



KINGDOM OF CAMBODIA
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THE ARBITRATION COUNCIL

Case number and name: 08/07-Siu Quinh

Date of Award: 20 February 2007

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **Chhiv Phyum**

Arbitrator chosen by the worker party: **Ven Pov**

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

DISPUTING PARTIES

Employer party:

Name: **Siu Quinh Company (MFG) Ltd.**

Address: Kwa Village, Sangkat Dangkor, Khann Dangkor, Phnom Penh

Telephone: 012 859 632 Fax: 023 362 233

Representative:

- | | |
|------------------------|------------------|
| 1. Mr. Ho Siv Chhoeung | Company Director |
| 2. Mr. O Kam Chang | Vice-director |
| 3. Mr. Bun Leng | Administrator |

Worker party:

Name: **Local Khmer Youth Trade Union at Siu Quinh Factory**

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

Telephone: 012 645 395 Fax: N/A

Representative:

- | | |
|--------------------|-------------------------------|
| 1. Mr. Ou Phoeun | Coordinating officer of KYFTU |
| 2. Mr. Mai Vattana | Coordinating officer of KYFTU |
| 3. Mr. Peo Bunna | Coordinating officer of KYFTU |
| 4. Mr. Yon Vanna | Coordinating officer of KYFTU |
| 4. Ms. Phan Sipa | Worker |

5. Ms. Chhorn Eng	Worker
6. Mr. Soy Piseth	Worker
7. Ms. Sok Nak	Worker
8. Ms. Kem Oy	Worker
9. Ms. Soy Pisey	Worker
10. Ms. Yean Chanty	Worker
11. Ms. Ban Somany	Worker
12. Ms. Soeun Chenda	Worker
13. Ms. Roeun Tieng	Worker

ISSUES IN DISPUTE

1. The workers demand the company to provide payment in lieu of remaining annual leave in January of each year. In addition, the workers demand that the company retain the attendance bonus and daily wage when they take annual leave. The company does not agree to the demand, claiming that it can provide the remaining compensation for annual leave in April of each year. As for the other request, regarding the use of annual leave, the company does not retain the attendance bonus.
2. The workers demand the company to pay one hundred percent of wages when the company has no work for a short time. The company does not agree to the demand but provides fifty percent for workers during times of no work.
3. The workers demand the company to retain the attendance bonus when they are absent from work for three days. The company does not agree to the demand but follows the Labour Law.
4. The workers demand the company retain the attendance bonus for those workers who come to work fifteen minutes late. The company does not agree to the demand but follows the past practice.
5. The workers demand the company to retain wages and attendance bonuses for pregnant women when they request to take one day leave per month to check the pregnancy. The company does not agree to the demand. The company gives leave with permission but does not retain the main wage and the bonus.
6. The workers demand that the company allow women workers to take 90 days [maternity] leave without counting Sundays and holidays. The company does not agree to the demand but follows the Labour Law.
7. The workers demand the company to provide one hour for women workers who have given birth to breast-feed their babies. The company does not agree to the demand because it has provided milk to workers.

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 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 2007
- From 9:00 a.m. to 11:30 a.m.

Procedural issues:

On 16 January 2006, the Department of Labour Disputes received a complaint by phone from workers at Siu Quinh Factory demanding the company follow working conditions on 10 points. After receiving this complaint, the Department of Labour Disputes assigned an officer to settle the problem at the company and the last conciliation was held on 17 January 2007. Out of the 10 points, three were conciliated and seven were not.

On 26 January 2007, the Secretariat of the Arbitration Council received the case and the report of the non-conciliated collective labour dispute No. 083 K.K.B.V/AK/V.K, dated 26 January 2007 by the head of the Department of Labour Disputes. Upon receiving this case, the Secretariat of the Arbitration Council summoned the employer party, the union at the factory and workers to come to the hearing and conciliation on the seven unresolved issues on 5 February 2007. Both parties were present as summoned by the Arbitration Council. On the hearing day, the Arbitration Council attempted to further the conciliation but did not achieve any successful resolution of the seven non-conciliation issues.

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 commercial registration of Siu Quinh Company
2. Internal Work Rules of Siu Quinh Company, visa No. 098 K.K.B.V/A.K/A.Th.K, dated 29 September 2006
3. Workers' appointment letter, dated 28 December 2006
4. Siu Quinh Company's response letter, dated 28 December 2006
5. A complaint made by Mak Sophann, a worker, dated on 6 January 2007
6. Minutes of collective labour agreement between Siu Quinh company and NIFTUC, dated 12 January 2007
7. Workers' appointment letter, dated 29 January 2007
8. Letter by workers to delegate their rights to worker representatives and KYFTU, dated 16 January 2007
9. Letter of workers' demand sent to the head of KYFTU, dated 15 January 2007
10. Minutes of collective labour dispute conciliation, dated 16 January 2007
11. Court order by Phnom Penh municipal court, dated 18 January 2007
12. Announcement of Siu Quinh Company, dated 13 January 2007
13. Announcement letter by Siu Quinh Company, dated 19 January 2007
14. Notification by Siu Quinh Company, dated 19 January 2007
15. Minutes by Siu Quinh Company regarding strike from 12 to 19 January 2007
16. Minutes of collective labour dispute conciliation, dated 28 April 2005

Provided by the worker party: N/A

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

1. Report of the collective labour dispute resolution at Siu Quinh Company, No. 083 K.K.B.V/AK /VK by the head of the Department of Labour Dispute, dated 26 January 2007
2. Minutes of collective labour dispute conciliation, dated 16 January 2007.

Provided by the Secretariat of the Arbitration Council:

1. Invitation letter No. 030 K.K.B.V/AK/VK/LKA dated 30 January 2007 to invite the worker party to attend the hearing.
2. Invitation letter No. 031 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:

Siu Quinh Company has a total number of 580 workers and is located in Kwa Village, Sangkat Dangkor, Khann Dangkor, Phnom Penh. In Siu Quinh Company, no union has most representative status yet.

ISSUE 1

- Every year, the company provides a payment in lieu of remaining annual leave in April.

- When [a worker] takes annual leave, the company does not retain the bonus but it maintains day's wage of US\$ 1.92.

In the hearing, the worker party claimed that, when there is no work, the company always tells workers to stay at home and deducts that day off from annual leave. The employer party admits to this practice in the past, but states that it will not continue this practice in the future.

ISSUE 2

- Sometimes a group or a section of workers at Siu Quinh company does not have work to do for a short time - sometimes one day and some times two or three days - because the company has no work activities for them to do. A group or a section of workers are affected by the short time work suspensions, but the whole factory is not suspended.

- Such suspensions and reductions in the work in sections result from the economic concerns of the company.

- In the hearing the employer admits that so far the company has never informed or asked for permission from the Labour Inspector to suspend a group or a section of workers and only pays 50 percent of workers' main wage to them when the company has no work for workers to do.

- In the hearing, the worker party stated that the company should provide 100 percent of main wages to workers when it has no work for them to do. If the company cannot do this, it should follow the work suspension procedure provided in the Labour Law; such as informing the Ministry of Labour in accordance with Article 71 of the Labour Law.

ISSUE 3

- So far, the company does not retain the regular attendance bonus for those workers who are absent from their workplace.

- In the hearing, the worker party demands the company to retain the regular attendance bonus when workers are absent with leave with permission for three days per month.

ISSUE 4

- So far, Siu Quinh Company retains the regular attendance bonus for workers who come to work 5 minutes late.

ISSUE 5

- The policy of the Siu Quinh Company is to give permission to pregnant women to take a half-day per month off to check the pregnancy and provide regular wages but not retain the regular attendance bonus.

ISSUE 6

- As a practice, Siu Quinh Company counts the national holidays and Sundays into the 90 days of maternity leave.

- The worker party demanded in the hearing that the duration of 90 days of maternity leave include only working days and not national holidays and Sundays.

ISSUE 7

- From 28 April 2005, Siu Quinh Company changed from providing a day care center to providing milk for children (medium sized tins) for 15 months according to an agreement made between the company and NIFTUC (point 6 of the agreement).

- In the hearing the company party stated that if workers demand the company to provide one hour for breast-feeding instead, the company will build a day care center and provide one hour per day for breast-feeding. The company abides by the law on this point.

REASONS FOR DECISION

ISSUE 1: The workers demand the company provide payment in lieu of remaining annual leave in January of each year and that the company should retain attendance bonus and daily wages when workers take leave by using their annual leave. The company does not agree to the demand but will provide the remaining compensation for annual leave in April of each year. For the other request regarding the use of annual leave, the company does not retain the attendance bonus.

As an actual practice, Siu Quinh Company provides payment in lieu of remaining annual leave to workers in April every year. But in this case, the workers demand the company to change the time to January.

In this case the Arbitration Council finds that the central issue relates to the payment in lieu of annual leave and the bonus. The Arbitration Council will consider this as follows:

Payment in lieu of annual leave

The worker in Siu Quinh factory demanded the company pay them their annual leave in early January each year. In this case, the Arbitration Council found that Siu Quinh

Company replaces workers' annual leave which remains from the previous year with a cash payment.

Paragraph 1 of Article 166 of the Labour Law states that, "Unless there are more favorable provisions in collective agreements or individual labor contracts, all workers are entitled to paid annual leave to be given by the employer at the rate of one and a half work days of paid leave per month of continuous service."

Paragraph 2 of Article 167 provides, "If the contract is terminated or expires before the worker has acquired the right to use his paid-leave, an indemnity calculated on the basis of Article 166 above is granted to the worker."

Paragraph 3 of Article 167 adds, "Apart from this, any collective agreement providing compensation in place of paid leave, as well as any agreement renouncing or waiving the right to paid annual leave, shall be null and void."

Article 13 of the Labour Law provides "The provisions of this law are of the nature of public order, excepting derogations provided expressly. Consequently, all rules resulting from a unilateral decision, a contract or a convention that do not comply with the provisions of this law or any legal text for its enforcement, are null and void."

Based on the above mentioned articles, the Arbitration Council finds that the right to annual leave can be exchanged for a cash payment only when the contract is terminated. In this case, the company pays money in lieu of the remaining annual leave. The Arbitration Council considers such past practice of the employer and the workers' demand do not have a legal basis. Therefore, the Arbitration Council rejects the workers' demand that the company provide payment in lieu of annual leave in January.

Annual leave and attendance bonus

In this demand, the company retains a wage of US\$ 1.92 per day for workers during their annual leave. But the company does not retain the bonus. Therefore the Arbitration Council will consider only the demand regarding attendance bonus.

Point 3 of Notice 017 dated 18 July 2000 states "Workers who work regularly for the number of working days within a month will receive at least a US\$ 5 bonus per month."

Article 168 of the Labour Law states, "Before the worker departs on leave, the employer must pay him an allowance that is at least equal to the average wage, bonuses, benefits, and indemnities, including the value of benefits in kind, but excluding reimbursement for expenses, that the worker earned during the twelve months preceding the date of departure on leave. This allowance shall in no case be less than the allowance that the worker would have received had he actually worked."

Based on the content of Article 168 mentioned above, the Arbitration Council considers that where workers take annual leave, the employer must pay them their wage and their regular attendance bonus (see awards 21/05-Sinomax, issue 1; 52/05-Hoy Fu, issue 2).

ISSUE 2: Workers demand the company to provide 100 percent wage when it has no work for a short time. The company does not agree to the demand and claims that it can provide 50 percent of wages to workers when there is no work.

The worker party demands that the company provide 100 percent of wages to the workers when it has no work for the workers to do and that if it cannot do this, the company should follow the work suspension procedure found in the Labour Law, such as informing the Ministry of Labour in accordance with Article 71 of the Labour Law.

The company does not agree to the demand but it follows its policy regarding workers' wage in the event it has no work for workers to do, i.e., to provide 50 percent of the main wage to workers.

The Arbitration Council finds that Siu Quinh Company has suspended workers for short periods of time from one day to two or three days because the company has no work for them to do. Generally, workers who are affected by this short time suspension are in a group or a section but not the whole factory.

The Arbitration Council must determine if the workers are entitled to a full 100 percent of their wages or only a part of those wages during short term work suspensions.

Point 11 of Article 71 of the Labour Law states, "The labour contract shall be suspended when the enterprise faces a serious economic or material difficulty or any particularly unusual difficulty, which leads to a suspension of the enterprise operation. This suspension shall not exceed two months and shall be under the control of the Labor Inspector..."

In this case, the Arbitration Council finds that the suspension of work or reduction of work of sections or groups caused by the economic concerns of the company is within the scope of Article 71.

Paragraph 1 of Article 72 states, "The suspension of a labor contract affects only the main obligations of the contract, namely, 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 providing 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 considers that paragraph 1 provides that the workers are released from their obligation of working for the employer and the employer is released from their obligation to pay the workers during the time of work suspension. However, the employer is not released from the obligation to pay the workers unless the administrative obligation as stated in Article 71 is fulfilled.

In this case, the Arbitration Council considers that the last sentence of paragraph 11 of Article 71 which states that "This suspension shall not exceed two months and be under

the control of the Labor Inspector“means that the employer has to follow the obligation of prior notification and receive permission from the Labour Inspector in order to have a legal work suspension. This interpretation is consistent with the decisions of the Arbitration Council in previous cases (see award 72/05-North Gaiety, issue 1 and 22/05-Ocean, issue 2).

In this case, in the hearing the company admits that so far the company has not notified or asked for permission from the Labour Inspector regarding the suspension of a group or section of workers and only pays 50 percent of the main wages to workers when they have no work to do.

Therefore, the Arbitration Council considers that such practice of Siu Quinh Company in the past as not having followed its obligations as stated in paragraph 11 of Article 71 and such failure requires the employer to pay 100 percent wages to the workers (see award 60/06-New Max Garment, issue 2).

ISSUE 3: The workers demand that the company retain attendance bonuses when workers are absent for three days. The company does not agree to meet the demand but follows the Labour Law.

In the hearing, the worker party mentioned that the demand refers to absences with permission stated in the Labour Law. The Arbitration Council finds that the type of leave found in the Labour Law includes special leave. However, the Arbitration Council does not find that this demand clearly specifies which type of leave this absence with permission is under. Nonetheless, the Arbitration Council understands that the workers' claim in the hearing regarding this point refers to all types of leave the law allows except annual leave (because this point is raised in issue 1) and unpaid leave.

Point 3 of Notification 017 states, “Workers who work regularly for the number of working days within a month will receive at least a US\$ 5 bonus per month.”

However, this Notification fails to address what happens when workers are absent with permission from the employer.

The Arbitration Council finds that in prior cases regarding the attendance bonus, workers who were absent with permission from the employer were still entitled to attendance bonuses in proportion to the number of days they came to work (see award 52/05-Hoy Fu, issue 2).

In those cases, the Arbitration Council determined that the “*attendance bonus*” is an incentive provided to workers who come to work regularly for the entire month and are not absent without permission. However, the principle of providing bonuses as stated in Notification No. 017 is not meant to impose sanctions on workers who are absent with permission from the employer. It is unfair to workers to lose the entire US\$ 5 because they exercised their legal right [to leave with permission] in that month. On the other hand, if the employer is required to pay an attendance bonus to workers who are absent, it is also unfair

to the employer because the employer loses the profit of the period that the workers are taking leave. This is why in previous cases the Arbitration Council decided that for workers who were absent from work with proper permission from the employer, the total amount of their wages should not be deducted but that they should receive a bonus in proportion to the number of days they came to work within that month (see award 52/05-Hoy Fu).

However, the Arbitration Council finds that in this case the worker party demands the company to provide the full US\$ 5 when workers take leave with permission for three days. The demand in this case is different from previous cases on the point that the Arbitration Council in previous cases generally considered the contents of the workers' demand and emphasized in its decision that if the employer agreed to give permission to a worker, that worker should not lose the entire (100 percent) bonus because he or she was permitted to leave. In contrast, in this case, the workers demand that they should keep 100 percent of the bonus. This demand is above what the law provides. Thus this demand is an interests dispute.

In previous cases, the Arbitration Council has determined that, generally for interests disputes, the union that is the party to the dispute must have most representative status. Most representative status provides a union with the legal ability to come before the Arbitration Council for resolution [of their dispute]. In order to receive the most representative status, according to Article 277 of the Labour Law 1997, the union has to register and fulfill other requirements stated in the Article.

The Arbitration Council finds that the Khmer Youth Trade Union at Siu Quinh Factory does not have most representative status yet. Thus this union does not have the legal right to make a CBA on behalf of the workers in the whole factory (see Article 96, paragraph 2B and Prakas 305, Article 9, paragraph 1). This right belongs to registered unions with the [majority of the workers as] members who have fulfilled other criterions as well, as stated in Article 277 of the Labour Law. Therefore, in order to be consistent with previous cases, the Arbitration Council decides that this union does not have the legal capacity to represent the workers in order to resolve a dispute regarding the collective interests of all workers in the company.

Thus the Arbitration Council declines to consider this demand by the workers.

ISSUE 4 The workers demand the company to retain attendance bonus for those workers who come to work fifteen minutes late. The company does not agree to the demand but follows the past practice.

In past practice, the company allowed workers to be 5 minutes late without making a deduction from the regular attendance bonus.

In this case, the workers demand the company to retain the regular attendance bonus when they are 15 minutes late to work. The company does not agree to the demand by

workers claiming that [“regular attendance”] refers to both the working days and the working hours.

However, the Arbitration Council does not find this issue addressed [expressly] in Notification 017 but only generally [that in order for] the work “to be punctual” means coming to work according to the number of days determined. Therefore, the Arbitration Council views the workers’ demand as beyond what is provided by the Law. Thus this demand has the nature of an interests dispute.

For the same reasons in the above mentioned issue 3, the Arbitration Council declines to consider the workers’ demand.

ISSUE 5: The workers demand the company to retain wages and attendance bonuses for pregnant women [who leave work for pregnancy checks]. The company does not agree to the demand. The company gives permission to leave but does not retain the main wage and the bonus.

In this case, the Khmer Youth Trade Union at Siu Quinh Factory requests the company to allow one day per month in addition to other leave as stated in the Labour Law for pregnant women to have pregnancy checks without deducting their wages and bonuses. In the hearing, the company stated that its policy is if a woman takes a half-day leave for a pregnancy check, the company will not deduct her main wage but it will deduct her bonus.

In the hearing, the workers clarify that the leave they are demanding would be a leave in addition to the other types of leave already stated in the Labour Law and would like to call it “Pregnancy Check Leave”.

The Arbitration Council considers that besides weekly leave, annual leave, special leave, and sick leave, the Labour Law as well as other legal provisions do not state whether the employer has an obligation to provide additional leave to pregnant women to have pregnancy checks. Thus this is a demand which is beyond what is provided by the Law. Thus this demand has the nature of an interests dispute.

For the same reasons in the above mentioned issues 3 and 4, the Arbitration Council declines to consider the workers’ demand.

ISSUE 6: The workers demand the company allow women workers to take 90 days [maternity] leave that does not include Sundays and holidays. The company does not agree to the demand but follows the Labour Law.

The worker party demands that the company should not count the national holidays and Sundays in the duration of the 90 day maternity leave.

As a practice, Siu Quinh Company counts the national holidays and Sundays into the 90 days of maternity leave.

Article 182 of the Labour Law states, “In all enterprises covered by *Article 1* of this law, women shall be entitled to a maternity leave of ninety days. “

The Arbitration Council finds that Article 182 provides the duration of 90 days for women workers as maternity leave in order to provide the women enough time to care for the health and healing of themselves and their babies. However, this Article does not state explicitly if national holidays and Sundays should be counted in the duration of 90 days. The Arbitration Council does not find any Prakas or any guideline by the Ministry of Labour and Vocational Training to guide or clarify this issue...

However, the Arbitration Council finds that the claimant party (the worker party) must provide a logical reason to support the demand (for example, the health of the mother and baby will be worsened if national holidays and Sundays are included in the duration of 90 days). In the hearing, however, the worker party did not provide any logical reason to support the claim. Moreover, the Arbitration Council does not see any reason to support the claim of the worker party. On the other hand, the Arbitration Council determines that this claim is beyond the benefit provided by the law; thus, this demand is an interests dispute.

For the same reasons in the above mentioned issues 3, 4, and 5 the Arbitration Council declines to consider the workers’ demand.

ISSUE 7: Workers demand the company to provide one hour for breast-feeding for women who have delivered babies. The company does not agree because it provides milk to workers.

The worker party demands the company provide one hour a day for breast-feeding for women who have delivered babies and mentions that providing time for breast-feeding and providing a day care center are two different things, and that women workers should have time for breast-feeding.

The company does not agree because it has provided milk to workers. If the workers insist that the company provides one hour for breast-feeding, the company will build a day care center and provide the demanded one hour for breast-feeding according to the Labour Law.

The Arbitration Council finds that the Company provides milk for children (medium sized tins) instead of providing a day care center in conformity with a conciliated agreement with NIFTUC, dated 28 April 2005.

Point 6 of the conciliated agreement states, “for women who have delivered babies, the company requests to provide milk for the children (medium sized tins) in lieu of building a daycare center. The provision of milk is for 15 months within the following limitations:

- Women workers who have been working for the company less than one year, the company provides 1 tin of milk

- Women workers who have been working for the company from one year to two years, the company provides 2 tins of milk

- Women workers who have been working for the company for 3 years and up, the company provides 3 tins of milk

Because the company has followed point 6 of the agreement mentioned above, the Company believes that it need not provide a day care center and one hour for breast-feeding. To the contrary, in the hearing, the company mentioned that if the workers demand the company provide one hour per day for breastfeeding, the company will build a daycare center and provide one hour each day for breast-feeding instead, which is in accordance with the Labour Law on this point.

Article 184 of the Labour Law states, “For one year from the date of child delivery, mothers who breast-feed their children are entitled to one hour per day during working hours to breast-feed their children. This hour may be divided into two periods of thirty minutes each, one during the morning shift and the other during the afternoon shift. The exact time of breast-feeding is to be agreed upon between the mother and the employer. If there is no agreement, the periods shall be at the midpoint of each work shift”.

Article 185 of the Labour Law states, “Breaks for breast-feeding are separate from and shall not be deducted from normal breaks provided for in the labor law, in internal regulations of the establishment, in collective labor agreements, or in local custom for which other workers in the same category enjoy them. “

Based on the content of Article 184 and 185 mentioned above, “the provision of one hour per day for breast-feeding of one’s own baby within working hours” is a right women workers who have delivered babies are entitled to and is an obligation that has to be fulfilled by the employer. The Arbitration Council considers the demand for this right by the worker party reasonable. In the hearing, the employer party also mentions that it agrees to provide this requested time during working hours to workers but it will discontinue providing the milk it provided under the past conciliated agreement.

Article 186 of the Labour Law states, “Managers of enterprises employing a minimum of one hundred women or girls shall set up, within their establishments or nearby, a nursing room and a crèche (day care center). If the company is not able to set up a crèche on its premises for children over eighteen months of age, female workers may place their children in any crèche and the charges shall be paid by the employer. “

The request for a day care center and breast-feeding room is not mentioned in the non-conciliation report from the Department of Labour Disputes. However, in the hearing, the company party mentions in its claim that as compensation for not providing milk anymore and to properly follow the Labour Law, the company has prepared itself to provide a day care center and breast-feeding room.

In the hearing the company party agreed to the two points of the demand raised by the worker party and agreed to fulfill its obligation stated in Articles 184, 185 and 186 in the future.

Nonetheless, the company insists that if the changes mentioned above are enacted, it will not provide milk any longer once the day care center is built. On the other hand, the worker party considers that the provision of time for breast-feeding and the provision of a day care center are different things, and therefore the women workers have a right to receive time for breast-feeding [in addition to the daycare center]. The Arbitration Council has to consider Article 13 of the Labour Law which states, "The provisions of this law are of the nature of public order, excepting derogations provided expressly. Consequently, all rules resulting from a unilateral decision, a contract or a convention that do not comply with the provisions of this law or any legal text for its enforcement, are null and void.

Except for the provisions of this law that cannot be derogated in any way, the nature of the public order of this law is not obstructive to the granting of benefits or rights superior to the benefits and the rights defined in this law, granted workers by a unilateral decision of an employer or a group of employers, by an employment contract, by a collective convention or agreement, or by an arbitral decision".

The Arbitration Council finds that the provision of milk is compensation for the provision of time for breast-feeding and day care center; thus it is within the meaning of "*better benefits or rights provided by the employer*" as stated in the second paragraph of Article 13 mentioned above. On the other hand, as long as the employer can fulfill its obligations listed in Articles 184, 185 and 186, the company does not need to follow the conditions set in the conciliation agreement dated 28 April 2005 because the provision of Articles 184, 185 and 186 are of the nature of public order as stated in paragraph 1, Article 13.

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

DECISION

1. Reject the workers' demand that the company pay money to compensate the remaining annual leave in January every year. However, order the company to pay the full regular attendance bonus when workers use their annual leave.
2. Order the company to pay 100 percent main wages when the company has no work for a short period if the company fails to comply with the obligation stated in Article 71 of the Labour Law regarding suspension of work.
3. Decline to consider the workers' demand that the company retain the full attendance bonus when absent from work with permission from the employer for 3 days.

4. Decline to consider the workers' demand that the company retain the attendance bonus for workers who come 15 minutes late to work.
5. Decline to consider the workers' demand that the company retain the regular attendance bonus for pregnant women who use one day leave per month for pregnancy checks.
6. Decline to consider the workers' demand that the company allow women to take 90 days [maternity] leave, excluding Sundays and holidays.
7. Order the company to allow one hour per day for breast-feeding and to provide a breast-feeding room and day care center for women workers who have delivered babies,

Type of Award: Non binding award

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: **Chhiv Phyrum**

Signature:

Arbitrator chosen by the worker party:

Name: **Ven Pov**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Tan Try**

Signature: