

**KINGDOM OF CAMBODIA  
NATION KING RELIGION**

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**THE ARBITRATION COUNCIL**

**Case number and name: 109/06-Trinunggal Komara**

**Date of Award: 14 December 2006**

**ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

**ARBITRATION PANEL**

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

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

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

**DISPUTING PARTIES**

**1. Employer party:**

Name: **Trinunggal Komara Garment Industry Co., LTD**

Address: Russian Federation Blvd., Sangkat Toeuk Thla, Khann Russey Keo, Phnom Penh

Telephone: 023 881 428/ 012 361 899      Fax: 023 881 438/ 884 628

Representative:

- |                       |  |
|-----------------------|--|
| 1. Mr. Lim Chhor Khay | Representative of the Company's Director |
| 2. Mr. Tep Chharavan  | Administration Officer                   |
| 3. Mr. Long Heang     | GMAC officer                             |

**Worker party:**

Name: **Local Free Trade Union in Trinunggal Komara Factory**

Address: Russian Federation Blvd., Sangkat Toeuk Thla, Khann Russey Keo, Phnom Penh

Telephone: 012 647 355 (Mariya)      Fax: N/A

Representative:

- |                       |  |
|-----------------------|--|
| 1. Mr. Pring Kuy Heng | Vice President of Local FTU in Trinunggal Komara Factory |
| 2. Mr. Chhuon Chhorn  | Secretary of Local FTU in Trinunggal Komara Factory      |
| 3. Mr. Chuon Thida    | Worker Representative                                    |
| 4. Mr. Soun San       | Worker Representative                                    |
| 5. Mr. Im Sovann      | Worker Representative                                    |
| 6. Mr. Pon Poeun      | Worker Representative                                    |
| 7. Mr. Iem Sophal     | Worker Representative                                    |

- |                   |                       |
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| 8. Mr. Yon Sokha  | Worker Representative |
| 9. Mr. Khuon Saly | Worker Representative |

### **ISSUES IN DISPUTE**

(In the non-conciliation Report)

The workers demand that the company pay an additional day's wages to them because there are 31 days in August 2006 and thus there were 27 working days. According to the Labour Law, 26 working days composes a working month and the wage is US\$45. The company does not agree to pay an additional day to the workers because some months have only 24 or 25 working days so the company can balance the 27 working day months in order to maintain a constant monthly wage of US\$45.

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

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

*An attempt was made to conciliate the collective dispute that is the subject of this Award, as required by Chapter XII, Section 2A of the Labour Law. The conciliation was unsuccessful, and the non-conciliation report No. 1698 KKBV/AK/VK dated 22 November 2006 was submitted to the Secretariat of the Arbitration Council on 22 November 2006.*

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

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

**Date of hearing:** 30 November 2006 (from 2:30 p.m. to 4:30 p.m.)

**Procedural issues:**

On 16 October 2006, the Department of Labour Disputes received a complaint from the Local FTU at Trinunggal Komara to complain about the company not following an agreement dated 21 April 2006. On 27 October 2006, the Department of Labour Disputes assigned officer(s) to attempt to conciliate the dispute, but the issue remained unresolved. The unresolved issue was submitted to the Arbitration Council on 22 November 2006.

Upon receipt of the case, the Arbitration Council summoned the employer party and the worker union in the factory to a hearing and conciliation about the unresolved issue on 30 November 2006 at 2:00 p.m. Both parties appeared as invited by the Arbitration Council.

On the hearing day, the Arbitration Council attempted to further conciliate the dispute but the issue could not be conciliated. Therefore, in this award, the Arbitration Council will consider the issue in dispute with reference to 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:**

- Letter dated 31 March 2003 to authorize Mr. Lim Chhor Khay to act as representative of the company
- Summary statement of workers' wages dated 25 November 2006
- Letter No. 007/99 KVK dated 4 January 1999 by the Investment Committee of Cambodia regarding a request to change the spelling of the company's name.
- Letter No. 2507/98 KVK dated 2 December 1998 by the Investment Committee of Cambodia regarding a request to establish an investment company under the name: Trinunggal Komara Garment Industry Co., LTD
- Letter No. 2508/98 KVK dated 2 December 1998 by the Investment Committee of Cambodia regarding a request to invest in a garment factory by Trinunggal Komara Garment Industry Co., LTD
- License of investment No. 2508/98 KVK dated 21 September 1999 by Investment Committee of Cambodia
- Letter No. 106 PN.NTK dated 12 January 2007 1999 regarding certificate of commercial registration.
- Minute of the collective labour dispute resolution dated 27 October 2006
- Company's Internal Work Rules, registration No. 087 SKBY.AK, dated 18 August 1999
- List of workers' wages
- Minute of meeting No. 2104006 dated 21 April 2006.
- Minute and report of meeting No. 010306 dated 1 March 2006
- Certificate of company registration

#### **Provided by the worker party:**

- Certificate of most representative status No. 319 KKBV dated 29 March 2006 by Local FTU in Trinunggal Komara Factory.
- Result of meeting dated 21 April 2006 regarding labour contracts and wages in April.
- Result of meeting dated 1 March 2006.

- Minute of collective dispute resolution dated 27 October 2006.

Provided by the Ministry of Labour and Vocational Training:

- Report on the resolution of the collective dispute at Trinunggal Komara Company No. 1698 K.K.B.V./A.K/V.K by the Head of the Department of Labour Dispute dated 22 November 2006
- Minute of the collective dispute conciliation dated 27 October 2006.

Provided by the Secretariat of the Arbitration Council:

- Letter of invitation to the worker party to attend the hearing No. 227 LKA dated 23 November 2006.
- Letter of invitation to the employer party to attend the hearing No. 228 LKA dated 23 November 2006.

**FINDINGS OF FACT**

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

**The Arbitration Council finds that:**

1. Trinunggal Komara Company employs approximately 1500 workers.
2. The Local FTU of Trinunggal Komara Factory has most representative union status.
3. The union party claims that to date, the company has never provided wages less than US\$45 even when there are less than 26 days in the month. The union stated that for those months with working days of more than 26 days, the company used to pay wages for the additional day(s). The company asserted that it provides US\$45 to workers in those months with working days of less than 26 days but the company always cuts [wages] from the other months which have more than 26 working days [so that the workers always receive US\$45/month].
4. Based on the payroll slip of a worker named Pring Kuy Heng, in August 2005, a month which had 27 working days, the workers received one day's wages in addition to the basic wage [of US\$45].
5. For wages in February 2006, which had only 24 working days, both parties agreed that the normal wage of US\$45 be maintained but the company would cut wages in March and May as both months have 27 working days. This meant that workers would not get additional wages for the one [additional] day at the end of these two months. This agreement was made on 1 March 2006.

6. The employer wants to cut wages for April 2006, which has only 25 working days, but the worker party does not agree.
7. On 21 April 2006, there was a meeting between the employer and union regarding the April 2006 wages. The minute of the meeting states:  
*“The next discussion is about wages for April 2006, which has 5 weeks and 25 working days. The intention of the company is to pay the normal US\$45 but it will cut one day from August, which has 27 working days. The worker representatives do not agree with this point for they want the company to make a concession to the workers. According to the view of the Labour Officer, the wage per month is US\$45 and it is stable in every month; even those months which have more than 26 days and those months with less. Thus the company decides that the company will not cut wages for April but from next year on, that is from January 2007 on, the company will pay stably in accordance with the Labour Law.”*
8. In August 2006 which has 27 working days, workers received a normal wage without one additional day for the day [in excess of the usual 26]. Therefore, the union demands that the employer pay for one additional day on top of the basic wage for August 2006.
9. There is no agreement, collective bargaining agreement (CBA) or written company policy which states that the company will pay US\$45 for the months which have less than 26 working days and will pay more than US\$45 for the months which have more than 26 working days.

### **REASONS FOR DECISION**

The worker party demanded that the company pay an additional day's wage in August 2006 because the company agreed in writing on 21 April 2006 and in accordance with the Labour Law, the number of working days is only 26, for which [workers] are paid US\$45. The company does not agree; they claim that the past practice of the company has been to provide US\$45 for those months which have less than 26 working days and always cut wages from those months which have more than 26 working days [so the wage is always US\$45]. In order to decide in relation to this dispute, the Arbitration Council will consider the following points:

1. Is there any law in effect which grants the right to workers that they are claiming?
2. Is the workers' demand supported by any agreement, CBA, labour contract or company's principle or policy?
3. Is there any past practice in accordance with the demand of the workers?

**1. Is there any law in effect which grants the right to workers that they are claiming?**

Article 104 of the Labour Law states *“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.”*

Point 2 of Notification No. 017 SKBY dated 18 July 2000 mentions that “Workers shall receive a minimum wage of US\$45 per month when the probationary period is finished...”

Is the month mentioned in the law the calendar month or the month of 26 actual working days?

Article 116 of the Labour Law mentions about the duration of payment of wage that *“Employees’ wages must be paid at least once a month.”* However, it does not mention if this is a calendar month or a month equaling 26 working days.

Article 137 of the Labour Law states, *“In all establishments of any nature, whether they provide vocational training, or they are of a charitable nature or liberal profession, the number of hours worked by workers of either sex cannot exceed eight hours per day, or 48 hours per week.”*

Furthermore, Prakas 10 SKBY dated 4 February 1999 gives an example of how to calculate daily wages for work done on paid public holidays. In accordance with that example, employers should take the wage and divide this by 26 days or calculate it based on hours, by taking the wage and dividing it by the average number of hours in a month; that is, the monthly wage will equal 48 hours multiplied by 52 then divided by 12.

The Arbitration Council considers that the 26 days or  $(48 \times 52 / 12)$  is just the average number of days or hours worked in a month which is to be used for calculating the daily or hourly wage (for 48 hours work in a week). The Arbitration Council considers that the payment of wages as stated by law does not depend on the actual working days in each month. The payment of wages is stable even if the duration of actual work in each month varies in comparison with the average duration. The word ‘one month’ refers to the day from the 1<sup>st</sup> to the end of the month even if some months have 28 or 29 or 30 or 31 days, these days will still be counted as one month.

Therefore, the Arbitration Council considers that the workers’ demand does not have a valid legal argument to support the claim.

## **2. Is the workers’ demand supported by any agreement, CBA or labour contract or company’s principle or policy?**

On 21 April 2006, there was a minute of a meeting between the employer and union regarding the April 2006 wages. The relevant part of this minute states:

*“The next discussion is about wages for April 2006, which has 5 weeks and 25 working days. The intention of the company is to pay the normal US\$45 but it will cut one day from August, which has 27 working days. The worker representatives do not*

*agree with this point for they want the company to make a concession to the workers. According to the view of the Labour Officer, the wage per month is US\$45 and it is stable in every month; even those months which have more than 26 days and those months with less. Thus the company decides that the company will not cut wages for April but from next year on, that is from January 2007 on, the company will pay stably in accordance with the Labour Law.”*

In this minute, the Arbitration Council found that the employer agreed to maintain the wage of US\$45 for April 2006 by attaching it to a condition that the employer had the right to cut the August 2006 wage from workers to compensate for the wage in April. The workers rejected the attached condition. Therefore, the Arbitration Council finds that the parties did not reach any specific agreement. In addition, the Arbitration Council does not find any other agreement, CBA, contract or policy of the company in accordance with the demand of the workers.

Therefore, there is no agreement, CBA, contract or policy of the company which supports the worker's demand.

### **3. Is there any past practice in accordance with the demand of the workers?**

Based on the facts determined by the Arbitration Council related to past practice, the company maintained the wage of US\$45 for those months which had less than 26 working days and cut the wages in those months which have 27 days. For example, the company maintained the wage in February 2006 which had 24 working days and cut the compensation from March and May which had 27 working days.

The practice of cutting wages [in this way] applied to all workers.

The balancing of workers' wages from one month to another has been practiced many times already since the establishment of the company in 2005 (see Arbitral Award 21/06-Zheng Yong).

The balancing of wages has been practiced with a clear rule; the company maintains the wage of US\$45 for those months which have less than 26 working days and the company takes compensation from those months which have 27 [or more] working days.

The practice has a clear rule to calculate the wages of one extra day.

Workers in the company have never received a basic wage of less than US\$45 per month (see the discussion about the minimum wage above). In addition, in some months, workers have received additional wages for one additional day. Thus the Arbitration Council considers that, so far, the practice in Trinunggal Komara is lawful, but there is no practice of providing additional wages in months which have less than 26 working days without cutting the wages of those months with more than 27 working days.

Therefore, the Arbitration Council considers that the balancing is a legal practice in Trinunggal Komara Factory. The Arbitration Council considers that as long as the employer has not announced or rejected such practice, the employer can continue practicing the wage calculation in this way. In this case, in the second negotiation in April 2005, the employer announced a stoppage to such practice and sought to practice in accordance with the law. However, this practice continued in 2006. Based on this practice, the employer has the right to cut wages from August 2006 which has 27 working days to compensate this in April 2006 which has only 25 working days. Therefore, in this case, the Arbitration Council decides to reject the workers' demand that the company pay one additional day's wages for August 2006.

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

**DECISION**

- Reject workers' demand that the company pay one additional day's wages for August 2006.

**Type of Award: Binding**

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

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

Arbitrator chosen by the employer party:

Name: **Chhiv Phyrum**

Signature: .....

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Ang Eng Thong**

Signature: .....