



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាគណ្តារ

THE ARBITRATION COUNCIL

Case number and name: 107/08-Seratex

Date of Award: 11 September 2008

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **Ing Sothy**

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

Chair Arbitrator (chosen by the two Arbitrators): **Pen Bunchhea**

DISPUTING PARTIES

Employer party:

Name: **Seratex Co., Ltd.**

Address: Chamkar Euvleuk Village, Kakab commune, Dangkor district, Phnom Penh.

Telephone: 012 404 134 or 023 890 715 Fax: 023 890 716

Representative:

- | | |
|----------------------|---------------------------------|
| 1. Mr. Kong Kok | General Management staff |
| 2. Ms. Chuon Chanthy | Assistant to general management |

Worker party:

Name: **Local Union of Free Trade Union of Workers of Kingdom of Cambodia (FTUWKC) at Seratex Garment Factory**

Address: #26A, St. 336, Sangkat Boeung Keng Kang 3, Khan Chamkamorn, Phnom Penh

Telephone: 012 263 543 or 012 577 921 Fax: N/A

Representative:

- | | |
|---------------------|---|
| 1. Mr. Man Senghak | General secretary of FTUWKC (Federation) |
| 2. Mr. Ou Sophat | Officer of FTUWKC (Federation) |
| 3. Mr. Hem Chanthol | President of local union of FTUWKC at Seratex |

4. Mr. Preap Bora

Vice-president of local union of FTUWKC at Seratex

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- The workers demand that the company stop requiring them to request a permission letter to leave at 4:00 p.m. if they do not volunteer to do overtime work. The company asserts that, while it will continue requiring the letter, overtime work remains voluntary.
- 2- Mr. Preap Bora, the vice-president of the local union of FTUWKC, demands that the company reinstate him to his former position. The company states that it cannot reinstate Mr. Preap Bora, because it assigned him to a new location, and he did not abide by the new assignment. Thus, the Company considered that he abandoned his job.
- 3- The workers demand that the company pay additional 500 riels per hour for the meal allowance. The company states that it follows the Notification No 017 SKBY, dated 18 July 2000.
- 4- The workers demand that the company dismiss Mr. Kong Kok, chief of administration of the company. The company can not terminate Mr. Kong Kok as he has not engaged in misconduct, as the leaders of factory's local union accuse.
- 5- The workers demand that the company maintain their attendance bonus if they are absent from work for three days. The company states that it follows the Notification No 017 SKBY, dated July18, 2000.

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. 076 dated 10 May 2007 (Fifth 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. 888 KB/AK/VK, dated 15 August 2008 was submitted to the Secretariat of the Arbitration Council on 15 August 2008.

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: 26 August 2008 from 2:00 p.m. to 5:30 p.m.

Procedural issues:

On 23 July 2008 the Department of Labour Dispute received a complaint by the local union of FTUWKC at Seratex Company, dated 22 July 2008, regarding demand for the company to improve some working conditions. After receiving the case, the Department of Labour Dispute assigned an expert officer to settle this dispute. The final conciliation was held on 12 August 2008, resolving in five of 10 non-conciliation issues. The five remaining non-conciliation issues were referred to the Arbitration Council on 15 August 2008 through a non-conciliation report on collective labour dispute resolution No. 888 KB/AK/VK, dated 15 August 2008.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer party and the worker party to the 26 August 2008 at 2:00 p.m. hearing regarding the 5 non-conciliation issues. Both parties were present at the arbitral hearing. The Arbitration Council tried to ask for information relevant to this case and attempted to continue the conciliation process. The panel conciliated issue 4. Thus, the Arbitration Council will consider and settle issues 1, 2, 3 and 5 based on evidence and fact finding as follows:

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party:

1. Authorization letter to Mr. Kong Kok, the company's general management staff, to settle all document relevant to the dispute, dated 23 August 2008.
2. Authorization letter to Ms. Chuon Channy, the company's assistant to general management, to settle all document relevant to the dispute, dated 23 August 2008.
3. Certificate of commercial registration of Seratex Company, dated 31 January 2007.
4. Internal Work Rules of Seratex Company, dated 18 May 2007.
5. Letter to terminate Mr. Preap Bora, dated 22 July 2008 (with signature of Mr. Ven Daravuth to acknowledge receipt of the letter dated 22 July 2008).
6. Letter to request for suspension of employment of Mr. Preap Bora, dated 22 July 2008.
7. Letter regarding transfer of position of Mr. Preap Bora, dated 21 July 2008.
8. Letter regarding transfer of position of Mr. Preap Bora, dated 18 July 2008.
9. Letter regarding transfer of position of Mr. Preap Bora, dated 16 July 2008.

10. Minutes of meeting regarding transfer of position of Mr. Preap Bora, dated 22 July 2008.
11. Employment contract of regular worker of Mr. Preap Bora made in the company, dated 9 October 2007.

Provided by the worker party:

1. Certificate of union registration of the local union of FTUWKC at Seratex Garment Factory No. 1467 KB/VK, dated 13 June 2008 and No. 154 KB, dated 13 June. It is noticed that Mr. Hem Chanthon is the president of the union, **Mr. Preap Bora is the vice-president of the union** and Mr. Va Piseth is the secretary of the union.
2. Grievance letter by Mr. Preap Bora to the Chief of Ka Kap police station to complain that a person named Kong Kok, chief of the company's administration, took his picture for bad intention, dated 18 July 2008.
3. Conciliation letter, dated 10 July 2008.
4. Letter by FTUWKC No. 022/08 to Mr. Koy Tepdaravuth, chief of the Department of Labour Dispute, regarding a complaint against the director of Seratex Garment Factory regarding its failure to implement the Labour Law and its union discrimination, dated 22 July 2008.

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

1. Report No. 888 KB/AK/VK, dated 15 August 2008 on the collective labour dispute settlement at Seratex Company.
2. Minutes of the collective labour dispute resolution at Seratex Company, dated 12 August 2008.

Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 533 KB/AK/VK/LKA dated 19 August 2008 to invite the worker party to attend the hearing.
2. Invitation No. 532 KB/AK/VK/LKA dated 19 August 2008 to invite the employer party to attend the hearing.

FACTS

- Having reviewed the report of collective dispute conciliation;
- Having listened to the statements by the worker party and the employer party;
- Having examined additional documents.

The Arbitration Council finds that:

- Seratex Company employs approximately 960 workers.
- Local union of FTUWKC is the claimant in this case. The union has 250 members and does not have most representative status.

Issue 1: The workers demand that the company should eliminate the practice that requires them to request for permission letter to leave at 4:00 p.m. if they do not volunteer to do overtime work

- Generally, workers' normal working hours finish at 4:00 p.m.
- The company has different practices for workers leaving the factory compound depending upon whether a given factory section has overtime work. Workers in sections where there is not overtime work can go home at 4:00 p.m. without the requirement to seek a company permission letter to leave at 4:00 p.m. On the other hand, in sections where there is overtime work, the company makes a list of the names of workers who volunteer to work overtime, which the workers must sign. The company requires those workers who do not volunteer to work overtime to request a permission letter to leave at 4:00 p.m. The company argues that it set this condition in order to facilitate the company's efforts to control security, and to maintain order and safety for the workers.
- The workers argue that, as the company implements overtime work based on the voluntary principle, those who do not sign up for overtime work do not volunteer to work overtime. Thus, the company should not require them to request for permission or fill in any form when they leave the factory at 4:00 p.m.
- In the hearing, the company stated that, because overtime work is voluntary, the workers would not need to obtain a permission letter to leave at 4:00 p.m. Although the company practiced this the past, it would now issue a card for workers who did not volunteer to work overtime and did not sign up, in order to assist the company's security personnel's efforts to maintain order and security. The workers rejected this proposal because, they argue, overtime work is supposed to be voluntary. Thus, workers who do not want to do overtime work should not need to follow any procedure other than leaving at 4:00 p.m. (This is not a legal argument but a request in the conciliation. Thus, it should not be included in the findings of fact section).

Issue 2: The demand for the company to reinstate Mr. Preap Bora, vice-president of the local union of FTUWKC, to his former position

- Mr. Preap Bora was the head of sewing group in quality control section who was in charge of 6 groups of workers.
- On 16 July 2008, Mr. Kong Kok, general manager of the company, told Mr. Preap Bora to go upstairs because the company's director wanted to meet with him. When Mr. Preap Bora met the company's director, he was told that the company had transferred him to the packing section, because the company was changing its structure to ensure quality control in packing section. The company issued a letter to

transfer him, which endorsed and sealed by the company's signature, and handed to Mr. Preap Bora for his agreement. However, Mr. Preap Bora did not consent to the assignment and requested for one day of time from the company. The company agreed to the request. However, he did not go to work in the new place as assigned by the company.

- On 18 July 2008, the company notified Mr. Preap Bora again to inform him that he should go to work in packing section. He refused again, noting that although work in the packing section was easier than work in the sewing section, he had previous altercations with, Thon Rattana, who worked in the packing section, as mentioned in the conciliation letter dated 10 July 2008.
- On 22 July 2008, the company had a meeting with the union to give the final instruction regarding the transfer of Mr. Preap Bora, who refused to go to his new assignment, the company would follow the law and the company's Internal Work Rules. Mr. Preap Bora did not agree to go, as mentioned in the minutes of the meeting dated 22 July 2008 regarding transfer of Mr. Preap Bora's work.
- On that same day on 22 July 2008, the company issued a letter No. 080722 SRT regarding temporary suspension of employment of Mr. Preap Bora.
- In the hearing, the company claimed that, in transferring Mr. Preap Bora's work station, the company maintained the position, wages and benefits he used to receive. Mr. Preap Bora does not object to the company's claim.
- In the hearing, the company claimed that it had not terminated Mr. Preap Bora. The company is waiting for decision of the Ministry of Labour and Vocational Training because the company has already submitted a letter to suspend Mr. Preap Bora's employment temporarily. Thus, the company will follow the Ministry's decision.
- The company submitted the letter requesting Mr. Preap Bora's termination to the Department of Labour Dispute on 22 July 2008 (with signature of Mr. Ven Daravuth to acknowledge receipt of the letter dated 22 July 2008).
- By the hearing date of 26 August 2008, neither party had received the response from the chief of the Department of Labour Dispute regarding whether the termination of Mr. Preap Bora was approved.

Issue 3: The workers demand that the company pay additional 500 riels per hour on the meal allowance

The company practiced voluntary overtime work as follows:

- Any worker who volunteers to do overtime work from 4:00 p.m. to 6:00 p.m. will be provided 1,000 riels meal allowance, as recorded in the payroll list.
- Any worker who volunteers to continue the overtime from 6:30 p.m. to 8:30 p.m. will be provided an additional 1,000 riels, which is handed immediately.

- The workers add that they request that the company provides 500 riel in addition to the above provisions.
- Moreover, the workers demand that the company should provide 500 riels for those workers who volunteer to do overtime work between 8:30 p.m. to 9:30 p.m.
- The company always buys food and drinks for those workers who work overtime from 8:30 p.m. until sometime after 9:30 p.m. Workers do not often stay through the late evening.
- The company adds that it follows Notification 017 SKBY, dated 18 July 2000. Thus, it cannot provide the overtime meal allowance in the amount requested by the workers.

Issue 5: The workers demand that the company maintain their attendance bonus when they take leave for personal commitments (considered neither annual leave nor special leave) with permission from the company for less than three days. The company can deduct their attendance bonus if the leave lasts longer than three days.

- The workers explained in the hearing that, when they request leave for personal commitments (other than annual leave or special leave) such as to attend a relative's wedding, or when their parents are sick, or when they attend ceremonial functions, the employer deducts the entire bonus even though is only one day or half a day. The employer did not object to this claim.
- The workers demand that the company maintain their attendance bonus because the leave is permitted by the company.
- The company states that it follows the Notification 017 SKBY, dated 18 July 2000, which means that attendance bonus is provided only to those workers who come to work regularly. If they are absent with, or without, permission the company would deduct the whole attendance bonus.

REASONS FOR DECISION

Issue 1: The workers demand that the company should eliminate the practice that requires them to request a permission letter to leave at 4:00 p.m. if they do not volunteer to do overtime work

The company practices overtime work based on the voluntary principle. The company prepares a list of names of workers who volunteer to work overtime for them to sign on. If they do not sign, it means that they do not volunteer to do overtime work so they will need to obtain a permission letter to leave at 4:00 p.m. from the company. The worker party, on the other hand, claims that because overtime work is voluntary, the company should not require the workers to ask for a permission letter to leave at 4:00 p.m.

Therefore, the Arbitration Council will consider whether the company's requirement that workers not volunteering for overtime work must request a permission letter to leave at 4:00 p.m., affects the principle of voluntary overtime work.

Clause 4 of Prakas 80 SKBY, dated 1 March 1999, provided that *"An arrangement for overtime work shall be executed on a voluntary basis, which means the owner or director of an establishment/enterprise shall not coerce or discipline the workers who do not volunteer to work overtime."*

The contents of this Article means that the employer should not punish workers who do not volunteer to work overtime. In this case, the company requires that those workers who do not volunteer to do overtime work request a permission letter to leave at 4:00 p.m. from the company when their head of groups ask the workers to sign on the list of workers who volunteer to work overtime. The company claims that this practice is to facilitate the security guards' role in maintaining order and safety for the workers. This is an additional management tool to motivate the workers who do not volunteer to work overtime, because generally the company allows workers to leave at 4:00 p.m. However, the company does not indicate the advantages of the requirement that workers must ask permission to leave at 4:00 p.m..

Generally, the Arbitration Council considers that the company's requirement that workers obtain permission to leave work at 4:00 p.m. when they do not work overtime creates another unnecessary burden or employment obligation, which, affects the principle of voluntary overtime work.

Therefore, the Arbitration Council decides to order the company to allow workers who do not volunteer to work overtime to leave at 4:00 p.m. like other general workers without having to obtain permission letter to leave at four or having any other unnecessary obligations.

Issue 2: The demand for the company to reinstate Mr. Preap Bora, vice-president of the local union of FTUWKC, to his former position

In order to consider whether Mr. Preap Bora is entitled to reinstatement, the Arbitration Council will consider whether the employer has followed the law in terminating Mr. Preap Bora, a union vice-president.

Article 293 of the Labour Law states, *"The dismissal of a shop steward or a candidate for shop steward can take place only after authorization from the Labour Inspector..."*

The Labour Inspector, who has been referred a request to authorise the dismissal of a worker covered by the present article, shall give his decision to the employer and to the worker in question... within one month at the latest upon receipt of the case...

If there is no notification of the Labour Inspector's decision within the allotted time... the case ... are considered to be rejected."

This Article is also applicable to union leaders as stated in Clause 4 of Prakas 305 SKBY, dated 22 November 2001 by the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation that *“... this protection will be granted to 3 union leaders pursuant to the conditions set out in Articles 282 and 293 of the Labour Law.”*

According to Article 293 and the Prakas above, the Arbitration Council considers that, in all cases concerning the termination of protected workers, the employer needs to have permission from the Labour Inspector and the Ministry in Charge of Labour. This means that the Labour Inspector who has been asked to authorize the dismissal of a worker as mentioned in this Article should, make a decision concerning within one month of receiving the case.

