

**KINGDOM OF CAMBODIA**

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**THE ARBITRATION COUNCIL**

**Case number:** 13/05

**Date of Award:** 20 April 2005

**ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

**Tack Fat Co., Ltd.**

(The employer party)

**And**

**C.CAWDU of Tack Fat Factory**

(The employee party)

**Detailed information of employer party**

**Representative:** Mr. Sar Samneang, lawyer of the company

**Address:** Building #1159, National road No. 2, Sangkat Chakangrekleu, Khan  
Meanchey,  
Phnom Penh

**Telephone:** 012 879 772, 011 957 576, 023 367 888

**Fax:** 023 362 828

**E-mail:** tfcam@bigpond.com.kh

**Detailed information of employee party:**

**Representatives:**

- 1- Ek Pheakdy, Chief of the dispute resolution office of C.CAWDU
- 2- Kao Peun, Dispute resolution officer of C.CAWDU
- 3- Mean Sampors, President of C.CAWDU of Tack Fat factory
- 4- Oum Sakhorn, Vice President of C.CAWDU of Tack Fat factory
- 5- Yann Chanthy, Secretary of C.CAWDU of Tack Fat factory
- 6- Reoung Samoun, Member of union committee of C.CAWDU of Tack Fat  
factory

**Address:** # 6F, St. 476, Toultapong I, Chamkamorn, Phnom Penh.

### **Issues In Dispute**

- 1- The employee party demanded that the company pay 1,000 riel for [the employees'] lunches as in the past.
- 2- The employee party demanded that the company pay US\$15 per month to workers in the laundry, sanding and cutting sections for medical checks because the chemicals at these workstations have an effect on their health.
- 3- The employee party demanded the company pay for technical bonuses of US\$15 per month to workers in the electrical, mechanical and carpentry [sections].
- 4- The employee party demanded the company pay wages to all workers during working hours and completely finish by 4:00 p.m. and if [work] goes past [this time] the company should pay for overtime to workers.
- 5- The employee party demanded the company reinstate Mr. Mean Makara and another 3 workers who are mechanics.
- 6- The employee party demanded the company:
  - a. reimburse 10,100 riel for medical checks to all workers
  - b. increase the [employees'] basic wage.

### **Jurisdiction of the Arbitration Council**

The Arbitration Council derives its power to make this Award from Section 2B (Article 309 to 317), Chapter XII of the Labour Law (1997); the Prakas on the Arbitration Council No. 099 dated 21 April 2004; the Prakas on the Appointment of Arbitrators No. 103 dated 26 April 2004 and No. 265 dated 13 July 2004 and the Arbitration Council Procedural Rules which form an Annex to the same Prakas No. 099 dated 21 April 2004.

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. However, the parties did not conciliate, and the non-conciliation report number 304 L.V.T dated 2 March 2005 was submitted to the Secretariat of the Arbitration Council on 15 March 2005.

### **Arbitration Panel**

Arbitrator chosen by the employer party:	Ms. <b>Seng Vuoch Hun</b>
Arbitrator chosen by the worker party:	Mr. <b>Tuon Siphann</b>
Chair arbitrator (chosen by the two arbitrators):	Mr. <b>Kong Phallak</b>

## **Hearing and Evidence**

### **Date and Place of hearing:**

- First hearing held on 23 March 2005 from 8:00 a.m. to 12:00 p.m. at the Secretariat of the Arbitration Council.
- Second hearing held on 6 April 2005 at 8:30 a.m. at the Secretariat of the Arbitration Council.

**Witnesses and experts:** *None*

### **Evidence considered by the Arbitration Council**

#### **Provided by the employer party:**

- 1- Certificate of registration in GSP No. 2637 dated 14 November 2003;
- 2- Certificate of business and company registration No. 2073 dated 5 October 1995;
- 3- Internal work rules dated 23 December 1998;
- 4- Payroll of January 2005;
- 5- Authorization letter No. 477/05 dated 3 March 2005 to Mr. Sar Samnang, attorney to the company, to participate in the hearing.

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

- 1- Letter of C.CAWDU federation dated 11 January 2005 to the Director of the factory to discuss the issues of workers;
- 2- Letter of C.CAWDU federation dated 27 January 2005 to the Chief Department of Labour Inspection requesting resolution of the workers' issues of Tack Fat factory;
- 3- Letter of C.CAWDU of Tack Fat factory dated 1 January 2004 to the Director of the factory to obtain protection for the union members;
- 4- Letter proving registration from the Ministry of Labour dated 8 August 2005;
- 5- Registration certificate of C.CAWDU of Tack Fat factory dated 8 August 2005;
- 6- List of thumbprints of approximately 961 workers to request C.CAWDU of Tack Fat factory to resolve their 14 issues.

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

- 1- Letter of request to settle the collective labour disputes of Tack Fat enterprise No. 342 MLVT from H.E Nhep Bunchin, Minister of Ministry of Labour and Vocational Training dated 14 March 2005;
- 2- Report on conciliation of the collective labour dispute of Tack Fat Cambodia Garment Co., Ltd. dated 1 March 2005;

- 3- Collective labour dispute conciliation record dated 16 February 2005;
- 4- Letter requesting settlement of the problems at C.CAWDU of Tack Fat factory to C.CAWDU dated 24 January 2005.

### **Presentation and testimony of the employee party and employer party at the hearing**

**Both parties agreed to have a NON-binding award.**

#### **Case summary:**

Tack Fat Garment Co., Ltd. is located at #1159, National road No. 2, Sangkat Chak Angrealeu, Khan Meanchey, Phnom Penh and employs approximately 6,000 workers.

On 28 January 2005 the Labour Inspection Department of Khan Meanchey received a complaint from workers demanding Tack Fat Company improve working conditions in respect of 14 points. After receiving this complaint, the Labour Inspection Department of Khan Meanchey conciliated at the factory location, the last conciliation being on 16 February 2005; eight of 14 issues were [successfully] conciliated. Six non-conciliation issues as set out above were referred to the Arbitration Council on 15 March 2005.

On 23 March 2005 at 8:00 a.m., the Arbitration Council invited both parties to a hearing. At the hearing both parties requested the Arbitration Council remove the fifth issue from the dispute because the parties had conciliated it before the hearing. At the hearing the Arbitration Council tried to conciliate [between the parties] based on a win-win principle. As a result, two of [the original] six issues were conciliated (the second and fourth issues). For the remaining issues (the first, third and sixth issues) both parties requested further negotiation. The Arbitration Council agreed with their request and decided to conduct a second hearing on 6 April 2005 at 8:00 a.m. to find out the result of their negotiations. The two parties did not reach agreement on any of the remaining issues (first, third and sixth issues). Therefore, the Arbitration Council considers the three remaining issues as follows:

#### **Findings of Fact**

- Having seen the conciliation report on the collective labour dispute
- Having heard the employee party and the employer party
- Having reviewed the above documents

The Arbitration Council finds the facts as follows:

**Union issue**

In this factory there are five unions: Cambodian Worker Union of Tack Fat factory, C.CAWDU of Tack Fat factory, Independent Union of Garment Workers of Tack Fat factory, Cambodia Garment Textile Industry Union of Tack Fat and Khmer Union of Tack Fat factory. None of these unions has most representative status, including C.CAWDU of Tack Fat factory, which is the plaintiff to this complaint.

**First issue:**

Regarding the demand of workers for a lunch allowance of 1,000 riel or a return to the past lunch policy, both parties agreed that from 1996 to early 2001 the company deducted from each worker's wages US\$2 per month and in exchange for this, the employer prepared lunch for the workers. Both parties also agreed that afterward, there was no longer a deduction or [a prepared] lunch. The company party argued that the reason it stopped providing lunch was because there was an agreement with the workers. The employee party argued that the reason that the company stopped providing lunch was because the workers complained and wanted to have better and more sanitary food. Both parties also agreed that in 2004 there was a renegotiation on lunch preparation, but the General Manager of the company asked for a delay of six months in order to call for a company meeting [on this issue]. However up to now there has been no result.

**Third issue:**

Three carpenters were on one month probation and were paid US\$40 per month during the probationary period. Thirty-nine mechanics and 30 electricians who were on one-and-a-half month probations were paid US\$40 per month during the probationary period.

Workers argued that although electricians, carpenters and mechanics of Tack Fat Company demonstrated their skills by completing their probation, they never received a technical bonus. However, translators receive US\$20 to \$30 per month for their technical bonuses. In other companies like Sabrina, mechanics receive wages of US\$100 and technical bonuses of US\$10 per month.

The company rejected the workers' demand to pay the electricians, carpenters and mechanics a technical bonus. The company denied that the employer paid the translators of Tack Fat Company any technical bonus, and stated that the employer just provided US\$5 per month to some workers as an allowance but not as a technical bonus.

**Sixth issue:****a- Medical check fee**

The workers claimed that some workers paid for medical checks themselves, some borrowed money from the company and the company deducted [their wages] later and some others were, for a second time, required by the company to have a medical check because the company lost their documents.

Medical check fees, which the workers demanded for reimbursement, [cost] 10,100 riel per worker.

Tack Fat Company never paid for medical check fees from previously and up to now because the employer party considered it to be the responsibility of each worker, prior to coming to work in the company, to have a medical check and attach a certificate of the medical check with other documents when they apply for work. For other workers who did not have a medical check, the company believed that they were indebted to the company and required them to submit the certificate later or the company would first pay for the fee and then deduct their wages for the fee later.

**b- Demand for pay rise**

The employee party argued that previously there had been a verbal contract between the employees and the employer and that the employer had agreed to increase the workers' basic wages every year. Actually, the employer increased wages every year and the amount of the increase depended on the employer party, so workers did not usually receive equal increases in their wages. The increase is based on work seniority, ranging from US\$0.03 to US\$0.08 per month.

The employer party argued that the company did not have a policy to increase basic wages, but the increase was [due to] the kindness of the employer as an incentive for workers, and the previous increase was because the company was in a good [economic] situation. The employer did not increase wages for workers as before, because since 2004 the economic situation has not been as good as before, i.e. the company did not have as much income because of fewer buyers. The workers did not object to the argument raised by the employer that there was no policy on pay increases and the economic situation of the company was not very good.

**Reasons for Decision****First Issue:**

Providing lunch and the deduction of US\$2 from each worker' wages per month for lunch was done under an agreement between the employer and employee party. The employer and

employee party gave different reasons for not providing lunch anymore; however, both parties agreed that the agreement was terminated. Therefore, the benefits and obligations of the employer and the employees regarding the past lunch arrangement under the agreement is no longer effective.

Moreover there is no law which requires the employer to pay 1,000 riel to each worker for lunch. The demand of workers in this issue shows that the employee party wants the employer to provide more benefits than those they are entitled to under the law. Therefore, the Arbitration Council finds that this demand is an interests dispute.

Consistent with prior cases, because this dispute involves an interests dispute, the Arbitration Council shall determine whether the employee party has the right to demand the Arbitration Council settle this dispute.

Article 43 of Prakas 99/04 states that "An arbitral award which settles an interest dispute takes the place of a collective bargaining agreement and shall remain in effect for one year from the date on which it becomes final unless the parties agree to make a new collective bargaining agreement replacing the award." Under this article if the Arbitration Council issues an award on this issue it will become a Collective Bargaining Agreement (CBA), which will apply to all workers in the factory and make other employees who are not involved in this dispute lose the right to claim for other interests.

Based on the facts, the Arbitration Council finds that the union representing the employee party in this case did not have representative or most representative status in the company. In order to get representative or most representative status, Article 277 of the Labour Law 1997 and Article 6 of Prakas 305 dated 22 November 2001 requires the union to have members totaling at least more than half of all workers in the factory, register at the Ministry of Labour and Vocational Training, and fulfill other conditions as provided in the Article.

Therefore, consistent with prior cases, the Arbitration Council finds that C.CAWDU of Tack Fat company does not have the legal right to have the Arbitration Council issue an award on an interests dispute, which will become a CBA and apply to all workers in the factory.

See 04/03 - Lida, 06/04 - Chu Sing, 24/03 - Top One, 61/04 - Best Honor, 62/04 - E Sin, 109/04 - Fortune, and 06/05 So Tong Fang. Previously, the Arbitration Council also concluded that a union which does not have most representative status has no right to bring an interests dispute to the Arbitration Council to settle (see 31/03 - Hong Wah, 60/04 - United Art, 99/04 - AIA and 98/04 - Great Union)

Therefore, to resolve this issue the employer and employee party should continue to negotiate [to make] an agreement to apply in the future. It is one of many options which should be possible to provide and gives benefits to both parties. Therefore, the Arbitration Council will

not order the employer to provide lunch and deduct US\$2 from each worker's wages as before, or pay 1,000 riel to each worker.

**Third Issue:**

The employees did not provide any evidence or legal basis [regarding this issue], and the Arbitration Council cannot find any legal basis which requires the company to pay technical bonuses to workers. This demand is an interests dispute (for the same reasons as the first issue). Therefore, the Arbitration Council declines to consider this demand.

**Sixth issue:**

a- Medical check fee

Article 247-a states that "The Ministry in charge of Labour shall issue a Prakas to determine the conditions under which pre-employment, re-employment, periodical, and special physical exams are given ", and Article 247-c states that "The Ministry in charge of Labour shall issue a Prakas to determine the conditions under which employers are required to establish and provide at their expense the medical exams of workers as stipulated in point a) of this article."

Article 3 of Prakas 9/94 dated 19 January 1994 on medical checks for Cambodians and foreigners who work in Cambodia, states that "Prior to the commencement of employment, Cambodians and foreigners are required to take medical examinations at the Labour Medical Department located at No. 482, Street 2, Sangkat Chak Angre, Khan Meanchey, Phnom Penh." Article 5 of this Prakas [provides], "The medical examination may include more specific examination based on the actual skills and profession." Article 7 of this Prakas [provides], "The cost of the employee's medical examination shall be paid by owner of the enterprise, as determined in Article 5 above, in accordance with the actual case." The Arbitration Council finds that under Article 247 of the Labour Law 1997 and Prakas 9/94 of 1994, the employer should pay their employees' medical check fees. See 02/03-Chu Sing, 21/03-Loyal Cambodia, 19/04-Kbal Koh 2, and 53/04-Kong Hong. However, in most of the recent cases both the employer and the Arbitration Council have questioned whether Prakas 9/94 is relevant to the analysis of the medical check fee issue (see 64/04-Mercury Garment, 98/04-Great Union, 106/04-Suit Way). However in most of those prior cases, the Arbitration Council has found that the employer is responsible for reimbursing workers 10,100 riel in connection with medical check fees. Therefore, the employer shall pay medical check fees in the amount of 10,100 riel to each worker who paid for his/her own medical check.

b-Demand for pay rise

Employees did not provide any evidence or any legal basis [in regard to this demand]. Such demand is an interests dispute (see the above reason in the first issue). Therefore the Arbitration Council decline to consider this demand.

**Decisions and Orders**

- 1- Reject the workers' demand for the employer to provide lunch and deduct US\$2 from their wages as was the practice from 1996 –2000 and demand the company provide each worker with 1,000 riel for lunch.
- 2- Reject the workers' demand for the employer to pay a technical bonus of US\$15 to each worker.
- 3- Order the employer to pay 10,100 riel to all workers of Tack Fat who paid for their own medical checks by the end of May 2005 at the latest.
- 4- Reject the workers' demand for the employer to increase their basic wage.

**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: Tuon Siphann

Signature: .....

Chair of arbitration panel:

Name: Kong Phallack

Signature: .....

*This Award will become binding after eight days of the date of its notification unless one of the parties lodges a written opposition with the Secretariat of the Arbitration Council within this time period.*