



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល
THE ARBITRATION COUNCIL

Case number and name: 119/07 – Royal Crowntex

Date of Award: 11 December 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: **Vong Vanna**

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

DISPUTING PARTIES

Employer party:

Name: **Royal Crowntex International Inc.**

Address: Mondol I, Sangkat Mittapheap, Khan Mittapheap, Sihanoukville

Telephone: 012 952 211

Fax: N/A

Representatives:

1. Mr. Dillard Cheek Director;
2. Mr. Sok Kung Administrative Staff;
3. Mr. Chab Keo Lawyer;
4. Mr. Panh Siv An Director's Assistant;
5. Ms. Sim Sokha Lin Administrative Staff;
6. Ms. Suong Sreyleak Administrative Staff.

Worker party:

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

Address: Mondol I, Sangkat Mittapheap, Khan Mittapheap, Sihanoukville

Telephone: 012 796 007

Fax: N/A

Representatives:

1. Mr. Long Sophat Labour Officer of KYFTU;
2. Mr. Nong Samnang Labour Officer of KYFTU;
3. Mr. Hing Bunthoeun Labour Officer of KYFTU;
4. Mr. Leang Vanny President of KYTU at the factory;
5. Mr. Lay Sokly Vice-President of KYTU at the factory;
6. Mr. Suong Labido Secretary of KYTU at the factory.

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

1. The worker party demanded that the company not deduct their wages and attendance bonus when workers come to work late.
2. The worker party demanded that when overtime work is performed the company shall pay them 500 riels per hour.
3. The worker party demanded that the apprenticeship and probation period shall be a maximum of two months and after two months, workers shall become regular workers and receive US\$ 50; and demanded that the company reimburse those who had received less.
4. The worker party demanded that the company make it easy for workers when requesting leave.
5. The worker party demanded that the company provide full payment and bonus to those [workers] who suffer a work-related accident.
6. The worker party demanded that the company deduct 1,000 riel union contribution fees for unions.
7. The worker party demanded that the company provide 50 percent of wages and other perquisites to any female worker who takes 90 days maternity leave and reimburse those [workers] who did not receive this earlier.
8. The worker party demanded that the company establish a day-care centre or provide three one kilogramme tins of milk powder per month and US\$ 30 for day-care fees per month in replacement of the establishment of the day-care centre.
9. The worker party demanded that the company arrange for a medical examination for workers and meet the cost [of the medical examination].
10. The worker party demanded that the company build more toilets for workers to use.
11. The worker party demanded that the company provide accommodation or transportation to workers when they work at night for the company.
12. The worker party demanded that the company establish a clinic with three standby doctors during working hours and fully equipped with medical equipment; and demanded that the company arrange for training on the use of the fire extinguisher.

13. The worker party demanded that the company provide gloves and safety glasses during working hours and a uniform to workers.
14. The worker party demanded that the company compensate workers for the loss of property including bicycle or motorbikes within the factory's premises.
15. The worker party demanded that the company announce the new piece rate before the new design is released.
16. The worker party demanded that the company pay night shift workers at a rate of 200% and reimburse those [workers] who had received less than that.
17. The worker party demanded that the company allow pregnant workers to leave the office 15 minutes early.

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 24 October 2007 was unsuccessful, and the non-conciliation report No. 289 was submitted to the Secretariat of the Arbitration Council on 5 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: 21 November 2007 (from 8:00am to 12:30pm)

Procedural issues:

On 2 October 2007, the Sihanoukville Department of Labour and Vocational Training received a complaint from the KYFTU demanding the improvement of working conditions. Having received the complaint, the Sihanoukville Department of Labour and Vocational Training designated its officials to conciliate the dispute three times. The first conciliation session was held on 17 October 2007, the second one on 19 October 2007, and last one on 22 October 2007, but none of the 17 issues were conciliated. The 17 non-conciliated issues were submitted to the Arbitration Council on 5 November 2007.

Having received the case, the Secretariat of the Arbitration Council summoned both the employer party and the employee party to a hearing to conciliate the 17 non-conciliated

issues on 16 November 2007 at 8:00 a.m., but the employer party requested a postponement because a buyer was inspecting the factory. The Arbitration Council agreed with the request and asked the Secretariat of the Arbitration Council to summon the employer party and the worker party to a hearing to conciliate the 17 non-conciliated issues on 21 November 2007 at 8:00 a.m. Both parties were present at the hearing summoned by the Arbitration Council.

On the hearing day, the Arbitration Council attempted to conciliate the 17 remaining non-conciliated issues as stated in the non-conciliation report of the Department of Labour Disputes. As a result issues 1, 2, 3, 4 and 5 were withdrawn by the worker party and issues 6, 8, 9, 10, 11, 12, 13, 15, and 17 were conciliated. Therefore, in this case the Arbitration Council considers only issues 7, 14 and 16 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. 3004 of the business registration of Royal Crowntex dated 26 September 2001;
2. Memorandum and statute of Royal Crowntex Company dated 1 August 2001;
3. Letter applying for a visa for the Internal Work Rules of Royal Crowntex dated 28 October 2003;
4. Internal Work Rules of Royal Crowntex dated 29 October 2003;
5. Recognition Letter of permanent worker delegates and assistants at Royal Crowntex dated 28 October 2003;
6. Minutes of the meeting with worker representatives at Royal Crowntex dated 22 October 2007.
7. Attendance list of worker delegates during the meeting.
8. Letter dated 14 October 2007 requesting a delay of the meeting to 28 November 2007.
9. Invitation No. 538 to the hearing on 12 November 2007.
10. Letter No. 047 on the request to represent Royal Crowntex in the hearing on 14 November 2007.
11. Authorization and Request Letter from the Director of Royal Crowntex dated 14 November 2007.

Provided by the worker party: N/A

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

1. Report No. 289 on the collective labour dispute at Royal Crowntex Company dated 24 October 2007.
2. Minutes of the collective labour dispute conciliation at Royal Crowntex Company dated 22 October 2007.

Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 539 dated 12 November 2007 to the worker party to attend the first hearing.
2. Invitation No. 538 dated 12 November 2007 to the employer party to attend the first hearing.
3. Invitation No. 555 dated 14 November 2007 to the worker party to attend the second hearing.
4. Invitation No. 554 dated 14 November 2007 to the employer party to attend the second 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:

- Royal Crowntex Company employs 1,908 workers.
- The claimant, Khmer Youth Trade Union, has not yet been registered but has applied for registration
- The union did not clearly provide the number of its members. The Arbitration Council ordered the worker party to provide the name list by 27 November 2007. The union provided the name list of 531 workers who made the demand to the Arbitration Council as ordered.

Issue 7: The worker party demanded that the company provide 50 percent of wages and other perquisites to any female worker who takes 90 days maternity leave

- The worker party demanded that the company provide 50 percent of wages and other perquisites to any female worker who takes 90 days maternity leave, [calculated on the worker's total wage ie] minimum wage and perquisites (seniority bonus, skill bonus, language bonus, and overtime wage).
- The employer party said that the company already followed the law by providing 50 percent of wages and other perquisites to any female worker who takes 90 days maternity leave, [calculated on the worker's total wage ie] minimum wage and perquisites (seniority bonus, skill bonus, and language bonus). However, the employer party did not provide the overtime wage because during maternity leave, the worker does not work overtime.
- The Arbitration Council ordered the employer party to provide [details] of the manner in which it calculated the maternity wage and ordered the worker party to provide the name list of those who made the demand by 27 November 2007. The employer party provided details of how it calculated the maternity wage as ordered. The worker party did not provide the exact number of workers who made the demand but asked the Arbitration Council to refer to the name list they provided.

Issue 14: The worker party demanded that the company pay for the motorbike that was lost in March 2007

- A worker named Lay Sokly lost his 2005-model motorbike (he promised to provide documents) on 6 March 2007 during working hours, and demanded that the company pay for the lost motorbike. He said his motorbike cost US\$ 1,225.
- The employer party acknowledged that the motorbike was lost, but did not agree to pay because the company has no obligation to look after bicycles and motorbikes of workers.
- The employer party said in the hearing that after the motorbike was lost, the company made an announcement to all workers and staff members to make a contribution to Lay Sokly. Lay Sokly said that up to the hearing day he had received US\$ 410 and requested the company to pay the remaining amount.
- The employer party did not agree to the request because it was not the company's obligation. The employer party said that from now on, it would build metal bars so that workers could lock their bicycles and motorbikes in the hall arranged by the company.
- Lay Sokly said that on the day he lost his motorbike he used only a normal lock. He did not have an additional lock.
- The company made an announcement urging workers to look after their motorbikes after the motorbike was lost.

- The Arbitration Council ordered both parties to provide relevant documents by 27 November 2007. The employer party provided the minutes relating to the loss of the motorbike as ordered, but the worker party did not provide any relevant document to the Arbitration Council.

Issue 16: The worker party demanded that the company pay night-shift work at a rate 200 percent higher than normal hours

- The worker party's demand that the company pay night-shift work at a rate 200 percent higher than normal hours was based on Circular No. 184 (1) dated 14 August 2007 of the Ministry of Labour and Vocational Training; and asked the company to continue providing benefits until the employment contracts expire. The worker party claimed that the [workers] have undetermined duration contracts. Therefore, their employment contracts do not expire.
- The employer party said that the company had provided 200 percent of wages for night shift work. However, the company had changed to 130 percent after the amendment of the Labour Law came into force in August 2007.
- The company's lawyer did not agree with the interpretation of workers on the Circular No. 185 dated 14 August 2007 because point 1 of this Circular is vague. While the amended Labour Law is clearer. Therefore, the Circular cannot be applied.
- Circular No. 184 (1) dated 14 August 2007 states that, *"Workers who work on night shift between 22:00 and 5:00 whether shift work or permanent work, shall receive 130 percent of the day shift wage. For those workers who work on night shift and receive wages and other benefits in accordance with an agreement, this agreement shall continue until expiry date."*

REASONS FOR DECISION

Issue 7: The worker party demanded that the company provide 50 percent of wages and other perquisites to female workers who take 90 days maternity leave

The worker party demanded that the company provide 50 percent of wages and other perquisites to any female worker who takes 90 days maternity leave, [calculated on the worker's total wage ie] the minimum wage and perquisites (seniority bonus plus skill bonus plus language bonus plus overtime wage). The employer party claimed that the company has already implemented the Labour Law as the company [calculated maternity leave] on the worker's minimum wage plus perquisites (seniority bonus plus skill bonus plus language bonus but did not include overtime wage).

Therefore, the Arbitration Council will consider whether or not maternity wages include overtime.

Article 182 of the Labour Law provides that, *“In all enterprises covered by Article 1 of this law, women shall be entitled to a maternity leave of ninety days.”*

Based on the facts, the Arbitration Council finds that the company allows female workers, who have worked for the company for one year, to take 90 days maternity leave. Therefore, the Arbitration Council finds that the 90 day maternity leave practice complies with Article 182 of the Labour Law.

Article 183 of the Labour Law states that, *“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.”

Based on Article 183 of the Labour Law, the Arbitration Council finds that women, who take maternity leave and have worked in the company for one year, are entitled to half of their wages and other perquisites paid by the employer. However, this Article does not state what exactly the half wage is (minimum wage or the wage that the workers receive inclusive of perquisites) (see Arbitral Award 24/06 – Fortune, Issue 2). The Arbitration Council finds that Article 183 only states half wage but does not specify about minimum wage. So what does the word “wage” in this article mean?

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

- *actual wage or remuneration;*
- *overtime payments;*
- *commissions;*
- *bonuses and indemnities;*
- *profit sharing;*
- *gratuities;*
- *the value of benefits in kind;*
- *family allowance in excess of the legally prescribed amount;*
- *holiday pay or compensatory holiday pay;*
- *amount of money paid by the employer to the workers during disability and maternity leave.”*

Based on Article 103 (2) of the Labour Law, the Arbitration Council considers that wage includes “overtime payments.” Based on this Article, the Arbitration Council finds that overtime work that workers undertook before the maternity leave is considered as part of their wage. Furthermore, in previous cases, the Arbitration Council also explained that

overtime payments shall be included as [part of the worker's] wage (see Arbitral Award 33/07 – Gold Fame, Issue 7).

In this case, the Arbitration Council also agrees with the previous interpretation that overtime payments should be considered as [part of the worker's] wage. Therefore, the Arbitration Council considers that the employer shall provide wages and other perquisites including overtime payments to any female worker who takes maternity leave by calculating the average wage of that worker for 12 months, multiplying it by three months and dividing it by two to find the wage and perquisites for the worker who takes 90 days maternity leave.

In conclusion, the Arbitration Council orders the employer party to provide 50 percent of wages and perquisites to any female worker who takes 90 days maternity leave by calculating the average wage of the worker in the 12 months prior to taking leave.

Issue 14: The worker party demands that the company pay for the motorbike that was lost in March 2007

In this case, the worker party demanded that the company pay for the motorbike that was lost in March 2007. The employer party did not agree to pay because it was not the obligation of the employer. The Arbitration Council considers whether or not this dispute is a collective dispute.

Article 302 of the Labour Law stipulates that, *“A collective labour dispute is any dispute that arises between one or more employers and a certain number of their staff over working conditions, the exercise of the recognized rights of professional organizations, the recognition of professional organizations within the enterprise, and issues regarding relations between employers and workers, and this dispute could jeopardize the effective operation of the enterprise or social peacefulness.”*

In this case, the Arbitration Council considers that this dispute is not a collective dispute because the loss of a motorbike of a worker is not related to working conditions, the exercise of the recognised rights of professional organisations, or the recognition of professional organisations within the enterprise.

Based on the above facts and interpretation, the Arbitration Council finds that none of the Articles in the Labour Law or provisions state that the employer shall be responsible for the loss of property of workers and there is no evidence to prove that the employer is responsible for looking after the motorbike of workers during working hours.

Therefore, the Arbitration Council declines to consider the demand of the worker that the company pay for the motorbike that was lost in March 2007.

Issue 16: The worker party demanded that the company pay night shift work at a rate 200 percent higher than normal hours

Amended Article 144 (2) of the Labour Law stipulates that, “...*night shift work shall be paid 130 percent of the wage of day shift.*”

Based on the amended Article 144 (2), the Arbitration Council considers that night shift workers are paid 30 percent more than workers who work the day shift (130 percent of the wage for day shift).

In this case, the worker party demanded that the company provide 200 percent to night shift workers based on Circular 185 (1) dated 14 August 2007 which states that, “*Worker, who works between 22:00 and 5:00 even though it is a shift work or permanent work, shall receive 130 percent of the day shift wage. For those who work night shift and received wages and other benefits through verbal agreement shall continue until expiry date.*”

Based on the content of Circular 184 (1) dated 14 August 2007, the Arbitration Council considers that workers, who work at night, are entitled to 130 percent of the day shift wage; and benefits that were previously agreed between workers and an employer shall remain the same until the expiration. In this case, the employer party said that the company had provided 200 percent for night shift work but had changed to 130 percent after the amended Labour Law came into force in August 2007. The employer party said that Circular 184 (1) dated 14 August 2007 is vague. The amended Labour Law is clearer. Therefore, the Circular cannot be implemented.

Having regard to the claim of both the worker party and the employer party regarding the content of this Circular, the Arbitration Council considers that the claim of the employer party is more reasonable, and if we consider the rank of the law it is higher than the Circular and the claim of the worker party is not [consistent with] the intention of the amendment to Article 144 of the Labour Law. The intention of the amended Article 144 of the Labour Law to provide 130 percent rate for night shift work was to motivate employers to increase their production line at night in order to create more jobs for Cambodian people. If the law has been amended but the amendment not applied, the amendment would be meaningless.

In this case, the Arbitration Council considers that the content of the new Article 144 that provides a 130 percent rate for night shift work clearly requires the company, establishment, or enterprise to implement after the King has signed and promulgated in accordance with Article 93 of the Constitution of the Kingdom of Cambodia.

Furthermore, in this case the Arbitration Council finds that there is no agreement between the employer and the workers about the continuation of the 200 percent rate for night shift workers.

In conclusion, the Arbitration Council rejects the demand of workers that the company provide a 200 percent rate for the night shift workers.

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

DECISIONS AND ORDERS

Issue 7: Order the employer party to provide 50 percent of wages and perquisites to female workers who take 90 days maternity leave by calculating the average wage of the worker in the 12 months prior to taking leave.

Issue 14: Decline to consider the demand of the worker party that the company pay for the motorbike that was lost in March 2007.

Issue 16: Reject the demand of the worker party that the company provide a rate of 200 percent rate for night-shift workers.

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: **Vong Vanna**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: