



**KINGDOM OF CAMBODIA**  
**NATION RELIGION KING**

**ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល**

**THE ARBITRATION COUNCIL**

**Case number and name: 108/07 – 8 Star Sportswear**

**Date of Award: 8 November 2007**

### **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: **Liv Sovanna**

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

#### **DISPUTING PARTIES**

##### **Employer party:**

Name: **8 Star Sportswear Ltd**

Address: Russei Village, Sangkat Stung Meanchey, Khan Meanchey, Phnom Penh

Telephone: 023 424 209

Fax: 023 424 205

Representatives:

1. Ms. Huor Sophea Administrative Manager;
2. Mr. Mey Sithom Compliance Officer.

##### **Worker party:**

Name: **Khmer Youth Federation Trade Union (KYFTU) and Khmer Youth Trade Union (KYTU)**

Address: Russei Village, Sangkat Stung Meanchey, Khan Meanchey, Phnom Penh

Telephone: 012 1 886 581/ 012 704 205

Fax: N/A

Representatives:

1. Mr. Sear Sorn KYFTU Conciliator;
2. Ms. But Phalla President of KYTU at 8 Star Sportswear Factory;
3. Mr. Pen Sophal KYFTU Conciliator;
4. Ms. Seng Putheary Secretary of KYTU at 8 Star Sportswear Factory.

## **ISSUES IN DISPUTE**

(In the Non-Conciliation Report)

1. The workers demanded that the company reinstate Ms. But Phalla, President of KYTU at 8 Star Sportswear. The company did not agree to reinstate Ms. But Phalla arguing that Ms. But Phalla committed serious misconduct in accordance with Article 83 of the Labour Law by extorting money from workers.
2. The workers demanded that the company comply with the agreements dated 13 June 2007 and 5 July 2007 and demanded that the company pay the union contribution fees that had not been deducted from KYTU members from June 2007 to the present equivalent to 156,000 (one hundred and fifty six thousand) riels to KYTU. The company claimed that the deduction of union contribution fees for KYTU will be applicable from 1 October 2007.
3. The workers demanded that the company provide workers [who earn] the minimum wage of US\$ 50 with an additional US\$ 5. The company representatives claimed that they could not make such a decision at the moment. They asked to convey the message to the factory owner.
4. The workers demanded that the company maintain their wage and other bonuses when workers returned to work from medical treatment with an official letter from the doctor.
5. The workers demanded that the company maintain the US\$ 8 and US\$ 7 bonus for workers who are one hour late. The company party did not agree to the demand.
6. The workers demanded that the company allow pregnant workers to leave work 15 minutes early. The company party did not agree to the demand adding that the company allows them to leave work five minutes early.
7. The workers demanded that the company send them home or provide them with 5,000 riels as a travel allowance when workers work overtime until 10:00 p.m. The company did not agree to the demand claiming that the company never asked workers to work until 10:00 p.m.
8. The workers demanded that the company give them freedom to talk on the phone. The company did not agree to the demand claiming that workers always spent a long time talking on the phone and it disrupted other workers (it may cause work-related accidents).

### **JURISDICTION OF THE ARBITRATION COUNCIL**

*The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B of the Labour 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 hearing which took place on 8 October 2007 was unsuccessful, and the non-conciliation report No. 1105 was submitted to the Secretariat of the Arbitration Council on 15 October 2007.*

#### **HEARING AND SUMMARY OF PROCEDURE**

**Place of hearing:** The Arbitration Council, Phnom Penh Centre, Building A, Sothearos Blvd., Sangkat Tonle Bassac, Khan Chamkarmon, Phnom Penh.

**Date of hearing:** 25 October 2007 (from 2:00pm to 7:00pm)

#### **Procedural issues:**

On 6 August 2007, the Department of Labour Dispute received a complaint from the KYFTU demanding the improvement of some working conditions. Having received the complaint, the Department of Labour Disputes designated its officials to conciliate the dispute. Two out of ten issues were conciliated in the last conciliation session held on 20 September 2007. The eight remaining non-conciliated issues were submitted to the Arbitration Council on 15 October 2007 through the non-conciliated report No. 1105 on the collective labour dispute dated 8 October 2007.

Having received the case, the Secretariat of the Arbitration Council summoned both the employer party and the employee party to a hearing on 25 October 2007 at 2:00pm.

Both parties were present as summoned by the Arbitration Council. The Arbitration Council attempted to seek more information regarding the dispute and as a result seven issues were conciliated – Issues one, two, four, five, six, seven and eight. Therefore, the Arbitration Council will only consider Issue 3 based on the evidence and findings of fact as follows:

#### **EVIDENCE**

**Witnesses and experts:** N/A

#### **Documents, Exhibits and other evidence considered by the Arbitration Council**

Provided by the employer party:

1. Trade Registration Certificate of 8 Star Sportswear Company dated 31 July 2006;
2. The company's letter notifying Ms. But Phalla of her work suspension dated 27 June 2007;

3. Letter No. 961 dated 10 September 2007 dismissing Ms. But Phalla;
4. The company's letter to the Director of Department of Labour Inspection and Vocational Training requesting the visa for the company's Internal Work Rules dated 28 April 2007;
5. The company's Internal Work Rules dated 3 May 2007;
6. The collective agreement between the employer and KYTU at 8 Star Sportswear dated 13 September 2007;
7. Notification No. 675 regarding opening of 8 Star Sportswear Enterprise dated 6 December 2006;
8. Leave application forms of Say Sam Art and Ben Savath dated 30 July 2007;
9. Payroll list for July, August and September 2007;
10. Authorisation Letter to Ms. Huo Sophea dated 25 October 2007.

Provided by the worker party:

1. Registration Certificate of KYTU at 8 Star Sportswear Company dated 13 July 2007;
2. Statute of KYTU at 8 Star Sportswear Company dated 13 July 2007;
3. Minutes of the collective labour dispute conciliation dated 13 June 2007;
4. Minutes of the collective labour dispute conciliation dated 23 July 2007;
5. Minutes of the collective labour dispute conciliation dated 20 September 2007;
6. Letter of KYFTU President dated 20 June 2007 to General Director of 8 Star Sportswear requesting for the deduction of union due of 1,000 riels from its members;
7. Agreement between the employer party and the worker party to settle the collective labour dispute at 8 Star Sportswear dated 5 July 2007;
8. Letter of KYTU dated 30 July 2007 to General Director of 8 Star Sportswear requesting discussion and mediation of workers' labour dispute;
9. Sample of leave application forms;
10. Letter acknowledging misconduct of Ms. But Phalla dated 20 June 2007;
11. Sreng Thy's complaint dated 20 June 2007.

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

1. Report No. 1479 on the collective labour dispute settlement dated 19 October 2007;
2. Minutes of the collective labour dispute settlement dated 20 September 2007;
3. Letter No. 961 dated 10 September 2007 of the Director of Labour Disputes Department on the dismissal of Ms. But Phalla.

Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 479 to the employer party to attend the hearing dated 18 October 2007;
2. Invitation No. 480 to the worker party to attend the hearing dated 18 October 2007.

## **FACTS**

- Having examined the report on the collective labour dispute conciliation;
- Having listened to the testimonies from both the employer party and the worker party;
- Having reviewed other supplementary documents;

### **The Arbitration Council finds that:**

#### **Issue 3: The workers demanded that the company provide workers [who earn] the minimum wage of US\$ 50 with an additional US\$ 5**

- 8 Star Sportswear Company employs 960 workers.
- Khmer Youth Trade Union does not have most representative status at 8 Star Sportswear.
- The worker party claimed in the hearing that the company had increased the minimum wage of probationary workers from US\$ 40 to US\$ 45 and from US\$ 45 to US\$ 50 for regular workers. Thus, those who received US\$ 50 per month should be paid US\$ 55 and those who received US \$55 should be paid US\$ 60. That means a increase of US\$ 5 shall be applied to all workers.
- The employer claimed that the company is not required under the Labour Law to provide those [workers] who already received US \$50 with an increase.
- The worker party considers that Notification 745 dated 23 October 2006 does not prevent the employer from providing a increase of US\$ 5 to workers who already receive US\$ 50.
- The worker party claimed that the demand that the company provide them with a increase of US\$ 5 was to make sure that each worker equally receives an increase of US\$ 5.
- The employer party claimed in the hearing that if the law requires the employer to provide all workers [who earn the] minimum wage of US\$ 50 with an increase of US \$5, the company willll comply with the law.

## **REASONS FOR DECISION**

#### **Issue 3: Workers demanded that the company provide workers [who earn] the minimum wage of US\$ 50 with an additional US\$ 5**

The workers demanded that the company provide those workers [who earn] the minimum wage of US\$ 50 with an additional US\$ 5; even though Notification 745 dated 23 October 2006 does not oblige the employer to provide such increase.

The Arbitration Council considers that workers have the legal right to demand that the company provide additional an US\$ 5 per month to each worker whose minimum wage is US\$ 50 per month if:

1. It is stated in the Labour Law or other regulation.
2. Workers have an agreement with the employer regarding a increase of US\$ 5
3. There is a collective agreement regarding a US\$ 5 increase or there is a practice of providing a US\$ 5 increase

***1. Do workers have the right to demand that the company provide an additional US\$ 5 if the Labour Law or other regulation is taken into consideration?***

Article 104 of the Labour Law states that, *“The wage must be at least equal to the guaranteed minimum wage; that is, it must ensure every worker of a decent standard of living compatible with human dignity.”*

According to the above article, the Arbitration Council considers that this article requires workers to receive a wage at least equal to the guaranteed minimum wage.

Point 1 of Notification 745 dated 23 October 2006 states that *“Determine the minimum wage for workers in textile and footwear industry to US\$ 45 (forty five) per month for probationary workers from one to three months. After the probation period, each regular worker shall receive the minimum wage of US\$ 50 per month.”*

In Award 33/07 – Gold Fame, Issue 6 and 102/07 – Teratext, Issue 4, the Arbitration Council held that:

*“The Arbitration Council notes that this notification is only to ensure the minimum wage of US\$ 50 per month but is not meant to increase by US\$ 5 the wages for workers in general. Therefore, the workers who receive more than the minimum wage of US\$ 50 per month are not entitled to an increase of wages, according to this Notification.”*

The Arbitration Council considers that other than the above notification 745, no regulation or article of the Labour Law states anything about a US\$ 5 increase.

***2. Do workers have any agreement or collective agreement with the employer regarding a US\$ 5 increase? Or is there any practice to provide the US\$ 5 increase?***

The Arbitration Council considers that workers can demand that the company provide a US\$ 5 increase for worker whose minimum wage is at least US\$ 50, if they have an agreement with the employer regarding a US\$ 5 increase or there is a collective agreement regarding the US\$ 5 increase or there is a practice regarding the US\$ 5 increase.

In general, if workers have an agreement or collective agreement with the employer regarding a wage increase above the minimum wage, the Arbitration Council considers that such agreement, collective agreement or practice is not contrary to the Labour Law.

In this case, the Arbitration Council finds that there was neither an agreement, collective agreement or previous practice regarding a wage increase.

Therefore, the Arbitration Council finds that there is no article in the Labour Law, regulation or agreement which states anything about a wage increase above the minimum wage. In this case, [there is no basis in law for] the workers' demand. Generally, the Arbitration Council always considers that such a demand is an interests dispute.

Clause 43 of Prakas 099 dated 21 April 2004 states that, *“An arbitral award which settles an interest dispute takes the place of a collective bargaining agreement and shall remain in effect for one year from the date on which it becomes final unless the parties agree to make a new collective bargaining agreement replacing the award.”*

Based on the above Prakas, the Arbitration Council finds that if the Arbitration Council issues an award that settles an interests dispute, it will become a collective bargaining agreement for one year.

The collective bargaining agreement will apply to all workers in the company and will remove other workers' rights to strike in relation to interests dispute in the future (see Article 96 and Paragraph 2, Article 321 of the Labour Law).

Generally, the Arbitration Council declines to consider an interest dispute if the union, who brought the labour dispute does not have most representative status. The most representative status of a union provides legal standing to negotiate a collective bargaining agreement within a company and the legal right to bring an interests dispute before the Arbitration Council for settlement.

In order to achieve the most representative status, Article 277 of the Labour Law 1997 and Article 6 of Prakas 305 dated 22 November 2001 states that the union membership must be more than 50% of all workers in the factory and [the union] must be registered with the Ministry of Labour and Vocational Training and meet other requirements as stated in this article (see Arbitral Award 84/07 - Yung Wah II, Issue 1).

In this case, Khmer Youth Trade Union at 8 Star Sportswear Factory does not have most representative status at the factory. Thus, the union has no right to negotiate a collective bargaining agreement on behalf of all workers. (See Article 9 (1) of Prakas 305)

In general, the Arbitration Council declines to consider an interests dispute brought by a union that does not have most representative status. (See Arbitral Awards 81/04 – Evergreen, Issue 4, 09/05 – Kinh Tay, Issue 2, and 84/07 – Yung Wah II, Issue 1)

Meanwhile in Issue 2 of case 70/07 – L.A, the Arbitration Council declined to consider the demand of workers that the company provide part of the profits to workers at the end of

each year because the union who made the demand did not have most representative status [and therefore] the Arbitration Council rejected the demand brought by the union.

Therefore, in this case, the Arbitration Council declines to consider the demand of workers that the company provide an additional US\$ 5 per month to each worker whose monthly minimum wage is US\$ 50 or more.

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

**DECISIONS AND ORDERS**

Decline to consider the demand of workers that the company provide an additional US \$5 per month to workers whose monthly minimum wage is US\$ 50 or more.

**Type of Award: Binding Award**

*This award immediately becomes binding upon the parties because both parties chose Binding Award on 25 October 2007.*

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

Arbitrator chosen by the employer party:

Name: **Ing Sothy**

Signature: .....

Arbitrator chosen by the worker party:

Name: **Liv Sovanna**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: .....