6 per month as an accommodation fee to each worker.

**JURISDICTION OF THE ARBITRATION COUNCIL**

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B (Article 309 to 317) of the Labour Law (1997); the Prakas on the Arbitration Council 099/04; the Arbitration Council Procedural Rules which form an Annex to the same Prakas; and the Prakas on the Appointment of Arbitrators 099/06, dated 11 May 2006 (Fourth Term).

An attempt was made to conciliate the collective dispute that is the subject of this Award, as required by Chapter XII, Section 2A of the Labour Law. The conciliation was unsuccessful, and the non-conciliation report No. 254 KBV/KN dated 25 December 2006 was submitted to the Secretariat of the Arbitration Council on 18 January 2006.

**HEARING AND SUMMARY OF PROCEDURE**

**Place of hearing:** Arbitration Council, Phnom Penh Center, Building A, Sothearos Blvd., Sangkat Tonle Basak, Khan Cham Kar Mon, Phnom Penh

**Date of hearing:** 30 January 2007 (at 08:00 a.m.)

**Procedural issues:**

Upon receipt of the complaint from workers regarding a demand that the company improves working conditions in accordance with the Labour Law on 21 December 2006, the Department of Labour Disputes assigned an officer to resolve the dispute. The last conciliation was held on 23 December 2006. As a result, the issue was not settled. The one non-conciliated issue was submitted to the Arbitration Council on 18 January 2007. After receiving the case, all parties to the dispute were summoned by the Arbitration Council for a hearing on 30 January 2007 at 8:00 a.m.

Both parties were present on the hearing day. The Arbitration Council attempted to further conciliate the issue in dispute but was not successful. Therefore, the Arbitration Council will consider and settle this issue based on evidence and findings of fact as follows:

**EVIDENCE**

**Witnesses and experts:** N/A

**Documents, exhibits and other evidence considered by the Arbitration Council**

Provided by the employer party: N/A

Provided by the worker party:

- Certificate of registration No. 491 SKBY dated 8 September 2003

Provided by the Ministry of Labour and Vocational Training:

- Report of the collective labour dispute at Supreme Company, No. 254 KBV/KN, dated 25 December 2006

Provided by the Secretariat of the Arbitration Council:

- Letter No. 024 KKBV/AK/VK/LKA, dated 24 January 2007 to invite the worker party to attend the hearing.
- Letter No. 023 KKBV/AK/VK/LKA, dated 24 January 2007 to invite the employer party to attend the hearing.

**FACTS**

- Having examined documents submitted to the Arbitration Council
- Having reviewed the report of the collective labour dispute conciliation
- Having listened to statements by the employer party and the worker party

**The Arbitration Council finds that:**

- Supreme Garment Factory employs 1,100 workers and has three unions. [These three unions (referenced as follows)] attended the hearing:

- CUF, which has 367 members
- CLUF, which has 346 members
- FUS, which has over 70 members
- In 2004 the company suspended workers for one month and provided [a payment of] US\$12 to each worker. When those workers were called back to work after approximately 20 days of work suspension, the company continued to provide US\$12 to the workers [throughout the period in which they were originally going to be suspended even though they had returned to work].
- In December 2006 the company applied to the Labour Inspector to request a suspension of 300 workers for two months from 28 December 2006 to 28 February 2007. However, [in actual fact] because some workers were casual workers who were dismissed by the company, only 120 workers were suspended by the company.
- The employer suspended work from 28 December 2006. About 10 days after the suspension commenced, the company received work from another company. The company called all the workers back to work and more than 90 percent of the workers came back to work. Only those workers whose houses are far [from the factory] were unable to come back to work at that time.
- The employer party and the union agreed that the practice in the garment sector, when an employer suspends workers' work is that the employer provides from US\$5 to US\$7 for workers' accommodation when the suspension is properly approved by the Labour Inspector.
- The three unions demand that the company pay US\$20 per month to each worker for the suspension of work for the two months even though the company recalled workers to work after only about 10 days of suspension.
- The unions claim that the suspension was an act of discrimination against pregnant women and against the unions. The company claims that, though some union members and pregnant women were suspended, there was no discrimination. The union did not provide any specific evidence to support the claim of discrimination.
- There are some other pregnant women in the factory that the company did not suspend.
- The employer did not suspend the work of the three union leaders.
- The employer party and the worker party agreed that the suspension of work was properly approved by the Labour Inspector and the employer did not hire new workers to replace the suspended workers.

### **REASONS FOR DECISION**

In order to consider this issue, the Arbitration Council will consider the following points:

**1. Did the employer discriminate against the unions or pregnant women during the suspension?**

The workers demand that the company provide US\$40 to each of 120 workers for the two-month suspension period applied for, even though the actual suspension was only about 10 days. [The unions argued that workers should be paid this amount] by reason of the suspension being discrimination against unions and pregnant women. The company rejected this claim, providing the reason [for the suspension] as the company did not have work.

In previous cases, the Arbitration Council reasoned that a worker party who claims union discrimination, is required to provide evidence to support that claim (see Arbitral Awards 79/05-Evergreen and 99/06-South Bay in Reasons for Decision, issue 1).

In this case, the unions did not provide any specific evidence to support their claim that the employer discriminated against unions and pregnant women when making their decision to suspend the workers. In addition, regarding the suspension of work, the employer applied it generally without differentiating which group a worker was a member of. Furthermore, the employer did not suspend the leaders of the three unions. The employer suspended the work of some pregnant women but there were some other pregnant women whom the employer did not suspend. Therefore, the employer did not suspend workers for reason of union discrimination or discrimination against pregnant women.

The Arbitration Council notes that even in a case where there was discrimination against the union or pregnant women during the suspension of work, the [discrimination] could be a reason for workers to be entitled to receive various compensation but that this compensation would not necessarily include the accommodation fee during work suspension.

**2. Does the employer have a legal obligation to provide accommodation to workers during the suspension period?**

Article 72(1) of the Labour Law states, *“The suspension of a labour contract affects only the main obligations of the contract, that are those under which the worker has to work for the employer, and the employer has to pay the worker, unless there are provisions to the contrary that require the employer to pay the worker.*

*Other obligations such as furnishing of accommodation by the employer, as well as the worker’s loyalty and confidentiality towards the enterprise, **continue to be in effect** during the period of suspension.”*

The Arbitration Council notes that the words “**continue to be in effect**” in Article 72(1) mentioned above refers to cases where the employer has [a pre-existing and continuing] legal

obligation to provide accommodation to workers during the time of their employment with the enterprise. In that case, if there is a work suspension, the employer's obligation to provide accommodation continues to be in effect. However, if the employer does not provide accommodation nor has a policy to provide accommodation to workers during the time of their employment, the employer does not have an obligation to provide accommodation [during the suspension].

The Arbitration Council notes that the provision of accommodation must occur [in some instances], for example in the agricultural sector as stated in Article 204 of the Labour Law, which provides that workers who work regularly in one place are entitled to free housing provided by the employer.

In the garment industry on the other hand, the Arbitration Council notes that there is no provision in the Labour Law which requires the employer to provide accommodation to workers, as is the case in the agricultural sector.

In this case, the employer does not provide accommodation for workers who work in the enterprise. In addition, there is no agreement, [collective bargaining agreement] (CBA) or company policy which provides accommodation for workers working in the employer's enterprise. In 2004 the company suspended workers once and provided US\$12 per month to each worker. In regards to this point, the employer party asserted that this was a result of a negotiation between the employer and workers but not a company policy. The Arbitration Council considers that the provision by the employer of US\$12 per month for the suspension of work in 2004 was not a company practice which would serve as a binding obligation on the employer to continue this practice. The result of the negotiation was only an agreement between the employer party and the worker party [for that one occasion].

In the hearing, the employer party and the worker party agreed that the practice in the garment sector when there is a work suspension is that the employer pays from US\$5 to US\$7 per month for the workers' accommodation fee and that the suspension must be approved by the Labour Inspector. The Arbitration Council notes that both parties can negotiate based on this practice.

However, in this case, the worker party demands that the company provide US\$20 per month to each worker for the two-month suspension period which the employer applied for, even though the suspension actually took place for only approximately 10 days. The Arbitration Council considers that the employer does not have such a legal obligation for the reasons as discussed above.

Based on the above facts, legal principles, and evidence the Arbitration Council makes its decision as follows:

**DECISION AND ORDER**

- Reject the workers' demand that the company provide US\$20 per month to each worker for the [suspension] period of two months because the employer applied for such a suspension of their employment contract.

**Type of Award: Non binding**

This Award will become binding after 8 days of the date of its notification unless one of the parties lodges a written opposition with the Secretariat of the Arbitration Council within this time period.

**SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:**

Arbitrator chosen by the employer party:

Name: **Ouk Ry**

Signature: .....

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Ang Eng Thong**

Signature: .....