



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

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

**Case number and name: 130/07– Win Shingtex**

**Date of Award: 21 December 2007**

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

**ARBITRATION PANEL**

Arbitrator chosen by the employer party: **Ing Sothy**

Arbitrator chosen by the worker party: **An Nan**

Chair Arbitrator (chosen by the two Arbitrators): **Sok Mathoeung**

**DISPUTING PARTIES**

**Employer party:**

Name: **Win Shingtex (Cambodia) Co., Ltd. (Win Shingtex Company)**

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

Telephone: 012 358 082 Fax: N/A

Representatives:

1. Mr. Lim Chhuong Administrative Manager

**Worker party:**

Name: **C.CAWDU and Cambodian Apparel Workers Democratic Union (CAWDU)**

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

Telephone: 012 396 096 Fax: N/A

Representatives:

1. Ms. Meas Vanny C.CAWDU Official;
2. Mr. Proeung Vichet Secretary of CAWDU at the factory;
3. Mr. Men Vannak Advisor of CAWDU at the factory;
4. Mr. Ek Thea Assistant of CAWDU at the factory.

## ISSUES IN DISPUTE

(In the Non-Conciliation Report)

1. The worker party demanded that the company make two copies of the fixed duration labour contracts – one for the company and one for the worker. The employer party requested one month to discuss [this issue] with the director of the company.
2. The worker party demanded that the company pay 50 percent of three months wages to female workers [in advance of their taking] maternity leave. The employer party claimed to resume the current practice (pay 50 percent of two months wages in advance and another 50 percent of one months wages when the worker returned [from maternity leave]).
3. The worker party demanded that the company reinstate Mr. Sith Sopheak, President of CAWDU at the factory and provide him with his wages because he did not commit serious misconduct (unintentional misconduct). The employer party would not reinstate Mr. Sith Sopheak because he had committed serious misconduct and this individual dispute had been settled at the Department of Labour Disputes.

## JURISDICTION OF THE ARBITRATION COUNCIL

### 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:** 4 December 2007 (from 8:00am to 10:10am)

**Procedural issues:**

On 1 October 2007, the Department of Labour Dispute received a complaint from C.CAWDU demanding the employer to improve working conditions. Having received the complaint, the Department of Labour Dispute designated its officials to conciliate the dispute and the last conciliation session was held on 1 November 2007 with two out of five issues conciliated. The three remaining non-conciliated issues were submitted to the Arbitration Council on 15 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 three non-conciliated issues on 4 December 2007 at 8:00a.m. Both parties were present at the hearing summoned by the Arbitration Council.

On the hearing day, the Arbitration Council attempted to conciliate the three remaining non-conciliated issues outlined in the non-conciliation report of the Department of Labour Disputes; and as a result issues 1 and 3 were conciliated. Therefore, in this case the

Arbitration Council considers only issue 2 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. Authorization Letter from the director of Win Shingtex Company dated 3 December 2007.

Provided by the worker party: N/A

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

1. Report No. 1211 on the collective labour dispute at Win Shingtex Company dated 12 November 2007.
2. Minutes of the collective labour dispute conciliation at Win Shingtex Company dated 1 November 2007.

Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 571 dated 20 November 2007 to the worker party to attend the hearing.
2. Invitation No. 570 dated 20 November 2007 to 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:**

### **Issue 2: The worker party demanded that the company pay three months wages to female workers [in advance of their] taking maternity leave**

- The factory employs 1,100 workers and 90 percent of them are women.
- Union members demanded that the company pay three months wages when a female worker takes maternity leave because previously the company did not comply with the agreement dated 11 September 2006. Point 4 of the Agreement states that,

*“The company agreed to pay 50 percent of two months wage before the maternity leave takes place for workers who come from provinces; workers from Phnom Penh and Kandal Province will be paid 50 percent of the wage once a month. A valid authorisation letter is required, if the worker is represented by others.”*

- Both the employer and the worker agreed that the female workers, who made the demand, have worked for more than one year.
- On 5 May 2007, two workers Soy Say with ID 007 and Lim Sothavy with ID 0019, took maternity leave and the company was late paying them 50 percent of their last months wage when they returned to work. The company agreed with the claim.
- The union and the company said that in November 2007, three or four workers took maternity leave and the company paid them 50 percent of their wages once a month on the pay day.

### **REASONS FOR DECISION**

In this case, the worker party did not have a dispute related to the calculation of wages and perquisites during the maternity leave. Therefore, the Arbitration Council does not need to consider this point. The worker party demanded that the company pay three months wages before the commencement of the maternity leave. Therefore, the Arbitration Council will consider this demand as follows:

Article 183 of the Labour Law stipulates 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.”*

The Arbitration Council considers that this Article does not provide any guideline in regards to the time that the employer has to pay the workers.

The Arbitration Council notices that Article 115 (3) of the Labour Law states that, *“Payment shall not be made on a day-off. If payday falls on such a day-off, the payment of wages shall be made a day earlier.”*

The Arbitration Council considers that the maternity leave is a worker’s entitlement; therefore, the company cannot pay the wages during the [leave] period and has to pay one day early.

Regarding this article, in the previous cases the Arbitration Council considered that the maternity leave payment shall be paid to relevant workers before the commencement of

maternity leave (see Arbitral Awards 57/06 – Evergreen, Issue 6 and 97/06 – New Max, Issue 1).

In this case, the Arbitration Council also agrees with the previous interpretation because the workers are entitled to this payment based on Article 115 (3). Furthermore, the payment of wages and perquisites prior to the commencement of maternity leave can help relieve the burden on workers who take maternity leave in remote provinces. Therefore, in order to be consistent with the previous rulings, the Arbitration Council decides to order the employer to pay wages to female workers prior to the commencement of their maternity leave.

The Arbitration Council notices that point 4 of the Agreement dated 11 September 2006 states that, *“The company agreed to pay 50 percent of two months wages before the maternity leave takes place for workers, who come from province; workers from Phnom Penh and Kandal Province will be paid 50 percent of the wage once a month. A valid authorisation letter is required, if the worker is represented by others.”*

The Arbitration Council notices that this agreement provides for payment of 50 percent of two months wages prior to the commencement of the maternity leave, which is less than the half payment and perquisites for three months (90 days). Article 13 of the Labour Law states that, *“The provisions of this law are of the nature of public order, excepting derogations provided expressly. Consequently, all rules resulted from a unilateral decision, a contract or a convention that do not comply with the provisions of this law or any legal text for its enforcement, are null and void. ...”*

The Arbitration Council considers that because the provision of the agreement dated 11 September 2006 provides the workers with less than what the law provides and distinguishes between workers on the basis of geography, this provision is null and void under Article 13 of the Labour Law.

In conclusion, the Arbitration Council orders the employer to pay female workers, who take maternity leave, 90 days wages and perquisites prior to the commencement of the maternity leave.

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

#### **DECISION AND ORDER**

**Issue 2:** Order the employer to pay 90 days wages and perquisites to workers prior to the commencement of their maternity leave, if the worker is entitled to that payment.

**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 period.

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

Arbitrator chosen by the employer party:

Name: **Ing Sothy**

Signature: .....

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Sok Mathoeung**

Signature: .....