



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

**ក្រុមប្រឹក្សាសវនកម្មជាតិ**

**THE ARBITRATION COUNCIL**

**Case number and name: 121/08-Sinomax**

**Date of Award: 9 October 2008**

### **ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

#### **ARBITRATION PANEL**

Arbitrator chosen by the employer party: **Kao Thach**

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

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

#### **DISPUTING PARTIES**

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

Name: **Sinomax International (Cambodia) Garment Ltd.**

Address: Village No. 2, Svay Rolom Village, Saang District, Kandal Province

Telephone: 012 800 097 or 012 500 567 Fax: N/A

Representative:

1. Mr. Tha Chhay Chief of administration

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

Name: **Coalition of Cambodian Apparel Workers' Democratic Union (C.CAWDU) and local union of C.CAWDU at Sinomax factory**

Address: #6C, Street 476, Sangkat Tuol Tompoung 1, Khan Chamkamorn, Phnom Penh

Telephone: 092 922 103 Fax: N/A

Representative:

1. Mr. Huot Tongyou Officer of C.CAWDU  
2. Ms. Men Sorphea Vice-president of local union of C.CAWDU at the factory  
3. Ms. Som Sopheap Assistant to local union of C.CAWDU  
4. Ms. Out Borei Assistant to local union of C.CAWDU

Name: **Cambodian Union Federation (CUF) and local union of CUF at Sinomax factory**

Address: Village 1, Svay Rolom Village, Saang District, Kandal Province

Telephone: 012 658 129 Fax: N/A

Representative:

- |                 |  |
|-----------------|--|
| 1. Mr. Mom Thon | Officer of CUF                                 |
| 2. Ms. Oun Kong | President of local union of CUF at the factory |

### **ISSUES IN DISPUTE**

(In the Non-Conciliation Report)

- 1- The workers demand that the company dismiss a Chinese supervisor named Fou Kou (alias Yeay Kror Nhanh). The company requests two months for her to improve herself, after which the company will terminate her if she fails to improve.
- 2- The workers demand that when they take sick leave supported by a medical certificate, the company should not deduct their attendance bonus. The company does not agree to pay the attendance bonus but it agrees to pay wages.
- 3- The workers demand that the company reinstate the dismissed workers with ID numbers: S 1720, ST 2299. The company requests time to consider their demand.
- 4- The workers demand that the Company allow one day per month for pregnant workers to have a medical check. The company requests time to consider their demand.

### **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. 445/08 KB/KN, dated 12 September 2008 was submitted to the Secretariat of the Arbitration Council on 12 September 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:** 25 September 2008 from 8:00 a.m. to 11:00 a.m.

**Procedural issues:**

On 11 September 2008 the Department of Labour and Vocational Training of Kandal Province assigned an officer to settle a collective labour dispute on 19 issues, after which four non-conciliation issues remained. The four non-conciliation issues were referred to the Arbitration Council on 12 September 2008 though the non-conciliation report of collective labour dispute resolution No. 445/08 KB/KN, dated 12 September 2008.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer party and the worker party to the hearing and conciliation on the four non-conciliation issues on 25 September 2008 at 8:00 a.m.

Both parties were present [at the hearing] as invited by the Arbitration Council. The Arbitration Council tried to ask for information relevant to this dispute and attempted to further the conciliation on the four non-conciliation issues. As a result, issue four was conciliated, while issue one and issue three were withdrawn from this case by the worker party. Thus, the Arbitration Council will consider and settle the remaining issue, issue two, based on 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. Authorization letter to Mr. Tha Chhay, chief of administration, to settle the collective labour dispute at the Arbitration Council, dated 20 September 2008.
2. Internal Work Rules of Sinomax Company No. 187 KB/AK/ATK, dated 19 December 2007.
3. Minutes of collective labour dispute conciliation at Sinomax garment company, dated 2 April 2008.

Provided by the worker party:

#### **Documents received from the local union of C.CAWDU at Sinomax factory**

1. Certificate of union registration of the local union of C.CAWDU at Sinomax Company, dated 25 April 2007;
2. Statement on case 121/08 of Sinomax Company, dated 24 September 2008.
3. List of names of workers who had medical certificates from the Labour Health Department and whom the company denied their attendance bonus.
4. Membership card of members of local union of C.CAWDU at Sinomax factory.
5. Letter from the chief of the Department of Labour Dispute to the president of local union of C.CAWDU at Sinomax Company regarding recognition of leadership of the union in the new mandate, dated 28 May 2008.

### **Documents received from the local union of CUF at Sinomax factory**

1. Certificate of union registration of the local union of CUF at Sinomax Company, dated 9 January 2008.
2. Notification letter regarding election for union leadership of the local union of CUF at Sinomax Company, dated 11 November 2007.
3. Membership cards of members of the local union of CUF at Sinomax Company.

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

1. Report No. 445 KB/KN, dated 12 September 2008 on the collective labour dispute settlement at Sinomax Company.
2. Minutes of the collective labour dispute resolution at Sinomax Company, dated 11 September 2008.

#### Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 596 KB/AK/VK/LKA dated 19 September 2008 to invite the worker party to attend the hearing.
2. Invitation No. 595 KB/AK/VK/LKA dated 19 September 2008 to invite the employer party to attend the hearing.

### **FACTS**

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

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

- Sinomax Company commenced operations in 2005. Currently it employs approximately 750 workers.
- In this dispute, the two unions who joined together as claimants in this case are the local union of C.CAWDU and the local union of CUF at Sinomax factory.
- The local union of C.CAWDU has 370 members while the local union of CUF has 100 members. The two unions do not have most representative status.

#### **Issue 2: The workers demand that the company pay the US\$ 5 attendance bonus to workers who take sick leave and provide a medical certificate**

- The company asserted in the hearing that it maintains wages for workers who are sick and provide a proper medical certificate, but the company does not maintain their attendance bonus; the company deducts the whole attendance bonus even though the workers take only a half-days leave and provide a proper medical certificate.
- The workers and the company agreed in the hearing that in April 2008 the workers had an agreement with the company that the company would not deduct workers'

wages when they take sick leave but provide a medical certificate. In May 2008, the company maintained attendance bonuses for workers who provided medical certificates; the company stated that this was because the accountant was not well acquainted with this issue. However, starting in June 2008 the company deducted the whole attendance bonus again.

- The company interpreted the agreement, which provides that the company will not deduct workers' wages when they are sick and provide a proper medical certificate, , to mean that their wages are maintained but not their attendance bonus. The worker party, on the other hand, considers the attendance bonus is part of their wages. Thus, they argue, the company should not deduct the attendance bonus of workers who are sick [and provide a] proper medical certificate.
- The company party adds that the workers need to come to work for a full 26 days per month in order to receive the US\$ 5 attendance bonus. Thus, when the workers are sick, even with a medical certificate, they are not entitled to an attendance bonus. The company states that [this policy] follows Notification 017 SKBY, dated 18 July 2000.
- The workers claim that wages include bonuses and indemnities as mentioned in Article 103 of the Labour Law. Thus, as the company maintains wages for workers who are sick with medical certificate, it should also maintain their attendance bonus. Moreover, the company's Internal Work Rules state that the company provides full wages for workers who take sick leave with a proper medical certificate from a doctor in the first month of leave.
- The workers and the company promised to provide the agreement to prove that when workers are sick with proper medical certificate the company would not deduct their wages, as well as the company's Internal Work Rules to the Arbitration Council, by 26 September 2008. The company provided the Internal Work Rules to the Arbitration Council but not the agreement.
- Clause 3 (e), of the company's Internal Work Rules states, *"(Sick leave): the company provides full wages for workers who take sick leave with a proper medical certificate from a doctor in the first month of leave..."*

## **REASONS FOR DECISION**

### **Issue 2: The workers demand that the company pay the US\$ 5 attendance bonus to workers who take sick leave and provide a medical certificate**

The company maintains wages for workers who are sick and provide a proper medical certificate but it does not maintain their attendance bonus; the whole bonus is deducted even if the leave is only half a day and is supported by a proper medical certificate.

Thus, the Arbitration Council will consider whether the workers are entitled to the attendance bonus according to the Labour Law when the workers are sick and provide a proper medical certificate.

Clause 3 (e), of the company's Internal Work Rules states, *"the company provides full wages for workers who take sick leave with a proper medical certificate from a doctor in the first month of leave..."*

According to the Internal Work Rules, the company provides full wages in the first month to workers who take sick leave with a proper medical certificate. However, it is not expressly stated what is included in the wages. It is not clearly mentioned whether the attendance bonus is included in the wages; this led to different interpretations by the company and by the workers. The company interprets the Rules to mean that it provides full wages to workers who take sick leave with a proper medical certificate, but that the attendance bonus is not included in the wages. The workers, on the other hand, interpret that the term "full wages" includes the attendance bonus according to Article 103 of the Labour Law.

Article 103 of the Labour Law states, *"Wage includes, in particular:*

- *actual wage or remuneration;*
- *overtime payments;*
- *commissions;*
- *bonuses and indemnities[.]"*

According to Article 103 of the Labour Law above, the Arbitration Council considers that the term "**wage**" has a broad meaning which includes base wage, overtime payments, bonuses and indemnities, etc. According to this Article, it is not clear whether the term "**full wage**" provided in the Internal Work Rules above refers to the base wage or to the package of wage stated in Article 103 of the Labour Law above. Hence, the Arbitration Council will look further into clause 3 of Notification 017, dated 18 July 2000, which states, *"Workers who come to work regularly on regular working days of a month shall receive a bonus of at least US\$ 5.00 per month."* The Arbitration Council considers that this Notification does not state clearly whether workers who are sick and unable to come to work are entitled to the attendance bonus. (See *Arbitral Awards 48/05-Manhattan, issue 1; 57/07-Seratex, issue 3; and 62/07-Hong Mei, issue 11*).

In case 48/05-Manhattan, issue 1, the Arbitration Council writes 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 *Arbitral Awards 48/05-Manhattan, issue 1; and 57/07-Seratex, issue 3*).

In relation to attendance bonuses, in previous cases the Arbitration Council held that workers who are absent with permission are entitled to an attendance bonus in proportion to

the number of days the workers came to work (See *Arbitral Awards 63/04-Shine Well, issue 5; 57/07-Seratex, issue 3; 106/07-M&V 3, issue 2*).

In case 31/08-South Bay, the Arbitration Council ordered the employer to deduct the attendance bonus in proportion to the number of days the workers [are absent on) sick leave with a proper medical certificate (*reasons for decision issue 6*).

The Arbitration Council considers that an “attendance bonus” is an incentive to encourage and praise workers who come to work regularly for one full month without taking any leave without valid reason. (See *Arbitral Award 62/04-Shine Well, issue 5; and 15/05-Wing Tai 2, issue 1*).

In this case, the Arbitration Council considers that the provision in the Labour Law which provides an attendance bonus as stated in Notification 017, dated 18 July 2000 by the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation is not intended to punish workers who take sick leave with proper permission from the employer.

The Arbitration Council considers that it is not fair for workers who take sick leave with proper permission from the employer to lose the whole attendance bonus of US\$ 5, because because their failure to come to work regularly is due to illness and not their mistake. However, neither is it fair to the employer who loses work during the workers’ sick leave if it is required to pay an attendance bonus for the workers who take sick leave. (See *Arbitral Awards 15/05-Wing Tai, issue 1; 48/05-Manhattan, issue 1; and 62/07-Hong Mei, issue 11*).

The Arbitration Council considers that on the days the workers take sick leave with a proper medical certificate, the employer is not required to provide an attendance bonus to the workers for the days that they do not come to work but take leave with proper permission from the employer. This means that the employer can deduct the attendance bonus in proportion to the number of days the workers were absent due to sick leave with a proper medical certificate. However, on the days the workers were not absent, the employer is required to pay an attendance bonus to the workers. This means that the employer should provide an attendance bonus in proportion to the number of days the workers came to work.

In conclusion, the Arbitration Council decides to order the employer to deduct the attendance bonus in proportion to the number of days the workers were absent on sick leave with a proper medical certificate.

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

**DECISION AND ORDER**

- Order the employer to deduct the attendance bonus in proportion to the number of days the workers take sick leave with a proper medical certificate from the date this Arbitral Award enters into effect.

**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: **Kao Thach**

Signature: .....

Arbitrator chosen by the worker party:

Name: **Tuon Siphann**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: .....