

**KINGDOM OF CAMBODIA
NATION KING RELIGION**

THE ARBITRATION COUNCIL

Case number and name: 05/07-Ghim Li

Date of Award: 14 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: **Sin Kim Sean**

Chair Arbitrator (chosen by the two Arbitrators): **Tan Try**

DISPUTING PARTIES

Employer party:

Name: **Ghim Li (Cambodia) Pte.**

Address: Ang Village, Kantok Commune, Ang Snuol District, Kandal Province

Telephone: 023 399 988 Fax: 023 393 838

Representative:

- | | |
|---------------------|-----------------------|
| 1. Mr. Cheat Khemra | Company Advisor |
| 2. Mr. Ngam Kun | Company Administrator |

Worker party:

Name: **Local KYTU at Ghim Li Factory**

Address: # 34, Street 265, Sangkat Toeuk Laak 3, Khann Tuol Kork, Phnom Penh

Telephone: 012 195 1533 Fax: N/A

Representative:

- | | |
|-----------------------|--|
| 1. Mr. Ou Phoeun | Coordinating Officer of KYFTU |
| 2. Mr. Pich Kunthea | Coordinating Officer of KYFTU |
| 3. Mr. Li Chheng Long | Head of local KYTU at Ghim Li Factory |
| 4. Mr. Sat Sokun | Vice-head of local KYTU at Ghim Li Factory |

5. Mr. Chi Cheatith	Union activist
6. Mr. Kao Vannak	Union activist
7. Miss. Pou Kolab	Union activist
8. Miss. Suth Simorn	Union activist
9. Miss Nong Srey Den	Union activist
10. Mr. Chin Vy	Union activist

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

1. The workers demand that the company maintain their attendance bonus when they use consecutive days for leave. The company agrees to allow one-day leave between the 1st and 15th of the month and another day of leave between the 16th and 30th of the same month; this policy will become effective from April 2007 onwards.
2. The workers demand to receive wage payments on the 5th of every month. The company tries to pay the workers' wage between the 7th and 10th of the month.
3. Sanitation workers demand to have the same working hours as regular workers do. The company maintains the working hours of the sanitation group from 8:00 to 12:00; from 12:00 to 13:00 is break time. Then re-starting [work] from 13:00 to 17:00.

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B of the Labor Law (1997); the Prakas on the Arbitration Council No. 099 dated 21 April 2004; the Arbitration Council Procedural Rules which form an Annex to the same Prakas; and the Prakas on the Appointment of Arbitrators No. 099 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 hearing was unsuccessful, and the non-conciliation report No. 1605 K.K.B.V/AK/VK. dated 27 October 2006 was submitted to the Secretariat of the Arbitration Council on 22 April 2007.

HEARING AND SUMMARY OF PROCEDURE

Place of hearing: The Arbitration Council, Phnom Penh Center, Building A, Sothearos Blvd., Sangkat Tonle Basak, Khann Chamkarmorn, Phnom Penh.

Date of hearing:

- 5 February 20067

- Time: 2:00 p.m. to 4:30 p.m. and

Procedural issues:

On 23 November 2006, the Department of Labour Disputes in Kandal Province received a complaint from KYFTU regarding the demand for the company to improve working conditions on 9 issues. Upon receipt of this complaint, the Department of Labour Disputes in Kandal Province assigned officer to handle this labour dispute consecutively and the last conciliation was held on 4 January 2007 with 6 issues of 9 issues were conciliated.

On 22 January 2007, the Secretariat of the Arbitration Council received the case and report on the non-conciliated collective labour dispute No. 008/07 K.B.V/KN, dated 04 January 2007, from the head of the Department of Labour and Vocational Training in Kandal Province. After receiving the case, the Arbitration Council invited the employer party and the union in the factory and workers to attend the hearing and conciliation on the three non-conciliated issues on 5 February 2007. Both parties were present as invited by the Arbitration Council. On the hearing day, the Arbitration Council attempted to further the conciliation on the three non-conciliated issues; the worker party agreed to cancel the demand on issue three but the other two issues did not receive any conciliated result.

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party:

1. Statute and certificate of registration of Ghim Li Company
2. Internal Work Rules of Ghim Li Company, registration No. 09/06 K.B.V, dated 20 June 2006
3. Minute of collective labour dispute conciliation, dated 27 November 2006
4. Minute of collective labour dispute conciliation, dated 03 January 2007
5. Minute of collective labour dispute conciliation, dated 04 January 2007
6. Objection letter by workers in sanitation section (no date)
7. Authorization letter, dated 05 January 2007
8. Brief statement regarding a strike which lasted from 3rd to 5th January 2007
9. Pictures of the strike

Provided by the worker party:

1. Letter No. 839 SSK, dated 15 November 2006, by KYFTU regarding notification about election of committee of KYTU at Ghim Li Company
2. Receipt of registration of KYTU at Ghim Li Company, dated 12 January 2007

Provided by the Ministry of Labour and Vocational Training [MoLVT]:

1. Letter No. 121 K.K.B.V regarding request for collective labour dispute resolution at Ghim Li Company by the Minister of the Ministry of Labour and Vocational Training, dated 22 January 2007
2. Report of collective labour dispute resolution at Ghim Li Company, No. 008/07 K.B.V/KN by the head of the Department of Labour and Vocational Training of Kandal Province, dated 04 January 2007
3. Minute of collective labour dispute conciliation, dated 04 January 2007.

Provided by the Secretariat of the Arbitration Council:

1. Invitation letter No. 026 K.K.B.V/AK/VK/LKA dated 30 January 2007 to invite the worker party to attend the hearing.
2. Invitation letter No. 027 K.K.B.V/AK/VK/LKA dated 30 January 2007 to invite the employer party to attend the hearing.

FACTS

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

The Arbitration Council finds that:

Issue 1:

- The worker party raises that workers should have right to take two consecutive days leave within a month because they may go to visit ailing parents in their hometown or go to their hometown for special business or other events which may require more than one day for traveling.

- The company party asserts the reasons that the company wants the workers to take only a one day leave in the first two weeks and another one day in the last two weeks of each month is because:

- The company is worried about the consequence to the production line if the company allows workers to take two consecutive days of leave in each month. The company thinks that when a worker whose house is in a faraway province has special business such as a wedding or ceremony and s/he invites workers who are her/his friend in the group to attend that occasion, the company is worried that those workers invited may ask for permission for leave as a group.

This can cause an interruption to the production line in a section and can lead to the interruption of production in the whole factory.

- In addition, the company has signed an agreement with C.CAWDU (minute of collective labour dispute conciliation dated 03 January 2007) to practice one day leave in the first two weeks and another one day separately in the last two weeks of each month.
- Moreover, the company has arranged a computer program for workers' leave of one day separately.

- The company will start practicing the separated one day leave from April 2007 onward.

- Based on the contents of the minute of the collective labour dispute conciliation dated 03 January 2007 by representatives of C.CAWDU and Ghim Li Company, it was agreed that when workers are busy, they are entitled to 2 days leave per month with regular attendance bonus retained; for this leave, from 01st to 15th workers can take one day leave and from 16th to 30th another one day; and this will be carried out from April 2007 onward.

Issue 2:

- Based on the contents of the minute of the collective labour dispute conciliation dated 27 November 2006, representatives of workers (including 3 officers of KYFTU) and Ghim Li Company agreed that the company will try to pay workers' wages between the 7th and 10th of the next month within working hours and provide notice to the worker representatives (agreement point 2, page 4).

- Based on the contents of the minute of the collective labour dispute conciliation, representatives of workers, which included KYFTU officers, and Ghim Li Company attended a collective labour dispute resolution session at the Department of Labour and Vocational Training of Kandal Province on 04th January 2007. Representatives of workers **changed**[changed what?] the conciliated points already agreed on 27 November 2006 and requested the company to pay workers' wage on the 5th of the next month.

- In the hearing, the worker party raises that so far the company never pays workers' wages before the 10th; generally it is on the 10th and once it was on 11th. The company party accepts that there was such practice; generally the company can arrange the salary on the 10th and hurries to pay the workers. Even though the company can arrange the calculation and account documents to be ready earlier, the company cannot arrange for the payment earlier than this because it receives a money transfer from the main company on 08th and it takes time to go to get money from the bank and arrange such money in the salary envelopes for each worker. Taking security and safety into account, the company can properly arrange for the payment on 10th.

- The company mentions that it has determined to pay workers not later than the 10th and to pay them before 10th if the 10th falls on national holiday or Sunday or a non-working day permitted by the law.

- Based on the receipt dated 12 January 2007, the KYTU at Ghim Li Company has applied for registration with the Ministry of Labour and Vocational Training. However, in the hearing, the party also mentions that KYTU has not received the union recognition letter from the Ministry yet.

Issue 3:

- Based on a denial letter received from the company party, 11 workers from sanitation section printed their thumbprints to deny that they demand the same working hours as normal workers.

- In the hearing, the worker party agrees that, if there is such a denial, the KYTU and KYFTU agree to withdraw this demand from this case.

REASONS FOR DECISION

Issue 1: The workers demand that the company maintain their attendance bonus when they use two consecutive days for leave. The company agrees to allow one-day leave between 1st and 15th of the month and another day of leave between 16th and 30th of the same month; this policy will become effective from April 2007 onwards.

The worker party demands that the workers should be allowed to take leave (leave with permission) for two consecutive days per month because this can allow them to use the two days leave to visit their ailing parents at their hometowns faraway or to travel to their hometowns when they have important personal commitments or other incidents which may take more than one day for traveling. Thus they request the company not to deduct the regular attendance bonus.

The company party, on the other hand, determines that between 1st and 15th it allows workers to take one day leave and between 16th and 30th it allows for another day leave and this will be practiced from April 2007 onward. The company provides the reasons regarding its concern such as the effect on the production line and the agreement with C.CAWDU and the computer program set (see Issue 1 of the Facts above).

The Arbitration Council considers that the word “leave” in the content of this demand refers only to **leave with permission**. In the hearing, the parties also agree to this interpretation.

The company wants to have general practice on this demand in the way the company has agreed with C.CAWDU which states, *“when workers are busy, they are entitled to 2 days leave per month with regular attendance bonus retained; for this leave, from 01st to 15th workers*

can take one day leave and from 16th to 30th another one day; and this will be carried out from April 2007 onward.”

The Arbitration Council considers that the US\$ 5 per month bonus stated in the agreement is the bonus stated in point 3 of Notification No. 017 S.K.B.Y dated 18 July 2000 (see notification No. 745 K.K.B.V dated 23 October 2007). In addition, the company's principle is to retain the bonus if the workers agree to accept the condition of using of using one day leave within the first two weeks and another one day leave within the second two weeks of each month separately but not two consecutive days.

Notification No.017 does not provide a clear definition or any condition which allows the employer to deny the right to receive this bonus, it only mentions coming to work regularly within a month. For example, this Notification does not mention clearly whether a worker who takes leave with permission will receive this bonus. This notification does not mention clearly how many days per month should a worker come to work to be considered regular [attendance] to get this bonus either. The Arbitration Council does not see any provision in the Labour Law that mentions this point. Therefore, it should be interpreted whether two consecutive days of absence without permission will lead the workers to lose their right to receive the bonus. Based on what bases in the case of no provision in the Law?

Article 5.8 of Ghim Li Company's Internal Work Rules registered on 20 June 2006 with the Department of Labour and Vocational Training of Kandal Province states:

“The regular attendance bonus: The amount of US\$ 5 will be provided to the workers who come to work regularly in a month for the annual leave and public holiday, this bonus is not withdrawn but for the sick leave, this bonus is calculated based on the number of days workers come to work.”

The Arbitration Council considers that Article 5.8 orders the company to provide the bonus without deducting any part for the paid annual leave and leave on public holidays. However, the last sentence of article 5.8 which states that *“but for the sick leave, this bonus is calculated based on the number of days workers come to work”* allows workers to receive bonus in proportionate to the number of days they come to work in case of sick leave.

The Arbitration Council considers that, in case of absence because of sickness and absence because of importance personal commitment which the law allows have the same nature for the demand because the company also provides the consideration and agreement on each leave.

For example, the case which the company raises in the hearing, the company is worried about the effect on the production line if it allows workers to use two consecutive days leave because it sees that when a worker whose house is in a far province has special business such as wedding or ceremony and s/he may invite workers who are her/his friend in the group to

attend that occasion. And the company is worried that those workers invited may ask for leave permission as a group which can cause interruption to production line of a section which can lead to interruption of the whole company. The Arbitration Council considers that this worried is one of the examples which may happen and in such case the company is fully entitled to decide to allow the leave or not because it is related to the management of its production.

In the same case, the worker party also raise about important personal commitment which requires them to ask permission because the workers may need to visit their ailing parents in a far place or have to travel to their hometown when there is special commitment or other incidents which requires more than one day for traveling. The Arbitration Council agrees that there is a lot of possibility that workers have such important commitments and such commitments as raised in the hearing have the same nature to the case of special leave permission stated in Article 171 of the Labour Law and Prakas 267 regarding special leave dated 11 October 2001 (article 1).

Therefore, the Arbitration Council considers that reasons for taking leave because of important commitment raise by the worker party above is within the meaning of special leave and there is no difference to the reason for taking leave because of sickness stated in the last sentence of article 5.8 of the Internal Work Rules; thus if there is such leave *bonus is retained for workers according to the number of days they came to work*.

In previous cases, the Arbitration Council decides that in case workers are absent with permission, the employer is obliged to provide bonus to workers in proportionate to the number of days they came to work in that month (case 45/05-B&N, Reason for Decision, issue 6; 48/06-Build Up, Reason for Decision, issue 1). The Arbitration Council considers that the principle of Notification No. 017 does not intent to punish workers who take leave with permission. If workers will lose the whole US\$ 5 bonus because they take leave with permission, it is not fair for the workers because this is not their mistake and they were absent because they have important commitment to do.

In conclusion, for this case, the Arbitration Council considers that the provision stated in the last sentence of article 5.8 of the Internal Work Rules (the retention of bonus calculated according to the number of days workers come to work) can be practiced only in the case of having important personal commitment as stated in the content of special leave stated in Article 171 of the Labour Law and Article 1 of Prakas 267. However, it should not be used for other normal leave with permission.

Based on the above interpretation, the Arbitration Council considers that Ghim Li company is obliged to provide incentive bonus in proportionate to the number of day workers come to work in each month. However, in this case, the workers demand for two consecutive days of leave and request the company to retain the attendance bonus. This demand is beyond

what is provided by the Labour Law. This means that this is an interest dispute. In previous cases, the Arbitration Council decided that only union with the most representative status can bring interest dispute to the Arbitration Council. (See award No. 09/05-Kin Tai, Reason for Decision, issue 2; No. 07/06-Dai Young, Reason for Decision, issue 3).

In this case, the Khmer Youth Trade Union at Ghim Li company does not have the most representative status. Thus the Arbitration Council will not consider the workers' demand.

Issue 2: Workers demand the company to pay their salary on 05th of the next month. The company tries to pay between 07th and 10th of the next month

The worker party raises that in the past, the company never pay workers' wage before 10th and generally the payday fall right on the 10th and there was once it fell on 11th. Because workers need to pay for their daily living as well as for transportation fare back and forth to work, they demand the company to pay their wage on 5th of the next month for every month.

The company accepts that there is such practice but the company can pay only on the 10 and it hurries to pay workers. Even the company can arrange the calculation of the wage and prepare the account document already but the company still have difficulty to pay quickly as the company can receive the money transferred from the main company only on the 8th and it needs time for withdrawing money from the bank and put it into envelop of salary for each worker. Taking the security and safety into account, the company can arrange to pay the wage properly only on the 10th.

The company party continues that the company determines the payment of workers' wage not later than 10th and in case 10th falls on National Holiday or any other pay leave, the company has to pay the workers before 10th. The Arbitration Council agrees with such practice of the Company as the Labour Law does not allow the employer to pay wage on the day which the workers are entitled to take leave but it must be one day before that day (Article 115).

Article 116 of the Labour Law provides that labourers' wage shall be paid at least two times per month, at a maximum of sixteen-day intervals. So far, Ghim Li company pays workers' wage once in each month. However, in their demand, the workers do not demand the company to pay them twice per month and in the hearing they did not raise this issue for the Arbitration Council to settle. Therefore, even the company's practice is not in accordance with the meaning of Article 116, this is not an issue in this case brought in front of the Arbitration Council.

The Arbitration Council continues to consider that the Labour Law does not determine a specific day which the employer should pay workers' wage. It seems that there is no provision on this point because it wants to allow the employer self-control and flexibility in the management of money and accounting work according to the size of working activities and

number of workers in each company. However, the employer should avoid unnecessary delay which may affect the urgent need in workers' daily expenses.

The Arbitration Council continues to look at article 5.1 of Ghim Li company's Internal Work Rules dated 20 June 2006 which states that they payday is before or on 10th of the next month and considers that the practice of the Internal Work Rules which has been reviewed and registered at the Department of Labour and Vocational Training of Kandal Province. Therefore, the Arbitration Council does not see any serious problem regarding the practice of the payment of wage but it is in accordance with the company's Internal Work Rules.

Issue 3: Sanitation workers demand to have working hours as regular workers do. The company maintains the working hours of the sanitation group from 8:00 to 12:00 and from 12:00 to 13:00 is break time. Then begin again from 13:00 to 17:00.

Based on the rejection letter received from the company, 11 workers from sanitation section printed their thumbprints to reject that they demand for the same working hours as normal workers. In the hearing, the worker party agrees that, if there is such rejection, the KYTU and KYFTU agree to withdraw this demand from this case. Therefore, the Arbitration Council does not consider this issue.

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

ORDER

1. Reject the demand to retain bonus when there is request to take 2 consecutive days of leave within a month.
2. Reject the workers' demand that the company pay wage on the 5th of the next month for every month.

Type of Award: Binding

This Award is immediately binding upon the parties after the notification of the award.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Ouk Ry**

Signature:

Arbitrator chosen by the worker party:

Name: **Sin Kim Sean**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Tan Try**

Signature: