



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

**ក្រុមប្រឹក្សាសវនកម្មជាតិ**

**THE ARBITRATION COUNCIL**

**Case number and name: 109/08-Ja Ding**

**Date of Award: 16 September 2008**

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

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

#### **DISPUTING PARTIES**

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

Name: **Ja Ding Limited**

Address: Prey Sorla Village, Sangkat Ka Karp, Khan Dangkor, Phnom Penh

Telephone: 012 303 459 Fax: N/A

Representative: Absent

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

Name: **Khmer Youth Trade Union (KYFTU) and local union of Khmer Youth Trade Union at Ja Ding Limited (KYTU)**

Address: Prey Sorla Village, Sangkat Ka Karp, Khan Dangkor, Phnom Penh

Telephone: 092 577 862 Fax: N/A

Representative:

- |                     |   |
|---------------------|---|
| 1. Mr. San Phan     | Officer of KYFTU                          |
| 2. Mr. Sok Vannak   | Present of KYTU at Ja Ding factory        |
| 3. Ms. Chea Sophary | Vice-president of KYTU at Ja Ding factory |

#### **ISSUES IN DISPUTE**

(In the Non-Conciliation Report)

- 1- The workers demand that the company allow them to use their special leave maintain their wage, attendance bonus and seniority bonus.
- 2- The workers demand that the company should not deduct their seniority bonus if they are absent from work.
- 3- The workers demand that the company pay the US\$ 6 living allowance without any deduction.

#### **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. 922 KB/AK/VK, dated 22 August 2008 was submitted to the Secretariat of the Arbitration Council on 25 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:** 2 September 2008 (from 2:00 p.m. to 3:15 p.m.)

#### **Procedural issues:**

On 9 July 2008, the Department of Labour Disputes received a complaint by local union of KYTU at Ja Ding factory to demand the company to improve some working conditions. The Department of Labour Disputes then assigned its officer to settle this collective labour dispute and the last conciliation was held on 13 August 2008 with no conciliation results for 3 issues. The 3 non-conciliation issues were referred to the Arbitration Council on 25 August 2008.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer party and the worker party to the hearing on 2 September 2008 (at 2:00 p.m.). On the hearing day, the worker party was present at the hearing as invited but the employer party was absent. The worker party withdrew issue 2 and issue 3 from the case because the company already settled the issues as requested [by the workers] thus the worker request that the Arbitration Council decides on issue 1. Therefore, the Arbitration Council will

consider and resolve the dispute based on evidence and findings of fact provided by the worker party as follows:

## **EVIDENCE**

**Witnesses and experts:** N/A

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

Provided by the employer party: N/A

Provided by the worker party: N/A

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

1. Report of collective labour dispute resolution at Ja Ding Company No. 922 KB/AK/VK, dated 22 August 2008.
2. Minutes of collective labour dispute conciliation at Ja Ding Company, dated 13 July 2008.

Provided by the Secretariat of the Arbitration Council:

1. Letter of invitation to invite the company party to come to select arbitrator, No. 542 KB/AK/VK/LKA, dated 26 August 2008.
2. Minutes regarding selection of arbitrator by lot from the list of arbitrators in the list nominated by the employer association, dated 27 August 2008.
3. Letter of invitation to invite the company party to attend the hearing, No. 543 KB/AK/VK/LKA, dated 27 August 2008.
4. Letter of invitation to invite the worker party to attend the hearing, No. 544 KB/AK/VK/LKA, dated 27 August 2008.

## **FACTS**

- Having reviewed the minutes of collective labour dispute conciliation.
- Having listened to clarification and testimony by the worker party as described above and in the minutes of the hearing.
- Having examined documents and evidence as described above.

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

Ja Ding Company employs approximately 250 workers and approximately 120 of them are members of local union of KYTU at Ja Ding Company.

**Issue 1: The workers demand that the company allow them to use their special leave and maintain their wage, attendance bonus and seniority bonus**

- The employer of Ja Ding Company allows workers to take special leave. However, wages, attendance bonus and seniority bonus will be deducted for the day-off.
- The employer of Ja Ding Company provides 18 days of annual leave according to the Labour Law but the company paid this in cash and uses the main wage as the basis of the calculation.
- In the hearing, the workers claim that this special leave refers to the day-off taken for their own weddings, [ ] delivery of their own babies, weddings of their own children, sickness or death of husband, wife, child, father or mother.

### **REASONS FOR DECISION**

#### **Issue 1: The workers demand that the company allow them to use their special leave and maintain their wage, attendance bonus and seniority bonus**

Article 171 of the Labour Law states, *"The employer has the right to grant his/her worker special leave during events directly affecting the workers' immediate family.*

*If the worker has not yet taken his annual leave, the employer can deduct the special leave from the workers' annual leave.*

*If the worker has taken all his annual leave, the employer cannot deduct the special leave from the workers' annual leave for the next year."*

Clause 2 of Prakas regarding special leave, No. 267 SKBY, dated 11 October 2001 by the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation states, *"Employers may deduct this special leave from the annual leave of the employee if the employee has not yet used all their annual leave. [The employer] may require the employee to make up work if they have already used all their annual leave."*

According to Article 171 and the above Prakas, the Arbitration Council considers that special leave can be deducted from annual leave if the workers have not used all their annual leave. In case where workers already used all their annual leave or where the workers are not entitled to annual leave yet, the employer can require the workers to work to make up for the company according to the law.

In this case, the employer does not make deductions from workers' unused annual leave. The employer does not allow the workers to use their annual leave, as the company pays the workers cash in lieu of annual leave.

In previous cases, the Arbitration Council considers that *"The demand for the company to pay in lieu of annual leave is against Article 167, paragraph 3, of the Labour Law 1997. Thus, the demand is not legally valid."* (See Arbitral Awards 45/05-B&N, issue 1; 94/04-Eternity, issue 2; and 98/07-Sky Sino, issue 1).

The Arbitration Council in this case agrees with the interpretation of the Arbitration Council in previous cases that the company's practice of provision of money in lieu of annual

leave is against the Law. Thus, the Arbitration Council considers that based on the above interpretation, the employer of Ja Ding Company should deduct from workers' annual leave when workers who have not used their annual leave take special leave. The employer can requires the workers to make up work for the company if they have used all their annual leave or are not entitled to annual leave yet.

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

**DECISION**

- 1. Order the employer to deduct from workers' paid annual leave if they have not used all of their paid annual leave.
- 2. Order the workers to make up work if they have used all their annual leave or are not entitled to annual leave yet.

**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: **Chhiv Phyrum**

Signature: .....

Arbitrator chosen by the worker party:

Name: **Liv Sovanna**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Ang Eng Thong**

Signature: .....