



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអន្តរាគ្នា

THE ARBITRATION COUNCIL

Case number and name: 114/08-Whitex

Date of Award: 25 September 2008

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **Mar Samborana**

Arbitrator chosen by the worker party: **Tuon Siphann**

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

DISPUTING PARTIES

Employer party:

Name: **Whitex Garments (Cambodia) Co., Ltd.**

Address: Trapeang Thleng Village, Sangkat Chom Chao, Khan Dangkor, Phnom Penh

Telephone: 012 522 255 or 011 655 607 Fax: 023 995 555

Representative:

- | | |
|---------------------|-----------------------------|
| 1. Mr. David Teo | Director of the company |
| 2. Mr. Chea Yongjai | Company's coordinator |
| 3. Ms. Bun Narin | Company's accountant |
| 4. Mr. Non Chanlida | Assistant to administration |
| 5. Mr. Cheat Khemra | Officer of GMAC |

Worker party:

Name: **Cambodian Federation for Workers' Rights (CFFWR) and local union of
Cambodian Union for Workers' Rights (CUWR) at Whitex Factory**

Address: Trapeang Thleng Village, Sangkat Chom Chao, Khan Dangkor, Phnom Penh

Telephone: 012 533 832 Fax: N/A

Representative:

- | | |
|---------------------|-------------------|
| 1. Mr. Chhom Veasna | President of CFWR |
|---------------------|-------------------|

- | | |
|--------------------|--|
| 2. Mr. Long Panha | President of CUWR at Whitex factory |
| 3. Mr. Long Sam | Vice-president of CUWR at Whitex factory |
| 4. Mr. Pheap Bunly | Secretary of CUWR at Whitex factory |

Name: **Khmer Youth Federation Trade Union (KYFTU) and local union of Khmer Youth Trade Union (KYTU) at Whitex Factory**

Address: Veng Sreng Road, Trapeang Thleng Village, Sangkat Chom Chao, Khan Dangkor, Phnom Penh

Telephone: 012 817 083 Fax: N/A

Representative:

- | | |
|---------------------|--|
| 1. Mr. Pov Bunna | Coordination officer of KYFTU |
| 2. Ms. Yin Kanha | Coordination officer of KYFTU |
| 3. Mr. Mom Sokmean | President of KYTU at Whitex factory |
| 4. Mr. Hin Kimsoeun | Vice-president of KYTU at Whitex factory |

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- The workers demand that when female workers apply for maternity leave, the company pay the half wages due for three months of leave in advance. The company party states that it follows the Labour Law.
- 2- The workers demand that the company pay US\$ 5 per month for transportation or rent. The company does not agree to the demand but will follow the Labour Law.
- 3- The workers demand that the company provide an attendance bonus of US\$ 10 per month. The company states that it is in compliance with Notification No. 017 SKBY, dated 18 July 2000.
- 4- The workers demand that the company pay US\$ 5 per month for their cooperation in working overtime. The company states that it is unable to provide this.
- 5- The workers demand that the company pay a 1,000 riel meal allowance to workers who work on Sundays. The company states that it is unable to provide this.

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. 941 KB/AK/VK, dated 28 August 2008 was submitted to the Secretariat of the Arbitration Council on 2 September 2008.

HEARING AND SUMMARY OF PROCEDURE

Place of hearing: The Arbitration Council, Phnom Penh Center, Building A, Sothearos Blvd., Sangkat Tonle Basak, Khan Chamkarmorn, Phnom Penh.

Date of hearing: 12 September 2008 from 8:00 a.m. to 11:00 a.m.

Procedural issues:

On 20 August 2008, the Department of Labour Disputes received a complaint from the workers regarding a strike to demand that the company improve certain working conditions. The Department of Labour Disputes then assigned an expert officer to settle this collective labour dispute; the last conciliation was held on 21 August 2008; five out of 19 issues were not able to be conciliated. The five non-conciliation issues were referred to the Arbitration Council on 2 September 2008 through non-conciliation report No. 941 KB/AK/VK, dated 28 August 2008.

After receiving the case, the Secretariat of the Arbitration Council summoned the employer party and the worker party to the hearing and conciliation on the five non-conciliation issues on 12 September 2008 at 2:00 p.m.

Both parties were present as invited by the Arbitration Council. The Arbitration Council tried to seek more information relevant to this dispute and attempted further conciliation on the five non-conciliation issues but did not succeed. Thus, the Arbitration Council will consider and settle the dispute 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. Certificate of commercial registration of Whitex Company No. 2680 PN JBP, dated 11 June 2008.
2. Internal Work Rules of Whitex Company No. 111 KB/AK/ATK, dated 17 August 2007.
3. Minutes of collective labour dispute resolution at Whitex Company, dated 21 August 2008.
4. 4 photographs of the strike incident.

Provided by the worker party:

1. Certificate of union registration of the local union of KYTU at Whitex Company, dated 19 October 2006.
2. Letter by the Chief of Department of Labour Dispute to the president of local union of KYTU at Whitex Company regarding recognition of the union's leadership in the new mandate No. 315 KB/AK/VK, dated 4 March 2008.
3. Statute of the local union of KYTU at Whitex Company No. 1039 KKBV/VK, dated 19 October 2006.
4. Complain letter(s) by workers, dated 18 August 2008.

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

1. Report of collective labour dispute resolution at Whitex Company No. 941 KB/AK/VK, dated 28 August 2008.
2. Minutes of collective labour dispute conciliation at Whitex Company, dated 21 August 2008.

Provided by the Secretariat of the Arbitration Council:

1. Letter of invitation to invite the worker party to attend the hearing, No. 562 KB/AK/VK/LKA, dated 8 September 2008.
2. Letter of invitation to invite the employer party to attend the hearing, No. 561 KB/AK/VK/LKA, dated 8 September 2008.

FACTS

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

The Arbitration Council finds that:

- Whitex Garment Company employs approximately 1,114 workers and 400 casual workers.
- Two unions, KYTU and CUWR, join together as claimants in this case.
- KYTU has approximately 300 members while CUWR has over 500 members. The two unions do not have most representative status but the total membership of the two unions exceeds 50 percent of the total number of workers in the factory.

Issue 1: The workers demand that when female workers apply for maternity leave, the company pay the half wages due for three months leave in advance

- At the moment, the company pays maternity leave wages every month on the normal payday. If the person cannot come to receive the money in person, the company allows their colleagues or relatives to receive it on their behalf if they have an authorization letter and two witnesses.
- The workers and the company state that two female workers are on maternity leave in September and that on average two or three workers take maternity leave each month.
- The worker party demands that the company pay half of three months wages before the maternity leave starts so that the workers will be able to pay their expenses during their maternity leave, without the added cost and difficulty of transportation from the provinces to come and receive their wage each month.
- The workers add that [in their experience] in the past, sometimes the colleagues or relatives who receive the money on their behalf did not give the money to them, but spent it instead, causing problems.
- The company states that it will follow the current practice in which the company pays wages to the workers on a monthly basis, allowing them to authorize their colleagues or relatives to receive it on their behalf if they have difficulty coming to receive it themselves. The company claims that the reason that it is unable to pay half of three months wages normally due during maternity leave to the workers before the leave starts is because the company needs to close its account each month, so calculating maternity leave separately will affect the accounting system. Moreover, if the company pays the total three months of wages in advance, the women workers will spend all the money, causing problems as the women will not have money at the time when they deliver their babies.
- The company claims that it will follow the Labour Law; if the law requires that the [company] need to pay half of three months wages normally due for the period of leave before the maternity leave starts, the company will implement this.
- The worker's demand is related to the time of payment of the money but not to the calculation of the amount due for maternity leave.

Issue 2: The workers demand that the company pay US\$ 5 per month for transportation or house rental fees

- The company has never offered an allowance for housing or transportation costs. However, because the company has a building reserved where workers who volunteer to work overtime can stay, the company has provided assistance in terms of accommodation to some workers.

- The company claims that currently there are approximately 200 workers who are staying in company housing, and that they ask the workers to pay 10,000 riels, or for those who are heads of groups, 4,000 riels per month.
- The workers argue that the company provides accommodation in company housing only to female workers. However, the company does not provide accommodation to male workers or those who are married. The company states that in the past the company has allowed relatives, siblings or parents of workers who come to visit them to stay there, but that they need to fill in the company's administration form in order for the company to maintain order and safety.
- The workers request that the company provide them with US\$ 5 per month or less for rent or transportation costs because they have increased substantially. In the past, workers paid US\$ 5 per month for hiring a van to transport them to and from work but now they need to pay US\$ 12 per month. In the past the workers paid US\$ 40 per month for renting [a house] outside of the company, but now they need to pay US\$ 50 per month; the general cost of living has also increased. For these reasons, the workers have faced difficulties and they request that the company help them.
- The company acknowledges that the cost of living and of petroleum have increased, affecting the workers' livelihoods, but they have also affected the company; fees for services have also increased and this has put a heavier burden on the company. Moreover, recently, in compliance with the government's recommendation, the company has provided US\$ 6 per month living allowance to the workers. Thus, the company is unable to provide a larger allowance.

Issue 3: The workers demand that the company provide an attendance bonus of US\$ 10 per month

- The company provides a US\$ 5 attendance bonus per month. The workers request that the company increase the attendance bonus by US\$ 5.
- The worker party adds that they request an additional US\$ 5 attendance bonus per month in order to encourage workers who work overtime and to assist the livelihood of the workers who have been working hard for the company, since the cost of living has increased.
- The company party claims that it cannot provide an additional US\$ 5 attendance bonus per month, but would like to follow Notification 017 SKBY, dated 18 July 2000.

Issue 4: The workers demand that the company pay US\$ 5 per month for their cooperation in working overtime

- The company provides overtime pay in accordance with the Notification. However, the workers request that the company pay an additional US\$ 5 per month for overtime.

- The workers request that the company provide US\$ 5 for their cooperation in working overtime in order to encourage more workers to work overtime.
- The company states that it is unable to provide this.

Issue 5: The workers demand that the company pay a 1,000 riel meal allowance to workers who volunteer to come to work on Sundays

- The company workers work eight hours per day, six days per week, from Monday to Saturday; Sunday is the weekly day off.
- When the company has work for the workers to do on Sunday, it notifies the workers one day in advance and those workers who volunteer to come to work will sign their names on the list of workers who volunteer to come to work on Sunday and the company will provide double time.
- The workers claims that they request that the company provide a 1,000 riel meal allowance to workers who volunteer to work on Sundays because they consider the work on Sundays is overtime work.
- The company states that it cannot provide a 1,000 riel meal allowance to workers who come to work on Sundays because the company already provides them with double time. The company considers that when the workers volunteer to come to work on Sundays or holidays it is not overtime. For overtime work on normal working days, the company provides a 1,000 riel meal allowance according to Notification 017 SKBY, dated 18 July 2000.

REASONS FOR DECISION

Issue 1: The workers demand that when female workers apply for maternity leave, the company pay the half wages due for three months leave in advance.

Article 183 of the Labour Law states, *“During the maternity leave as stipulated in the preceding article, women are entitled to half of their wage, including their perquisites, paid by the employer.*

Women fully reserve their rights to other benefits in kind, if any.

Any collective agreement to the contrary shall be null and void.

However, the wage benefits specified in the first paragraph of this article shall be granted only to women having a minimum of one year of uninterrupted service in the enterprise.”

The Arbitration Council considers that Article 183 requires the employer to pay half of normal wages and perquisites to women workers who take maternity leave. However, Article 183 does not provide any instruction in relation to the time of payment of the maternity payment.

However, paragraph 3 of Article 115 of the Labour Law states, “*Payment shall not be made on a day-off. If payday falls on a day-off, the payment of wages shall be made a day earlier.*”

According to Article 115, the Arbitration Council considers that payment of wages shall not be made on a day that is a day-off for workers. Thus, if it falls on a day-off, including during maternity leave, the employer should make the payment a day earlier.

Moreover, the Arbitration Council finds that in previous Arbitral Awards, the Arbitration Council held that payment of maternity leave should be made to the relevant workers before the leave starts according to Article 115 regarding payment of wages above. (*See Arbitral Awards 57/06-Evergreen, issue 6 and 97/06-New Max, issue 1*).

In this case, the Arbitration Council agrees with its own interpretation in previous cases that the employer should pay the half wages due for the leave period to women workers before they commence their maternity leave. In this case, the company pays half of normal wages to women workers who take maternity leave, but does not pay the three months of maternity leave wages to women workers before they start their leave.

Thus, following the Labour Law and previous cases, the Arbitration Council decides that the employer should pay the half wages due for the 3 month maternity leave period to female workers before they commence their leave.

Issue 2: The workers demand that the company pay US\$ 5 per month for transportation or house rental fees

The workers request that the company provide US\$ 5 per month or less than this for them to pay for housing or transportation costs, because housing and transportation costs have increased along with the cost of living, making it more difficult for workers to secure a livelihood. The Arbitration Council considers that the workers’ demand for the company to pay US\$ 5 per month is not provided by the Labour Law. Since the workers demand more than what is provided by the Labour Law, their demand is related to interests.

The Arbitration Council has consistently determined that in general only unions with most representative status can bring an interests dispute to the Arbitration Council for resolution. In previous cases, the Arbitration Council has declined to consider an interests dispute if the union who brings the dispute does not have most representative status in the factory. (*See Arbitral Awards 81/04-Evergreen, issue 4; 09/05-Kin Tai, issue 2, 84/07-Yung Wah II, issue 1; 108/07-8 Stars Sportswear, issue 3; 135/07-Wilson, issue 1; 14/08-Quick Sew, issue 3 and 101/08-GDM, issue 3*).

In previous cases, the Arbitration Council has found that a collective of unions without most representative status in a factory, but in which the total membership of the collective of unions makes up a majority of workers in the factory, can join together to bring an interests

dispute for resolution at the Arbitration Council. (See *Arbitral Award 81/07-Supreme Garment, issue 1.*)

In this case, the Arbitration Council agrees with the interpretation of the Arbitration Panels in previous case above. In this case neither KYTU nor CUWR, who are the claimants, have most representative status but the membership of both unions totals approximately 800 workers (more than 50 percent of all workers in the factory). The Arbitration Council considers that although neither of the claimant unions in this case has most representative status, the two unions who were present at the hearing represent more than 50 percent of all the workers at the Whitex Factory. Thus, the Arbitration Council considers that the collective of the two unions without most representative status can join together to bring an interests dispute for resolution at the Arbitration Council.

Article 312, paragraph 2 of the Labour Law states, *“The Council of Arbitration legally decides on disputes concerning the interpretation and enforcement of laws or regulations or of a collective agreement. The Council’s decisions are in equity for all other disputes.”*

Article 312, paragraph 2 of the Labour Law grants authority to the Arbitration Council to resolve all other disputes based on equity. However, the Arbitration Council considers that it will implement the principle of equity only when the worker party provides reasons and reasonable testimony for the Arbitration Council to believe that:

1. the parties have done their best to negotiate to establish a CBA; and
2. they have provided credible testimony to prove that the demand for more money is reasonable and that the other party is capable of providing it.

In this case, the workers did not show that they had attempted to negotiate to establish a CBA and did not provide reasons or evidence to prove either the reasonableness of demanding more than the minimum provided by the law, or the capability of the other party to accommodate the demand. Thus, based on the principle of equity, the Arbitration Council decides to reject the workers’ demand that the company provide US\$ 5 per month for transportation or housing costs.

Issue 3: The workers demand that the company provide an attendance bonus of US \$10 per month

The company provides an attendance bonus of US\$ 5 per month to the workers. However, the workers demand that the company provide an additional US\$ 5 per month to encourage workers who work overtime, and to assist the workers in terms of their livelihood, since the cost of living has increased. The Arbitration Council considers that the workers’ demand is related to an interest exceeding what is provided by the Labour Law; thus it is an interests dispute.

In relation to this demand, the workers do not provide reasons or evidence to prove either the reasonableness for demanding more than the minimum provided by the law or the capability of the other party to accommodate the demand. Thus, based on the principle of equity, the Arbitration Council decides to reject the workers' demand that the company provide an additional US\$ 5 per month as in issue 2 above.

Issue 4: The workers demand that the company pay US\$ 5 per month for their cooperation in working overtime

The workers request that the company provide US\$ 5 per month for their cooperation in working overtime in order encourage more workers to do so, and to assist workers' livelihood, since the cost of living has increased. The Arbitration Council considers that the workers' demand that the company provide US\$ 5 per month for their cooperation in working overtime is not provided by the Labour Law. Thus the workers' demand is related to an interest exceeding what is provided by the Labour Law; thus it is an interests dispute.

In relation to this demand, the workers do not provide reasons and evidence to prove either the reason for demanding more than the minimum provided by the law or the capability of the other party to accommodate the demand. Thus, based on the principle of equity, the Arbitration Council decides to reject the workers' demand that the company provide US\$ 5 per month for their cooperation in working overtime as in issue 2 and issue 3 above.

Issue 5: The workers demand that the company provide a 1,000 riel meal allowance to workers who volunteer to come to work on Sundays

The [company] provides overtime pay double time for workers who volunteer to work overtime on a Sunday, which is the weekly day-off, in accordance with the amended Article 139 of the Labour Law which states, *"In case of special urgency which requires workers to work overtime other than the usual working hours, the overtime hours shall be paid at an increased rate of 50 % (fifty percent). Working overtime at night between 22:00h to 05:00h or weekly time off, shall be additional paid at an increased rate of 100 % (one hundred percent)."* However, the workers request that the company provide a 1,000 riel meal allowance to workers who agree to come to work on Sundays because they consider work on Sundays is overtime work. Thus, the Arbitration Council will consider whether [when workers] volunteer to work on Sundays it is overtime work for which the workers are entitled to a 1,000 riel meal allowance.

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."*

Article 137 of the Labour Law above means that workers' normal work hours should not exceed eight hours per day or 48 hours per week. In this case, the company asks the workers to work from Monday to Saturday, eight hours per day, which equals 48 hours per week; Sunday is the weekly day-off, not a normal working day, for workers at Whitex Company. When workers volunteer to work on Sundays, they work for more than the normal working hours. Moreover, when the workers agree to work for the company for more than eight hours per day on normal working days, which the worker party and the company agree is overtime, the company provides a 1,000 riel meal allowance for overtime work on each day. The Arbitration Council considers that the normal work duration of workers is eight hours per day or 48 hours per week from Monday to Saturday. The Arbitration Council considers that extra hours worked on normal working days are overtime hours. Thus, [if workers] volunteer to work on a Sunday, it is additional to their normal working days and hours. Thus, the Arbitration Council considers that [if workers] volunteer to work on Sundays it is overtime work.

Notification 017 SKBY, dated 18 July 2000, clause 4, states, *“Workers who voluntarily work overtime upon request from the employer shall receive a meal allowance of 1,000 riels per day or receive one free meal.”*

The Arbitration Council considers that clause 4 of the above Notification does not expressly state that working on Sunday is not overtime. However, the Notification provides that if workers work overtime at the request of the employer, they are entitled to a 1,000 riel [meal allowance] per day or one free meal.

In this case, the Arbitration Council considers that workers perform overtime work if they volunteer to work on a Sunday, [which is] additional to their normal working days and hours; thus they are entitled to a 1,000 riel meal allowance in accordance with Notification 017 SKBY, dated 18 July 2000.

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 pay the half wages due for the three month maternity leave period before female workers take the leave .

Issue 2:

- Reject the workers' demand that the company provide US\$ 5 per month for transportation or [house] rental fees.

Issue 3:

- Reject the workers' demand that the company provide an additional US\$ 5 per month attendance bonus.

Issue 4:

- Reject the workers' demand that the company provide US\$ 5 per month for their cooperation in working overtime

Issue 5:

- Order the employer to provide a 1,000 riel meal allowance to workers who come to work on a Sunday, which is the weekly day-off.

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: **Mar Samborana**

Signature:

Arbitrator chosen by the worker party:

Name: **Tuon Siphann**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: