



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

**ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល**

**THE ARBITRATION COUNCIL**

**Case number and name: 133/07 – The United Knitting**

**Date of Award: 17 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: **Liv Sovanna**

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

#### **DISPUTING PARTIES**

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

Name: **The United Knitting MFG (Cambodia) Company Ltd.**

Address: Mondol 1, Sangkat No. 4, Khan Mittapheap, Sihanoukville

Telephone: 034 933 745                      Fax: N/A

Representatives:

1. Mr. Lak Kuon                                      Assistant Director;
2. Mr. Phon Phal Piseth                              GMAC Official.

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

Name: **Khmer Youth Federation Trade Union (KYFTU) – Khmer Youth Trade Union (KYTU) at the United Knitting Company**

Address: Mondol 1, Sangkat No. 4, Khan Mittapheap, Sihanoukville

Telephone: 012 796 007                      Fax: N/A

Representatives:

1. Ms. Ung Sinat                                      KYFTU Official;
2. Mr. Nong Samnang                                      KYFTU Official;
3. Mr. Hing Bunthoeun                                      KYFTU Official;
4. Mr. Seing Vuthy                                      Worker;

5. Ms. Touch Nakry                      Worker;
6. Mr. An Saroath                      Worker.

### **ISSUES IN DISPUTE**

(In the Non-Conciliation Report)

1. [The worker party] demanded that the company increase wages to the minimum level for piece rate workers who do not work for one full month.
2. [The worker party] demanded that the company take care of the hygiene within the factory premises especially the toilets, which should be comfortable.
3. [The worker party] demanded that the company be fully responsible for [worker's] medical fees and maintain their wages and attendance bonus when workers suffer a work related accident.
4. [The worker party] demanded that the company increase the seniority bonus by US\$ 1 per year in addition to the existing seniority status of workers and reimburse the payment.
5. [The worker party] demanded that the company provide 50 percent of wages and perquisites to female workers who take 90 days maternity leave.
6. [The worker party] demanded that the company maintain the attendance bonus when workers occasionally come to work late.
7. [The worker party] demanded that the company build a day-care centre and if the company cannot build the centre, the company provide three cans of milk or US\$30 per month for day-care services.
8. [The worker party] demanded that the company build a breastfeeding room or allow one hour per day for breastfeeding.
9. [The worker party] demanded that the company double the wage for Sunday work.
10. [The worker party] demanded that the company deduct 1,000-riel union contribution fee from members of the Khmer Youth Trade Union.
11. [The worker party] demanded that the company arrange for a stand-by medical doctor during working hours and adequate medicine.
12. [The worker party] demanded that the company provide two sets of factory uniforms to workers.
13. [The worker party] demanded that the company provide adequate soap in the restroom.
14. [The worker party] demanded that the company pay for [worker's] medical fees when there is a letter from the public hospital.
15. [The worker party] demanded that the company provide transportation for workers who work overtime at night.

16. [The worker party] demanded that the company allow the pregnant workers to see the doctor once a month and maintain their attendance bonus.
17. [The worker party] demanded that the company provide workers with a 500 riel meal allowance per hour for overtime work.
18. [The worker party] demanded that for apprenticeship workers, the company should apply a two month probation after [the workers] finish their apprenticeship, and the workers should be converted to regular workers after the two month probation and provided with US\$ 50 wage and reimburse the payment.
19. [The worker party] demanded that the company build a secure parking lot for workers' bicycles and motorbikes.
20. [The worker party] demanded that the company provide workers with a special medical check.
21. [The worker party] demanded that the company be fully responsible for the medical bill for Nuth Chanthou, who fainted in the factory.

#### **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:** 3 December 2007 (from 8:00am to 12:30pm)

**Procedural issues:**

On 23 October 2007, the Sihanoukville Department of Labour and Vocational Training received a complaint from KYFTU demanding the improvement of some working conditions. Having received the complaint, the Sihanoukville Department of Labour and Vocational Training designated its officials to conciliate the dispute and the last conciliation session was held on 1 November 2007. However none of the 21 issues was conciliated because the

employer party was absent. The 21 non-conciliated issues were submitted to the Secretariat of the Arbitration Council on 20 November 2007.

Having received the case, the Secretariat of the Arbitration Council summoned the employer party and the worker party to a hearing to conciliate the 21 non-conciliated issues on 3 December 2007 at 08:00 a.m. Both parties were present as summoned by the Arbitration Council.

On the hearing day, the Arbitration Council attempted to conciliate the 21 non-conciliated issues set out in the non-conciliation report of the Sihanoukville Department of Labour and Vocational Training. As a result 17 issues were conciliated – Issues 1, 2, 3, 6, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21. Therefore, in this case the Arbitration Council will consider only four issues—Issues 4, 5, 7, and 10 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: N/A

Provided by the worker party: N/A

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

1. Report No. 307 on the collective labour dispute settlement at The United Knitting Company dated 7 November 2007;
2. Minutes of the collective labour dispute conciliation at The United Knitting Company dated 1 November 2007.

Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 574 to the director of The United Knitting Company to select an arbitrator dated 20 November 2007;
2. Minutes of the selection of arbitrator on the Employer List by lot dated 22 November 2007;
3. Invitation No. 581 to the employer party to attend the hearing dated 22 November 2007;
4. Invitation No. 582 to the worker party to attend the hearing dated 22 November 2007.

## **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:**

- The United Knitting Company employs 1,200 workers.
- The Khmer Youth Trade Union, the claimant, has not yet registered and has not applied for the registration.
- The union did not show how many members it has. The Arbitration Council ordered the union party to provide the name list by 7 December 2007. Both parties failed to provide the documents as ordered by the Arbitration Council.

### **Issue 4: The worker party demanded that, in addition to the existing bonus, the company increase the seniority bonus by US\$ 1 per year for those workers with five years service,**

- The employer party said that the company provided the seniority bonus based on Notification 017 dated 18 July 2000. The company cannot afford to increase the seniority bonus.
- The worker party said the company already provided the seniority bonus based on Notification 017 dated 18 July 2000, but the workers demanded that the company increase the seniority bonus by US\$ 1 per year for those [workers] who have worked for more than five years because Notification 017 does not provide for a bonus to those who have increased seniority status. The worker party did not provide any evidence to support its claim.
- The union did not show the name list of its members and promised to submit it by 7 December 2007, but the worker party did not submit the name list of union members by the deadline.

### **Issue 5: The worker party demanded that the company provide 50 percent of wages and perquisites to female workers who take 90 days maternity leave**

- The worker party asked the company to provide 50 percent of wages and perquisites to female workers who take 90 days maternity leave.
- The employer party said the company did not agree and would provide only 50 percent of the basic wage to female workers who take 90 days maternity leave.
- The worker party said that in October 2007, two female workers took maternity leave. The employer party said that it could not remember the number but acknowledged

that there are more female workers than male ones and there were workers who took maternity leave.

- The employer party and the worker party claimed that they did not know what the perquisites are. The Arbitration Council ordered both parties to provide more documents by 7 December 2007, but both parties failed to provide the documents as ordered by the Arbitration Council.

**Issue 7: The worker party demanded that the company build a day-care centre or provide three cans of milk powder or US\$ 30 per month in replacement**

- The worker party demanded that the company build a day-care centre or provide three cans of milk powder or US\$ 30 per month because it is the obligation of the company.
- The employer party said the company does not have a day-care centre and asked the Arbitration Council to decide.
- The employer party said there are between 400 and 500 female workers in the factory.

**Issue 10: The worker party demanded that the company deduct the 1,000-riel union contribution fee from union members who agreed to have it deducted from their wage**

- The worker party demanded that the company deduct the 1,000-riel-union contribution fee from union members who agreed to have it deducted, but the company did not agree and asked the Arbitration Council to decide.
- The union said that it had not applied for the deduction because the union was not registered and this demand was made for the future.
- The union said it did not remember the number of members it had and promised to provide related documents (union contribution fee deduction application, workers' letters requesting the deduction of union contribution fees, and union election documents) by 7 December 2007, but the union failed to provide these documents by the deadline.

**REASONS FOR DECISION**

**Issue 4: The worker party demanded that, in addition to the existing bonus, the company increase the seniority bonus by US\$ 1 per year for workers with five years of service.**

Point 3 of Notification 745 dated 23 October 2006 of the Ministry of Labour and Vocational and Training 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.”*

Clause 5 of Notification 017 dated 18 July 2000 of the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation states that, *“Workers who have been working for a long time in a factory or an enterprise shall receive a seniority bonus as follows:*

- *those who have been working more than one year shall receive a seniority bonus of US\$ 2 per month;*
- *those who have been working more than two years shall receive a seniority bonus of US\$ 3 per month, that is US\$ 2 for the first year plus US\$ 1 for the second year;*
- *those who have been working more than three years shall receive a seniority bonus of US\$ 4 per month, that is US\$ 2 for the first year plus US\$ 1 for the second year and US\$ 1 for the third year;*
- *those who have been working more than 4 years shall receive a seniority bonus of US\$ 5 per month, that is US\$ 2 for the first year plus US\$ 1 for the second year, US\$ 1 for the third year and US\$ 1 for the fourth year.”*

Based on this Article, the Arbitration Council considers that this Notification provides that the seniority bonus is US\$ 5 per month for those who have up to four years service. This Notification does not state how much a worker shall receive after five years of service.

In this case, the worker party demanded to increase the seniority bonus by US\$ 1 per year for workers who have more than five years of service. This demand is beyond what Notification 017 dated 18 July 2000 provides. Therefore, the Arbitration Council considers that the above demand is an interest-related demand. Therefore, it is an interests dispute.

Generally, the Arbitration Council will reject an interests dispute, if the union, who brings the labour dispute, does not have most representative status. The most representative status of a union provides legal standing to negotiate a collective bargaining agreement in a company (See Article 96 (2B) of the Labour Law and Article 9 (1) of Prakas 305) and legal rights to bring an interests dispute before the Arbitration Council. In order to receive most representative status, Article 277 of the Labour Law states that a union must be registered and fulfill other requirements stated in this Article (see Arbitral Awards 57/04 – Evergreen; 60/04 – United Art, Issue 3; 08/07 – Sui Qinh, Issue 3; and 33/07 – Gold Fame, Issue 2).

In this case, the Khmer Youth Trade Union does not have the most representative status in the United Knitting Factory and was not registered. Therefore, the Arbitration Council declines to consider the demand of workers that, in addition to the existing seniority

bonus, the company increase the seniority bonus by US\$ 1 per year for workers with five years of service.

**Issue 5: The worker party demanded that the company provide 50 percent of wages and perquisites to female workers who take 90 days maternity leave**

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

Based on this Article, the Arbitration Council considers that all women, who work in all enterprises covered by Article 1 of the Labour Law, are entitled to 90 days maternity leave.

Based on the facts, the Arbitration Council finds that the company allows female workers to take 90 days maternity leave. Therefore, the Arbitration Council considers that the company complies with the requirement under Article 182 of the Labour Law to provide 90 days maternity leave.

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 considers that women, who take maternity leave and have worked in the company for one year, are entitled to half their wages including perquisites paid by the employer. However, this Article does not clearly state that half of what kind of wages (basic wage or wages received by the workers during the period of work including perquisites) (see Arbitral Award 24/06 – Fortune, Issue 2). The Arbitration Council considers that Article 183 only states half of the wages, but does not state about basic wage; therefore, what does the word “wage” in this article mean?

Article 103 of the Labour Law states 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 of the Labour Law, the Arbitration Council considers that wages may include actual wage, overtime payments, and other payments provided by the employer during the period of work and in the previous cases, the Arbitration Council explained that overtime payments shall be included as wage (see Arbitral Awards 49/04 – Hou Hing, Issue 2; 96/06 – Wilson, Issue 1; and 33/07 – Gold Fame, Issue 7).

In this case, the Arbitration Council agrees with the previous interpretations that overtime payments shall be included as wage. Therefore, women who take 90 days maternity leave shall receive 50 percent of their wages, inclusive of overtime payment and other perquisites.

In the previous Arbitral Awards, the Arbitration Council decided that wages during maternity leave shall be calculated by dividing 12 months wages by 12 to find the average [monthly] wage and dividing the average wage by 2 to find 50 percent of wages and multiplying it by 3 for the 90 day (three months) maternity leave period (see Arbitral Awards 68/04 – City New, Issue 4; 18/06 – GHG, Issue 3; and 119/07 – Royal Crowntex, Issue 7).

In this case, the Arbitration Council also agrees with the above interpretation that the employer shall pay wages, which include overtime payments and perquisites, to women who take 90 days maternity leave based on the following calculation:

- Divide 12 months wages by 12 to find average [monthly] wage;
- Multiply the average [monthly] wage by 3 (three months) and divide by 2 to find half wage in accordance with Article 183 of the Labour Law;
- If the company has an allowance policy for workers on maternity leave (other perquisites), the company shall include these allowances (perquisites) with half of the basic wage based on Article 183 of the Labour Law.

In conclusion, the Arbitration Council orders the employer to provide 50 percent of wages and perquisites to women who take 90 days maternity leave as calculated above.

**Issue 7: The worker party demanded that the company build a day-care centre or provide three cans of milk powder or US\$ 30 per month in replacement**

Article 186 of the Labour Law stipulates that, *“Managers of enterprises employing a minimum of one hundred women or girls shall set up, within their establishments or nearby, a nursing room and a crèche (day-care center).*

*If the company is not able to set up a crèche on its premises for children over eighteen months of age, female workers can place their children in any crèche and the charges shall be paid by the employer.”*

Therefore, the Arbitration Council considers that the employer has an obligation to set up a nursing room under the supervision of the Ministry of Labour Law. However, the Labour Law does not require the employer to provide milk powder or payment in replacement of the nursing room (see Arbitral Awards 63/04 – Shine Well, Issue 2 and 68/04 – City New, Issue 1).

Moreover, in the previous Arbitral Awards the Arbitration Council considered that the Royal Government has a policy to encourage women to breastfeed rather than to use milk powder (see Arbitral Awards 83/04 – June Textile, Issue 1 and 24/06 – Fortune, Issue 3).

In this case, the Arbitration Council also agrees with the statements of the Arbitration Council in the previous cases that this demand is not consistent with the policy of the Royal Government, the Labour Law and the previous Arbitral Awards. Therefore, the Arbitration Council decides to order the employer to set up a day-care centre for children above 18-months of age or reimburse the day-care fee based on the actual receipts.

**Issue 10: The worker party demanded that the company deduct the 1,000-riel union contribution fee from union members who agreed to have their wage deducted**

The Arbitration Council considers this issue as follows:

1. Is the company obliged to deduct the union contribution fees?
2. Has the Khmer Youth Trade Union fulfilled the formalities?

**1- Is the company obliged to deduct union contribution fees?**

Article 129 (2) of the Labour Law stipulates that, “...*However, the worker can authorize deductions of his wage for dues to the trade union to which he belongs. This authorization must be in writing and can be revoked at any time.*”

Clause 5 (5) of Prakas 305 in 2002 states that, “*All employees who are members of a union may request in writing to the employer at least 15 days in advance to deduct their wages to pay for union dues in compliance with Article 129 of the Labour Law, and the employer shall properly implement that request. Following the proposal of the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation, the employer shall confirm the number of employees that request the deduction of wages to pay for union dues, the source and name of the union or any union that receives an interest from this procedure. This confirmation is additional proof to determine the representative status of the union.*”

In previous cases, the Arbitration Council interpreted Article 129 of the Labour Law and clause 5 of Prakas 305 [to mean] that employees may authorise their employer to deduct union contribution fees from their wages. However, this authorisation must be in writing at all times. When workers agree to have their wages deducted, the employer must deduct the union contribution fees and send it to the union (see Arbitral Awards 03/03 – Tonga, Issue 9; 05/03 – Top One Garment, Issue 1; and 16/05 – New Point, Issue 11).

In this case, the Arbitration Council agrees with the previous interpretation that the employer is obliged to deduct union contribution fees from union members who provide written application subject to the union meeting legal requirements.

## **2. Has the union fulfilled the formalities?**

In this case, the worker party said that the union has not yet registered. Therefore, the Arbitration Council considers that the workers' professional organisation at the United Knitting does not have legal standing to enable them to legally collect union contribution fees.

Moreover, Khmer Youth Trade Union neither provided documents related to the name list of workers who requested the company to deduct union contribution fees, the deduction applications nor written authorisations from each member.

Therefore, the Khmer Youth Trade Union did not meet the requirements set out in Article 129 (2) of the Labour Law and Clause 5 of Prakas 305 above. Therefore, the employer is not obliged to deduct the union contribution fees for the Khmer Youth Trade Union.

In conclusion, the Arbitration Council rejects the demand of the Khmer Youth Trade Union that the company deduct 1,000-riel-union contribution fees from its members.

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

### **DECISIONS AND ORDERS**

- Issue 4:** Decline to consider the demand that, in addition to the existing seniority bonus, the company increase the seniority bonus by US\$ 1 per year for workers who have worked for more than five years.
- Issue 5:** Order the employer to provide women who take 90-day maternity leave with half their wages and perquisites by applying the calculation set out in the reasons for decision in Issue 5.
- Issue 7:** Order the employer to set up a day-care centre or pay [worker's] day-care fees based on the actual receipts.
- Issue 10:** Reject the demand of workers that the company deduct the 1,000-riel-union contribution fees from union members.

### **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: **Liv Sovanna**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: .....