



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

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

**Case number and name: 135/07 – Wilson**

**Date of Award: 14 January 2008**

**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: **Huon Chundy**

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

**DISPUTING PARTIES**

**Employer party:**

Name: **Wilson Garment (Cambodia) Co., Ltd.**

Address: Prey Tea Village, Sangkat Chom Chao, Khan Dangkor, Phnom Penh

Telephone: 012 555 829

Fax: N/A

Representatives:

1. Mr. Long Phally Administrator;
2. Mr. Lim Chhor Khay Company's Representative.

**Worker party:**

Name: **Khmer Youth Federation Trade Union (KYFTU)**

Address: Prey Tea Village, Sangkat Chom Chao, Khan Dangkor, Phnom Penh

Telephone: 012 160 27 63

Fax: N/A

Representatives:

1. Mr. Mai Vathana KYFTU Official;
2. Mr. Sim Phally KYFTU Official;
3. Mr. Voeun Sroeu President of KYTU at Wilson Garment Factory;
4. Mr. Hem Bun Seng Vice-President of KYTU at Wilson Garment Factory;
5. Mr. Khut Theravuthy Secretary of KYTU at Wilson Garment Factory.

## ISSUES IN DISPUTE

(In the Non-Conciliation Report)

1. Members of the Khmer Youth Trade Union demanded that the company provide an attendance bonus of US\$10 per month. The employer party said it cannot afford the provision of US\$10 per month and would implement Notification 017 dated 18 July 2000 of the Ministry [of Labour].
2. Members of the Khmer Youth Trade Union demanded that the company provide a 1,000 riel meal allowance for eight hours work to all workers. The employer party can only provide a 500 riel meal allowance for eight hours work per day.
3. Members of the Khmer Youth Trade Union demanded that the company take disciplinary action against Mr. Roel, sewing machine repairman who was violent towards a worker delegate Mr. Voeun Sroeun, in accordance with the Internal Work Rules. The employer party said it had already settled this issue.
4. Members of the Khmer Youth Trade Union demanded that the company increase the seniority bonus by US\$1 per year for those [workers] who have worked for more than five years. The employer party said it cannot afford and would implement Notification 017 dated 18 July 2000 of the Ministry [of Labour].

### 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 5 December 2007 was unsuccessful, and the non-conciliation report No. 1298 was submitted to the Secretariat of the Arbitration Council on 6 December 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:**

First hearing: 17 December 2007 (from 8:00am to 8:30am)

Second hearing: 4 January 2007 (from 2:00pm to 3:30pm)

**Procedural issues:**

On 22 October 2007, the Department of Labour Disputes received a complaint dated 21 October 2007 from the KYFTU demanding the improvement of some working conditions. Having received the complaint, the Department of Labour Dispute designated its officials to conciliate the dispute and the last conciliation was held on 13 November 2007; as a result four out of eight issues were conciliated. The four non-conciliated issues were submitted to the Secretariat of the Arbitration Council on 6 December 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 four non-conciliated issues on 17 December 2007 at 8:00 a.m. Both parties were present at the hearing summoned by the Arbitration Council. However, on the hearing day both parties requested that the Arbitration Council postpone the hearing to allow both parties to negotiate the four remaining issues stated in the non-conciliation report. The Arbitration Council agreed with the request.

After the negotiation, both parties informed the Secretariat of the Arbitration Council that they could not reach any agreement and requested the Arbitration Council to conduct the hearing on the remaining issues. Having received the information, the Secretariat of the Arbitration Council summoned the worker party and the employer party to a hearing to conciliate the four remaining non-conciliated issues on 4 January 2008 at 2:00pm.

On the hearing day, the Arbitration Council attempted to conciliate the four remaining non-conciliated issues stated in the non-conciliation report of the Department of Labour Disputes but none of the issues could be conciliated. The worker party requested to withdraw Issue 3 because Mr. Roel had stopped working in Cambodia and returned to the Philippines. Therefore, in this case the Arbitration Council considers only issues 1, 2 and 4 based on the evidence and statements of both parties as follows:

**EVIDENCE**

**Witnesses and experts:** N/A

**Documents, Exhibits and other evidence considered by the Arbitration Council****Provided by the employer party:**

1. Letter dated 17 December 2007 authorising Mr. Lim Chhor Khay to settle the labour dispute;
2. Business registration certificate of Wilson Garment Company dated 19 July 1999;
3. Statute and Memorandum of Wilson Garment Company dated 16 December 1998;
4. Internal Work Rules of Wilson Garment Company dated 7 November 2002;

5. Minutes of the collective labour dispute conciliation at Wilson Garment Company dated 13 November 2007;
6. Minutes of individual labour dispute conciliation between Wilson Garment Company and Mr. Voeun Sroeun dated 31 May 2007;
7. Letters dated 15, 17 and 20 December 2007 requesting the delay of the hearing of case 135/07;
8. Minutes of the collective labour dispute conciliation between Wilson Garment Company and Khmer Youth Trade Union dated 19 December 2007.

Provided by the worker party:

1. Registration certificate of Khmer Youth Trade Union at Wilson Garment Company dated 30 August 2002;
2. Letter No. 1627 applying for the recognition of second-term union leaders dated 3 November 2006.

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

1. Report No. 1298 on the collective labour dispute settlement at Wilson Garment Company dated 5 November 2007;
2. Minutes of the collective labour dispute conciliation at Wilson Garment Company dated 13 November 2007.

Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 605 to the Company Director to attend the hearing dated 11 December 2007;
2. Invitation No. 606 to the worker party to attend the first hearing dated 11 December 2007;
3. Invitation No. 660 to the Company Director to attend the hearing dated 25 December 2007;
4. Invitation No. 661 to the worker party to attend the hearing dated 25 December 2007;
5. Invitation No. 674 to the Company Director to attend the hearing dated 31 December 2007;
6. Invitation No. 675 to the worker party to attend the hearing dated 11 December 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:**

- According to the employer, Wilson Garment Company employs 1,200 workers.
- According to the union, the Khmer Youth Trade Union at Wilson Garment Factory, the claimant in this case, has 400 members.
- The worker and the employer parties did not have any agreement in relation to the three demands below.

**Issue 1: Members of the Khmer Youth Trade Union demanded that the company provide an attendance bonus of US\$ 10 per month**

- The worker party said the company provided a US\$ 5 attendance bonus per month in accordance with Notification 017 dated 18 July 2000, but members of Khmer Youth Trade Union demanded a US\$ 10 [attendance bonus] because the US\$ 5 attendance bonus provided by Notification 017 dated 18 July 2000 was insufficient and the price of goods kept increasing. Moreover, Wilson Company has done business in Cambodia for quite a long time since 1999.
- The employer party said the company cannot provide workers with an attendance bonus of US\$ 10 per month because it had already implemented Notification 017 dated 18 July 2000 and the company cannot afford it.

**Issue 2: Members of Khmer Youth Trade Union demanded that the company provide a 1,000 riel meal allowance for eight hours work**

- The company has provided a 500 riel [meal allowance] for eight hours work to all workers since 1999. The worker party said there was neither any agreement nor law which stated anything about this issue.
- The worker party demanded that the company provide an additional 500 riel [meal allowance] because the price of goods kept increasing. For instance, a bowl of rice costs 500 riels and a bowl of food costs 1,000 riels so each worker has to spend from 1,500 to 2,000 riels for one meal.
- The company said it cannot provide an increased meal allowance since it already provides more than the Labour Law. The company would maintain the current practice by providing a 500 riel meal allowance for eight hours work.
- The worker party did not provide evidence to support their claim.

**Issue 4: Members of Khmer Youth Trade Union demanded that the company increase the seniority bonus by US\$ 1 every year for those [workers] who have more than five years service**

- The company provides the seniority bonus in accordance with Notification 017 dated 18 July 2000. Members of Khmer Youth Trade Union demanded that the company increase the attendance bonus by US\$ 1 every year for those [workers] who have worked for more than five years in order to motivate workers to work hard. Moreover, Notification 017 does not prohibit the employer from increasing the seniority bonus.
- The employer party said 700 workers have worked for more than five years. The Khmer Youth Trade Union said 400 of its members have worked for more than five years.
- The employer party said it cannot afford to increase [the seniority bonus by] US\$ 1 every year for those [workers] who have worked for more than five years because the company has already implemented Notification 017 dated 18 July 2000 and the company cannot afford to [increase the bonus].
- The worker party did not provide evidence to support this demand.

**REASONS FOR DECISION**

**Issue 1: Members of the Khmer Youth Trade Union demanded that the company provide an attendance bonus of US\$ 10 per month**

In this case, the Khmer Youth Trade Union demanded that the company provide an attendance bonus of US\$ 10 per month. Therefore, the Arbitration Council considers [this issue] as follows:

Point 3 of Notification 745 dated 23 October 2006 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.”*

Point 3 of Notification 017 dated 18 July 2000 states that, *“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.”*

In this case, both parties acknowledged that the employer provides a US\$ 5 attendance bonus in accordance with Notification 017 dated 18 July 2000. Therefore, the Arbitration Council considers that the employer has fulfilled its obligation regarding the provision of an attendance bonus.

However, in this case the worker party demanded that the company [pay] an additional US\$ 5 in addition to the existing US\$ 5. The Arbitration Council finds that there is neither anything in the labour regulations nor any agreement requiring the employer to increase the

US\$ 5 attendance bonus for workers. Therefore, the demand of worker has no legal basis. Generally, the Arbitration Council considers this demand is an interests dispute.

Clause 43 of Prakas 099 dated 21 April 2004 states that, *“An arbitral award which settles an interests 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.”*

Based on clause 43 above, the Arbitration Council finds that if the Arbitration Council issues an Award that resolves an interests dispute, it becomes a collective bargaining agreement for a period of one year. The collective bargain agreement generally covers all workers in the factory and the right to strike can not be exercised to amend the collective bargaining agreement for the period that it remains in effect (see Article 96 and 321 (2) of the Labour Law).

Previously, regarding interests dispute the Arbitration Council always considers whether or not the union has most representative status because most representative status provides a union with legal standing to negotiate the collective bargaining agreement 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 and clause 6 of Prakas 305 dated 22 November 2001 require that the union's members must comprise more than 50% of all workers in the factory and [the union] must be registered at the Ministry of Labour and Vocational Training and it must meet other requirements set forth in this Article.

In this dispute, the Khmer Youth Trade Union at Wilson Company does not have most representative status. Therefore, the union does not have legal standing to negotiate a collective bargaining agreement on behalf of all workers in the factory (see Clause 9 (1) of Prakas 305).

Generally, the Arbitration Council declines to consider any interests dispute brought by a union that does not have most representative status (see Awards 81/04 – Evergreen, Issue 4; 09/05 – Kin Tay, Issue 2; 84/07 – Yung Wah, Issue 1; and 108/07 – 8 Star Sportswear, Issue 3).

Based on the above facts, the Arbitration Council finds that the Khmer Youth Trade Union does not have most representative status. Therefore, the union does not have legal standing to request that the Arbitration Council consider the claim regarding the increase in the price of goods, that Wilson Company has been in business since 1999, and that the US\$5 attendance bonus provided by Notification 017 dated 17 July 2000 is insufficient.

Therefore, the Arbitration Council declines to consider the demand of Khmer Youth Trade Union that the company provide a US\$ 10 attendance bonus per month.

**Issue 2: Members of Khmer Youth Trade Union demanded that the company provide a 1,000 riel meal allowance for the normal eight-hours of work**

In this case, members of the Khmer Youth Trade Union demanded that the company provide an additional 500 riel meal allowance because the price of goods has sharply increased. For instance, a bowl of rice costs 500 riels and a bowl of food costs 1,000 riels so each worker has to spend between 1,500 to 2,000 riel per meal. The employer party said the company cannot provide an additional meal allowance because it has already provides more than the law. The company asked to maintain the current practice, adding that the 500 riel meal allowance for eight hours work will be maintained. The Arbitration Council considers [this issue] as follows:

The Arbitration Council finds that neither the labour regulations nor any agreement stipulates a [requirement to provide] a1,000 riel meal allowance for eight hours work. Therefore, the Arbitration Council considers that the demand of workers is an interests demand because it is beyond what the law provides. Generally, the Arbitration Council will only consider an interests demand if the union who brought the dispute has most representative status in the company.

In this case, the Khmer Youth Trade Union does not have most representative status. Therefore, the Arbitration Council declines to consider the demand of the Khmer Youth Trade Union that the company provide a 1,000 riel meal allowance for eight hours work (see reasoning regarding the interests dispute in Issue 1).

**Issue 4: Members of the Khmer Youth Trade Union demanded that the company increase the seniority bonus by US\$ 1 per year for those [workers] who have worked for more than five years**

Point 3 of Notification 745 dated 23 October 2006 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:*

- 5.1 *those who have been working more than one year shall receive a seniority bonus of US\$ 2 per month;*

- 5.2 *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;*
- 5.3 *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;*
- 5.4 *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 Clause 5 of the above Notification, the Arbitration Council considers that the notification stipulates that for workers who have worked for more than four years the seniority bonus is US\$ 5.

Moreover, regarding this case the Arbitration Council finds that there is no labour regulation or agreement which sets out a [requirement] to provide a US\$ 1 annual increase in the seniority bonus for workers who have worked for more than five years. Therefore, the Arbitration Council considers that the demand of workers is an interests demand because this demand is beyond what the law provides. Generally, the Arbitration Council will only consider an interests demand if the union who brought the dispute has most representative status in the company.

In this case, the Khmer Youth Trade Union does not have most representative status. Therefore, the Arbitration Council declines to consider the demand of the Khmer Youth Trade Union that the company increase the seniority bonus by US\$ 1 per year for workers who have worked for more than five years (see reasoning regarding the interests dispute in Issue 1).

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

#### **DECISIONS AND ORDERS**

- Issue 1:** Decline to consider the demand of the Khmer Youth Trade Union that the company provide a monthly attendance bonus of US\$ 10.
- Issue 2:** Decline to consider the demand of the Khmer Youth Trade Union that the company provide a 1,000 riel meal allowance for eight hours work.
- Issue 4:** Decline to consider the demand of the Khmer Youth Trade Union that the company increase the seniority bonus by US\$ 1 per year for workers who have worked for more than five years.

**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: **Huon Chundy**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: .....