



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

**ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល**  
**THE ARBITRATION COUNCIL**

**Case number and name: 115/07 - Whitext**

**Date of Award: 21 November 2007**

**ARBITRAL AWARD**  
(Issued under Article 313 of the Labour Law)

**ARBITRATION PANEL**

Arbitrator chosen by the employer party: **Seng Vuoch Hun**

Arbitrator chosen by the worker party: **Ven Pov**

Chair Arbitrator (chosen by the two Arbitrators): **Kong Phallack**

**DISPUTING PARTIES**

**Employer party:**

Name: **Whitext Garment (Cambodia) Co., Ltd.**

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

Telephone: 012 614 020 Fax: N/A

Representatives:

1. Mr. Neth Rina Human Resource Representative.

**Worker party:**

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

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

Telephone: 012 1 602 763 Fax: N/A

Representatives:

1. Mr. Yun Vanna KYFTU official;
2. Ms. Yin Kanha KYFTU official;
3. Mr. Jae Dara President of KYTU;
4. Mr. Sum Chanratha Secretary of KYTU.

## **ISSUES IN DISPUTE**

(In the Non-Conciliation Report)

1. Members of Khmer Youth Trade Union at Whitemax Factory demand that the company maintain their attendance bonus even when workers are absent for three days (with permission). The company party does not agree and [said it] would follow the Internal Work Rules of the company and the Labour Law.
2. Members of Khmer Youth Trade Union at Whitemax Factory demand that the company give them prior notice of the expiration of their employment contracts and that the company not renew their employment contracts [for a duration of] less than six months. The company party said it would follow Article 73 of the Labour Law.

## **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 30 October 2007 was unsuccessful, and the non-conciliation report No. 1150 was submitted to the Secretariat of the Arbitration Council on 1 November 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:** 14 November 2007 (from 8:00 a.m. to 9:00 a.m.)

### **Procedural issues:**

On 6 September 2007, the Department of Labour Disputes received a complaint from the KYFTU seeking improvement in working conditions. Having received the complaint, the Department of Labour Disputes designated its officials to conciliate the dispute and the last conciliation session was held on 19 October 2007, with 11 out of 13 issues conciliated. The two remaining non-conciliated issues were submitted to the Arbitration Council on 1 November 2007.

Having received the case, the Secretariat of the Arbitration Council invited both the employer party and the employee party to a hearing to conciliate the dispute on 14

November 2007 at 8:00 am. Both parties were present at the hearing scheduled by the Arbitration Council.

On the hearing day, the Arbitration Council attempted to conciliate the two remaining non-conciliated issues set out in the non-conciliation report of the Department of Labour Disputes; however, the issues could not be conciliated. Therefore, in this case the Arbitration Council considers the two non-conciliated issues based on the evidence and statements of both parties in the hearing 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 No. 2179 certifying the trade registration of Whitext Garment (Cambodia) dated 19 September 2005;
2. Patent No. MTU 008621.2006 of Whitext Garment (Cambodia) dated 3 July 2006;
3. Internal Work Rules of Whitext Garment (Cambodia) dated 17 August 2007;
4. Statute of Whitext Garment (Cambodia) dated 16 August 2007;
5. Minutes of the labour dispute conciliation at Whitext Company dated 21 September 2007;
6. Minutes of the collective labour dispute conciliation at Whitext Company dated 19 October 2007;
7. Fixed duration employment contract dated 30 September 2007;
8. Two ID cards of Nim Sao Leang and Muon Sina;
9. Letter authorizing Mr. Neth Rina to resolve the labour dispute.

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

1. Letter No. 1441 on the recognition of Khmer Youth Trade Union at Whitext Garment (Cambodia) dated 19 October 2006;
2. Certificate No. 1039 on the registration of the statute of Khmer Youth Trade Union at Whitext Company dated 19 October 2006;
3. Registration Certificate of Khmer Youth Trade Union at Whitext Company dated 19 October 2006;
4. Minutes of the collective labour dispute conciliation at Whitext Company dated 19 October 2007.

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

1. Letter No. 1579 on the request for collective labour dispute resolution at Whitext Company dated 5 November 2007;

2. Report No. 1150 on the collective labour dispute at Whitext Company dated 30 October 2007;
3. Minutes of the collective labour dispute conciliation at Whitext Company dated 21 September 2007;
4. Minutes of the collective labour dispute conciliation at Whitext Company dated 19 October 2007.

Provided by the Secretariat of the Arbitration Council:

1. Letter No. 518 dated 5 November 2007 inviting the worker party to attend the hearing.
2. Letter No. 517 dated 5 November 2007 inviting the employer party to attend the hearing.

**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:**

- Whitext Company employs 554 workers.
- The company has one union – the Khmer Youth Trade Union, the claimant in this case.
- The union claimed to have 300 members but it does not have the most representative status.

**Issue 1: Workers demanded that the company maintain their attendance bonus when workers are absent for three days (with permission)**

- The workers demanded that the company maintain their attendance bonus when workers are absent for three days (with permission). Under the current practice, the employer does not maintain the [worker's] attendance bonus and deducts the whole US\$5 despite the leave being authorised.
- The employer did not agree and [said it] would apply Notification 017 dated 18 July 2000.
- The employer claimed that the company would maintain the attendance bonus for annual leave, special leave, and sick leave. [For other types of] leave, besides the above-mentioned leave categories, [workers] would not be entitled to the attendance bonus.

- The workers party claimed that 400 workers made the demand and 300 of them are members of the union; however, the union neither provided the name list of those workers nor the letter authorizing the union to represent the workers.
- The employer party demanded that the worker party provide the name list of the workers who made the demand.
- The Arbitration Council ordered the worker party to provide the name list on 19 November 2007, but the worker party did not provide the name list as ordered.

**Issue 2: Workers demanded that the company give them prior notice of the expiration of their employment contracts and that the company not renew their employment contracts for a duration of less than six months**

- The workers demanded that the company give them prior notice of the expiration of their employment contracts and not renew their employment contract for a duration of less than six months because they did not know when their contracts would expire and when their employment contracts would be renewed. Workers could not remember the exact date.
- The employer party did not agree and [said it] would follow Article 73 of the Labour Law as prior notice was only required for employment contracts of more than six months.
- In practice, the company prints the commencement date and expiration date of the [worker's] employment contract on the workers ID card so that they know when their employment contracts will expire.
- In addition, in practice, the company usually invites workers to renew or terminate their employment contracts at 3:30 p.m. or 4:00 p.m. on the last day of their employment contract.
- The company pays workers for the full day; even though, the company always invites workers to renew or terminate their employment contracts at 3:30 p.m. or 4:00 p.m. on the final day [of their contract].

**REASONS FOR DECISION**

**Issue 1: Workers demand that the company maintain their attendance bonus when workers are absent for three days (with permission)**

In this case, the employer party said in the hearing that the company maintains the attendance bonus for workers for annual leave, special leave, and sick leave. However, the company does not maintain the attendance bonus for workers for other types of leave; even though the leave is authorised by the company. Yet workers demand that the company

maintain their attendance bonus when they are absent for three days (with permission). Therefore, the Arbitration Council will consider whether or not workers, who are absent for three days (with permission), are entitled to an attendance bonus.

Point 3 of Notification 745 dated 23 October 2006 states that, *“Other benefits that workers used to receive in accordance with Notification 017 dated 18 July 2000 in point 3, 5 and 6 shall remain the same.”*

Point 3 of Notification 017 dated 18 July 2000 states that, *“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 the previous cases involving the issue of attendance bonuses, the Arbitration Council held that the *“attendance bonus” is an incentive bonus and [ensures] praise to workers who come to work regularly and are not absent without a valid reason.*” (See Arbitral Awards 62/04 – Ecent, Issue 1; 63/04 – Shine Well, Issue 5; and 15/05 – Ving Tay II, Issue 1)

The reasons for decision on issue 1 of case 84/05 – Manhattan, the Arbitration Council held that, *“The Notification does not clearly state the number of working days to be considered as regular for workers to receive the attendance bonus.”* (See Awards 48/05 – Manhattan, Issue 1 and 57/07 – Siratext, Issue 3)

In this case, the Arbitration Council also agrees with the previous interpretation that this notification does not clearly state how many days a worker must work to be considered regular and entitled to receive the attendance bonus. However, according to Article 103 of the Labour Law, bonus is part of the wage.

Article 103 of the Labour Law provides that, *“Wage includes, in particular:*

- *actual wage or remuneration;*
- *overtime payments;*
- *commissions;*
- *bonuses and indemnities;*
- *profit sharing;*
- *gratuities”*

Article 71(6) of the Labour Law stipulates that, *“The labor contract shall be suspended under the following reasons:*

*Absence of the worker authorized by the employer, based on laws, collective agreements, or individual agreements.”*

Article 72(1) of the Labour Law states that, *“The suspension of a labor 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.”*

Therefore, when a worker is absent with permission from the employer, the labour contract is suspended and the worker is not required to work for the employer. An employer is not required to pay him or her because the leave is not included in the annual leave, special leave, or sick leave; unless there is a contrary provision that requires the employer to pay the worker. That means the employer is not required to pay the worker on the day that he or she is absent with permission; but on the day that the worker is not absent (for example, the day the worker comes to work) the employer must pay the worker for those days.

Therefore, the attendance bonus is part of the wage. On the day that the worker is absent with permission from the employer, the employer is not required to pay the attendance bonus to the worker. That means the employer may deduct the attendance bonus in proportion to the number of days that the worker is absent with permission. However, when the worker comes to work, the employer is required to pay the worker the attendance bonus. That means the employer must pay the attendance bonus in proportion to the number of days the worker has worked.

In the previous cases, the Arbitration Council ordered the employer to deduct the attendance bonus in proportion to the number of days that a worker was absent (see Arbitral Awards 57/07 – Siratext, Issue 3 and 106/07 – M&V III, Issue 2).

However, in this case the worker party demanded that the company maintain the \$5 attendance bonus when the workers were absent for three days with permission from the employer. Based on the above interpretation, the Arbitration Council considers that the demand is not valid because during the period of absence the worker did not work for the employer. Therefore, the worker was not entitled to the full attendance bonus because the company had previously maintained the attendance bonus for workers when they took annual leave, special leave, and sick leave.

In conclusion, the Arbitration Council decides to reject the demand of workers that the company maintain the US\$ 5 attendance bonus when the workers are absent for three days with permission from the employer; however, the employer may deduct the attendance bonus in proportion to the number of days that the workers are absent with permission.

**Issue 2: Workers demanded that the company give them prior notice of the expiration of their employment contracts and that the company not renew their employment contracts for a period of less than six months**

In this case, the worker party demanded that the company give them prior notice of the expiration of their employment contracts and that the company not renew their employment contracts for a period of less than six months. The employer party did not agree and [said it]

would apply Article 73 of the Labour Law because by law only a contract that is longer than six months requires prior notice. The Arbitration Council considers this issue as follows:

Article 73(5) of the Labour Law provides that, *“If the contract has a duration of more than six months, the worker must be informed of the expiration of the contract or of its non-renewal ten days in advance...”*

Based on this article, the Arbitration Council considers that the Labour Law requires the employer to inform workers of the expiration of their contract or its non-renewal ten days in advance, if the labour contract has a fixed duration of more than six months. However, this article does not require the employer to inform workers of the expiration of their contract or its non-renewal, if the contract has a fixed duration of less than six months (see Arbitral Award 107/04 – Jacqsintex, Issue 4).

Based on the above interpretation, the Arbitration Council considers that the demand of workers is not provided for under the law because most of the labour contracts between the workers and the employer have the duration of less than six months. According to the employer, only a few labour contracts were not renewed when they expired after six months and most labour contracts were renewed for a period of [only] six months.

Therefore, the Arbitration Council decides to reject the demand of workers that the company inform them of the expiration of their labour contracts and non-renewal because the contract duration is less than six months.

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

### **DECISIONS AND ORDERS**

**Issue 1:** Reject the demand of workers that the company maintain the \$5 attendance bonus when they are absent for 3 days with permission.

**Issue 2:** Reject the demand of workers that the company inform them of the expiration of their labour contract and non-renewal because the contract duration is less than six months.

### **Type of Award: Non-Binding Award**

*This Award will become binding after eight 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 period.*

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

Arbitrator chosen by the employer party:

Name: **Seng Vuoch Hun**

Signature: .....

Arbitrator chosen by the worker party:

Name: **Ven Pov**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: .....