In previous cases, the Arbitration Council decided that, in relation to the termination of a union leader pending authorization by Labour Inspector and the Ministry of Labour and Vocational Training, the Arbitration Council cannot make a consideration on the merits of the issue in dispute (See Arbitral Awards 79/06-Woosu, issue 1; 74/08-Generation, issue 1).

In this case, the Arbitration Council considers that the company can terminate Mr. Preap Bora, a vice-president of the local union at the factory, only after it receives approval from the Labour Inspector and the Ministry in Charge of Labour upon request by the company. The decision of the Labour Inspector and the Ministry in Charge of Labour regarding termination of Mr. Preap Bora is in accordance with the legal procedure required by the Labour Law and will determine whether the termination of Mr. Preap Bora is consistent with the Labour Law. In this case, the company submitted the request to terminate vice-president of the local union of FTUWKC, Mr. Preap Bora, at the factory to the chief of the Department of Labour Dispute on 22 July 2008. It has been more than 30 days from 22 July 2008 to the date of this arbitral awards.

Thus, based on the contents of Article 293 of the Labour Law above, the Arbitration Council considers that the Department of Labour Dispute rejected the request for termination of Mr. Preap Bora on 22 August 2008. Thus, the company should have a period of 2 months to make an appeal to the Ministry of Labour and Vocational Training started from 22 August 2008.

Based on the above findings of fact, the company suspended Mr. Preap Bora's employment contract on 22 July 2008.

Article 295 of the Labour Law states, *“In the case of serious misconduct, the manager of enterprise can render the decision to instantly suspend the party in question pending the Labour Inspector's decision. If the Labour Inspector turns down the dismissal, the suspension is annulled and its effects are cancelled lawfully.”*

According to Article 295 above, the company has a right to suspend the employment of Mr. Preap Bora pending the decision from the Labour Inspector. The same Article

mentions that if the Labour Inspector does not approve the termination, the suspension of employment contract is annulled. Thus, based on the above interpretation, the Labour Inspector has rejected the request to terminate Mr. Preap Bora. Therefore, the Arbitration Council decides to order the company to reinstate Mr. Preap Bora from the date that this Arbitral Award enters into effect, in order to continue the appeal procedure to the Ministry of Labour and Vocational Training.

Issue 3: The workers demand that the company pay additional 500 riels per hour on the meal allowance

Clause 4 of Notification 017 SKBY, dated 18 July 2000 by the Ministry of Labour states, *“Workers who voluntarily work overtime upon request by the employer shall receive a meal allowance of 1,000 riels per day or receive one free meal.”* It is clear from the contents of the Notification that overtime work meal allowance is 1,000 riels based on the “daily” basis regardless of the number of hours.

In this case, the employer provides 1,000 riels to workers who volunteer to work overtime from 4:00 p.m. to 6:00 p.m. and additional 1,000 riels for work from 6:30 p.m. to 8:30 p.m. The Arbitration Council found that the company has followed Notification 017 SKBY, dated 18 July 2000 regarding provision of meal allowance for workers who volunteer to work overtime.

Therefore, the Arbitration Council considers that the workers’ demand above is related to interests, which is above what is provided by the Law. This is an interests dispute.

Generally, the Arbitration Council can settle an interests dispute only when the union that brings the dispute has the most representative status. (See Arbitral Awards 81/04-Evergreen, issue 4 and 98/04-Great Union, issue 3).

In this case, the local union of FTUWKC does not have the most representative status in the factory. Thus, the Arbitration Council declines to consider this issue.

Issue 5: The workers demand that the company maintain their attendance bonus when they take leave for personal commitments (which are not annual leave or special leave) with permission from the company for less than three days. The company can deduct their attendance bonus if the leave is longer than three days.

Point 3 of Notification 745 KKBV, dated 23 October 2006 states, *“Benefits workers used to receive from Notification No. 017 SKBY dated 18 July 2000 on points 3, 4, 5 and 6 shall be retained.”*

Point 3 of Notification 017, dated 18 July 2000, which states, *“Workers who come to work regularly on regular working days of a month shall receive a bonus of at least \$ 5.00 per month.”*

In this case, the employer party states that the company follows Notification 017 SKBY, dated 18 July 2000 above and deducts the whole US\$ 5 attendance bonus if they take leave with or without permission.

The Arbitration Council observes that the US\$ 5 attendance bonus mentioned in Notification 017 SKBY, dated 18 July 2008, means that the bonus will be provided only to workers who have come to work regularly. The Notification does not state clearly the procedure when workers are absent with proper permission from the employer. In this case, the Arbitration Council agrees with the above interpretation that this Notification does not clearly state the number of working days to be considered as regular for workers to receive the attendance bonus. However, Article 103 of the Labour Law states, "*Wage includes, in particular:*

- *actual wage or remuneration;*
- *overtime payments;*
- *commissions;*
- *bonuses and indemnities...*"

Thus, according to Article 103 of the Labour Law, bonus is a part of wages.

Article 71, paragraph 1, point 6, of the Labour Law states, "*The labour contract shall be suspended under the following reasons: absence of the worker authorised by the employer, based on laws, collective agreements, or individual agreements*"

Article 72, paragraph 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.*"

Based on Article 71, paragraph 1, point 6 and Article 72, paragraph 6, of the Labour Law. the Arbitration Council considers that the workers' employment contract is suspended when they are absent with permission from the employer. Thus, the employer is not required to provide a wage, and the workers are not required to work for the employer, because the leave is for normal personal commitment, not annual leave, special leave, or sick leave, and there is no contrary provision requiring the employer to pay the worker. This means that the employer is not required to pay the workers on the days they are absent with permission from the employer. However, on the days the workers are not absent (for example, on the days the workers come to work) the employer needs to pay the workers. Hence, according to the interpretation of Article 103 of the Labour Law above that bonus is a part o wage, the Arbitration Council considers that the employer is not required to pay attendance bonus to the workers when they are absent with permission from the employer. This means that the employer can deduct attendance bonus in proportion to the number of days the workers are absent with permission from the employer.

In this case, the workers demand that the company should maintain the US\$ 5 attendance bonus for a leave of three days without permission from the employer. Based on the interpretation above, the Arbitration Council considers that the demand is not valid because when the workers are absent from work, they do not work for the employer. Thus, the workers are not entitled to the full attendance bonus.

In previous cases, the Arbitration Council orders the employer to deduct attendance bonus in proportion to the number of days of the leave permitted by the employer (*See Arbitral Awards 57/07-Seratex, issue 3; 106/07-M & V 3, issue 2*).

In case 54/08-Zhong Yov, issue 2, the Arbitration Council orders the employer to deduct the attendance bonus in proportion to the number of days the employer permits the workers to take leave, although the workers demand that the company maintain the US\$ 5 attendance bonus for the leave with permission for three days.

In this case, the arbitration Council agrees with the interpretation of the Arbitration Council in previous cases.

Therefore, the Arbitration Council decides to reject the workers' demand for the employer to maintain the US\$ 5 attendance bonus when they take leave with permission from the company for three days. However, the employer can deduct the attendance bonus in proportion to the number of days the workers are absent with permission from the employer.

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

DECISION AND ORDER

Issue 1:

- Order the employer to allow workers who do not volunteer to work overtime to leave at 4:00 p.m. without having to obtain permission letter.

Issue 2:

- Order the company to reinstate Mr. Preap Bora when this Arbitral Award enters into effect and back pay him until the day the company reinstates him in order to make an appeal to the Ministry of Labour and Vocational Training.

Issue 3:

- Decline to consider the workers' demand for the company to provide additional 500 riels for overtime work meal allowance.

Issue 5:

- Reject the workers' demand for the employer to maintain the US\$ 5 attendance bonus when they take leave for personal commitment with permission from the company for less than three days.

- Order the company to provide attendance bonus in proportion to the number of days the workers worked if they take leave with permission.

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 to the Minister of Labour through the Secretariat of the Arbitration Council within this time period.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Ing Sothy**

Signature:

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature:

Annex to Arbitral Award 107/08-Seratex

Dissenting Opinion by Arb. Ing Sothy

According to Clause 37 of Prakas 099 SKBY, date 21 April 2004 by the Ministry of Labour and Vocational Training, in this case I, Arb. Ing Sothy, would like to make a dissenting opinion to the decision by the Arbitration Panel on issue 5, paragraph 2, in which it is ordered, *"Order the employer to provide attendance bonus in proportion to the number of days the workers worked if they take leave with permission."*

I would like to give detail of my dissenting opinion as follows:

I. Definition of terms:

1. Bonus (premium) (n.) Something provided separately addition to what one is entitled to receive, something provided due to being satisfied or to satisfy someone: to give bonus, to receive bonus. Reward, bonus, gift offered to spiritual teacher, something offered separately to spiritual teacher. (Page 970, line 12, **Chuon Nat Dictionary**).

2. Gift offered to spiritual teacher: gift offered to spiritual healer: offer gift to spiritual healer; offer the spiritual healer gift (page 463, line 2, **Chuon Nat Dictionary**).

3. primes (n.) (Dt. trav.) -sommers versees par l'employeur au salairié en sur du salaire normal, soit á titre de remboursement de frais, soit pour encourager la productivité, tenir compte de certaines difficultés particulières du travail,ou recompenser l'ancienneté. [livre, **Lexique des termes juridiques 12 éme édition Dalloz 1999 page 413**]

II. Explanation:

The term **bonus** refers to something given in order to encourage someone to perform a duty, attached with some conditions. Thus, a person is entitled to bonus only when s/he has fulfilled certain conditions or, if there is level of satisfaction of the conditions, achievement of that level.

Generally as a principle for practice in giving a **bonus**, who posses the right to give or to withheld the conditions to receive the bonus? The answer is: **the owner of the bonus**.

Thus, in the field of labour, the owner of the bonus is **the employer** while the **workers** are the ones who need to fulfill those conditions.

For example:

A/1. "Please count up to 1,000, then I will give you a prize/bonus of US\$ 100. However, you could count only up to 900 then you go to the owner of the bonus and state that you are too

tired to count to 1,000; the owner of the prize/bonus allows you to stop counting. You then make a request for the owner of the prize/bonus to divide the US\$ 100 and share it to you. Who has the rights to decide whether to divide the US\$ 100 when you are unable to count up to the condition set by the owner of the prize/bonus? The answer is **the owner of the prize/bonus**.

B/1. Anyone comes to work 8 hours/day will receive US\$ 10.

2. Anyone comes to work 6 hours/day will receive US\$ 8.

3. Anyone comes to work 4 hours/day will receive US\$ 6.

These are conditions set in three levels; thus if you fulfill one of the conditions, you are entitled to the bonus. On the other hand, if you ask for leave permission or take leave one hour a day, although with permission, have you fulfilled the condition of any level? Can you ask the owner of the prize/bonus to divide the bonus for you? This means that the division is made as follows: US\$ 10 divided by 8 and multiplied by 7 = US\$ 8.75. The answer is that you have right to make a request but the decision is of **the owner of the prize/bonus**.

III. Conclusion:

In conclusion, point 3 of Notification 017 SKBY, dated 18 July 2000, clearly states that *“Any workers who regularly work according to number of working days per month shall have a reward at least 5 US dollars per month.”* This clearly stipulates the conditions which workers need to fulfill – that they need to work on all of their scheduled work days per month in order to receive their monthly US\$ 5 attendance bonus. However, if workers are unable to fulfill these conditions, if they take leave at all during the month, they lose their entitlement to the bonus. Therefore, the workers should fulfill all the conditions properly in order to receive the bonus.

Signature of the Arbitrator

Arbitrator chosen by the employer party:

Name: **Ing Sothy**

Signature: