



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអន្តរាជ្ញាគណៈ

THE ARBITRATION COUNCIL

Case number and name: 136/08-Supertex

Date of Award: 28 November 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: **Liv Sovanna**

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

DISPUTING PARTIES

Employer party:

Name: **Supertex Ltd.**

Address: National Road 2, Sangkat Chak Angre Kraum, Khan Meanchey, Phnom Penh

Telephone: 012 879 772/012 894 300 Fax: N/A

Representative:

1-Mr. Sar Samnang Lawyer

2-Mr. Liv Man Administration Director

Worker party:

Name: **Khmer Youth Federation Trade Union (KYFTU) and local union of Khmer Youth Trade Union (KYTU) at Supertex factory**

Address: Phoum Tourl Roka, Sangkat Chak Angre Kraum, Khan Meanchey, Phnom Penh

Telephone: 012 310 320/092 890 148 Fax: N/A

Representative:

1-Mr. Ly Kim An Facilitation Officer at KYFTU

2-Mr. Tith Vannak Facilitation Officer at KYFTU

3-Ms. Yim Bopha President of local KYFTU at Supertex factory

4-Ms. Sourn Bopta Vice President of local KYFTU at Supertex factory

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- The workers demand that the Company reimburse [pre-employment] medical check fees (the fee for doctor certificate) to all workers according to the actual cost the workers paid and that the Company be responsible for the fee of periodical medical checks because this is provided in the Labour Law in Article 247, point 4, paragraph 3 (C). The Company party states that it cannot provide this because the [pre-employment] medical check is a prerequisite the workers need to fulfill before they are accepted to work which means the workers must declare their health condition to the company at the start. In a situation where the company needs to send the workers for periodical medical checks, the company will pay the fee.

- 2- The workers demand that the Company provide 100 percent of the wage when it does not have work for them to perform and provide reimbursements [for their past wages]. The Company does not agree to the demand because if there is no work it follows the existing agreement.

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.1161 KB/AK/VK dated 20 October 2008 was submitted to the Secretariat of the Arbitration Council on 22 October 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: 30 October 2008 from 2:00 p.m. - 5:30 p.m.

Procedural issues:

On 30 October 2008, the Department of Labour Disputes received the complaint from the workers of Supertex demanding improved working conditions in the factory. After that the Department assigned an expert official to attempt resolution, and the last conciliation was held on 10 October 2008 with 2 of 8 issues remaining as non-conciliated. Those 2 non-conciliation issues were forwarded to the Arbitration Council on 22 October 2009 through the non-conciliation report of the collective dispute No. 1161 dated 20 October 2008.

After receiving the case, the Secretariat of the Arbitration Council invited the employer and the worker parties to the hearing and conciliation on those 2 non-conciliation issues on 30 October 2008 at 2:00 p.m.

Both parties appeared for arbitration on the hearing day. The Arbitration Council attempted to ask for more information related to the issues and tried to conciliate the 2 issues again but without success. Thus, in this case, the Arbitration Council will consider and resolve the case based on the evidence and clarification by the parties in the hearing as follows:

EVIDENCE

Witnesses and experts: *n/a*

Documents, Exhibits and other evidence considered by the Arbitration Council

A. Provided by the employer party:

- Authorization letter dated 30 October 2008 from employer to Mr. Sar Samnang, lawyer, and Mr. Liv Man, Administration Manager, to resolve the labour dispute at the Arbitration Council in place of the Director of the company who is busy.
- Certificate of commercial registration of Supertex company, dated 11 September 2003.
- Internal Work Rule of Supertex company dated 01 August 2005.
- Status of Supertex company dated 06 August 2003.
- Sample of the employment contract
- Sample of the curriculum vitae
- Sample of working conditions
- Sample of working agreement
- Minutes of collective labour dispute conciliation of Cambodia Sportswear Mfg. dated 18 September 2003.

B. Provided by the worker party:

- Receipt of case received by the Department of Labor Disputes of the Ministry of Labour and Vocational Training from the Khmer Youth Federation Trade Union dated 03 October 2008.
- The workers complaint to President of KYFTU asking for intervention to resolve certain working condition (there are 40 workers who provided thumbprints) dated 13 September 2008
- KYFTU's letter to Director of Supertex company on notification about the KYFTU committee election at Supertex, No 550 S S Y Kh dated 14 August 2008.
- KYFTU's letter to Director of Department of Labor Disputes requesting resolution of the labor dispute at Supertex company dated 26 September 2008.
- KYFTU's letter to Director of Supertex company asking for discussion and mediation of the labor dispute of the workers at Supertex company dated 22 September 2008.

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

- Report No 1161 on the collective labour dispute non-conciliation at Supertex factory dated 20 October 2008.
- Minute of the collective labor dispute conciliation dated at Superetex company dated 10 October 2008.

D. Provided by the Secretariat of the Arbitration Council:

- Invitation No 679, dated 24 October 2008, to the worker party to attend the hearing
- Invitation No 678, dated 24 October 2008, to the employer party to attend the hearing

FACTS

- Having examined the collective labor dispute conciliation report
- Having listened to the statement of the employer and worker parties
- Having reviewed additional documents

The Arbitration Council finds that:

- Supertex company employs approximately 4770 workers

- Khmer Youth Trade Union is the complainant in this case. Khmer Youth Trade Union mentions in the hearing that this union did not receive the certification of union registration yet because it just filed the application to ask for registration at the Ministry of Labour and Vocational Training, and obtained the receipt of the registration. But the union did not submit this receipt to the Arbitration Council.

Issue 1 : The workers demand that the Company reimburse medical check fees (fees for doctor certificates) to all workers according to the actual cost the workers paid

- The workers party demanded the company to reimburse the medical check fee to all workers in the factory because since this company started its operations, it never reimbursed the medical check fee to the workers.
- The company confirmed that it cannot provide such reimbursement because the first medical check of the worker is a prerequisite to complete the application for the company to accept the worker to work after the worker passes the test; and this is in accordance with the policy of the company even if the medical certificate includes the name of another company.
- The company added that the company will pay for the workers in case the company sent those workers for their periodical medical check. So the company can not reimburse the medical check fee to the workers. But the company never sent the workers to complete the medical check.
- The workers stated in the hearing that for workers who complete the medical check, the doctor will issue the certificate of the medical check to them only if they give the name of the company they are working for.
- The workers further added that the demand for reimbursement of the medical check fee is for all workers in the factory. But the workers did not state how many workers demand the company to reimburse the medical check fee.
- The Arbitration Council asked the worker party in the hearing whether the union or workers know how many workers total demand reimbursement from the company. They responded that they don't know. Thus the Arbitration Council asked the worker whether they can provide a name list of the workers (with thumbprints or signatures) who demand reimbursement and any documents or evidence related to this demand to the Arbitration Council? The worker party answered that they will provide the name list of workers who demand the reimbursement to submit to the Arbitration Council by 07 November 2007. But the worker failed to provide the name list of workers or any documents or evidence related the above demand to the Arbitration Council by the date set.

- The Arbitration Council also told the company to submit the name list of the workers who demand the company to reimburse the medical check fee to the Arbitration Council as well. But the company failed to submit it.

Issue 2 : The workers demand that the Company provide full of wage when it does not have work for them to perform and provide reimbursements [for their past wages]

- The workers party demanded the company to calculate their wage in full and pay them back because in the past when the company had no work for worker to do, the company paid only 50% of their wage. But the workers stated in the hearing that they will not demand reimbursement when there was no work to perform in the past because the worker did not remember the exact dates (month or year). So the workers' demand for the company to pay the full wage when the company has no work for the workers perform, is a demand for the future.
- The employer and the worker parties confirmed that the company did not implement a [lawful] work suspension of the workers when the company had no work for the workers to perform in the past.
- The employer party stated that in the past, when the company knew that there was no work for the workers to perform, the company would notify the workers one day before by providing them 50% of their full wage. But in case that the company did not know in advance that there would be no work to do on that day, because [for example] this depends on the buyer, and the workers already arrived at the factory, the company would provide them 50% if the company asked them to go back home. The company will provide them 100% of full wage if the company prepared other work which is suitable to their capacity and their skill. The workers had agreed to implement this rule but there was no written agreement. Thus the company can not provide what the workers demand.

REASONS FOR DECISION

KYFTU mentioned in the hearing that this union did not have the union registration certificate yet because the union just filed the registration form with the Ministry of Labour and Vocational Training [] and [only] received the union registration receipt. But the union did not submit this receipt to the Arbitration Council. Thus the Arbitration Council will consider whether the union that attended the hearing can represent all workers in the company to make the demand for these two issues or not.

Article 268 of the Labour Law states that *"In order for their professional organization to enjoy the rights and benefits recognized by this law, the founders of those professional*

organizations must file their statutes and list of names of those responsible for management and administration, with the Ministry in charge of labour for registration

If the Ministry in charge of Labour does not reply within two months after receipt of the registration form, the professional organization is considered to be already registered’.

The Arbitration Council determines that Article 268 above means that the professional organization receives the rights and benefits recognized by the Labour Law when this professional organization is registered and recognized by the Ministry in charge of labour.

The Arbitration Council also understands that these rights and benefits include the union’s right to represent their own members to resolve disputes at the Arbitration Council as well (See *Arbitral Awards of case 62/06-Quick Sew, issue 2 and case 31/08-South Bay, issue 2*).

Therefore, according to Article 268 of the Labour Law above, this union is not legally entitled to receive the rights and benefits yet. It means that the union was not legally entitled to take the dispute for resolution at the Arbitration Council on behalf of its members.

Moreover in Arbitral Award 128/08-Wei Hua the Arbitration Council explained that *“union with the appropriate registration certificate from the Ministry of Labour and Vocational Training has the legal right to take their members dispute for resolution at the Arbitration Council without any written authorization letter. Generally, the Arbitration Council does not consider on the demand if the union complainant has no the union registration certificate.”* (See *Arbitral Award 128/08-Wei Hua*)

The Arbitration Council in this case also agreed to the explanation of the previous Arbitration Council. Therefore in this case, KYFTU has no legal right to represent the workers who are union members.

However, Clause 19 of Prakas 099 SKBY dated 21 April 2004 on the Arbitration Council allows any person who is not the party in dispute but who has written permission from the party in dispute to be the representative in dispute resolution process at the Arbitration Council. The Arbitration Council determines that this Prakas means even if KYFTU did not have a registration certificate and did not file the registration forms, a union still can represent the disputant party in the dispute resolution process at the Arbitration Council as long as it has written authorization from workers who filed the complaint.

In this case, workers clarified in the hearing that they will complete the name-list of the workers who are making a demand for these issues and submit it to the Arbitration Council by 07 November 2008. By the determined date of 07 November 2008, the worker failed to provide the name-list of workers and other documents and evidence related the above demand for submission to the Arbitration Council. But the Arbitration Council found that workers filed the complaint dated 13 September 2008 to KYFTU’s President requesting

for intervention and resolution of certain working conditions (there are 40 thumbprints of the workers).

Thus, the Arbitration Council determines that it will consider the 2 issues above for only the 40 workers who are the complainants.

Issue 1 : The workers demand that the Company reimburse medical check fees (the fee for doctor certificate) to all workers according to actual cost the workers paid

Article 243 of the Labour Law states that “*The Ministry in charge of Labour issues a Prakas to determine:*

(a) *The conditions under which pre-employment, re-employment, periodical, and special physical exams are given*

(c) *The conditions under which employers are required to establish and provide at their expense:4-The medical exam of workers as stipulated in point (a) of this article.”*

Clause 2(X) of Inter-Prakas 1191 SHV.BRK.CMP dated 21 November 2006 on the employment card fee, employment card and medical check fee of the Ministry of Economy and Finance and the Ministry of Labour and Vocational Training states that “*The service fee on the medical check which the employer must pay, is determined as follows:... X- For each Cambodian worker, [] 12 000 Riel (twelve thousand Riel).* “

According to the meaning of Article 247 (a) and (c) of the Labour Law and Clause 2(X) of Inter-Prakas 1191 SHV.BRK.CMP dated 21 November 2006 on the employment card fee, employment card and medical check fee of the Ministry of Economy and Finance and the Ministry of Labour and Vocational Training, the Arbitration Council determines that the employers have a duty to pay the medical check fee for the workers.

In addition, the Arbitration Council notices that, in previous awards, the Arbitration Council ordered the employer to pay the medical check fee to the workers who paid for the medical check fee by themselves (See *Arbitral award 21/03-Loyal, issue 7, 19/04-Kbal Koh 2, issue 2, 53/04-Kong Hong, issue 3, 59/05-Tack Fat, issue 5, 05/06-W & D, issue 1, 56/07-Golden Crown, issue 2, 86/07-Target Shoes, issue 2, 93/07-Global Footwear, issue 2, 98/07-Sky Sino, issue 2, 40/08-Supreme Garment, issue 4 and 52/08-Supreme Garment, issue 1*).

In this case, the Arbitration Council also agrees with the decision of the Arbitration Council in the previous award that the employer has a duty to pay for its workers' medical check fee.

The Arbitration Council has the power to require the disputant party to show their evidence (See Clauses 18 and 24 of Prakas 099/2004). Clause 24 of Prakas 099 dated 21 April 2004 states that “*the Arbitration Council shall be free to determine the admissibility, relevance, materiality and weight of evidence as well as the allocation of the burden of proof*”.

Related to this demand, in the hearing the workers party did not clarify how much money the workers demand from the company for reimbursement of the medical check fee. The workers demanded the company to pay according to actual costs the workers paid, but the workers did not clarify the amount the workers paid by themselves for the medical check fee. Nor did they clarify when they went to complete the medical check. The Arbitration Council ordered the workers to submit evidentiary documents and name lists of workers who demand reimbursement to the Arbitration Council by 07 November 2008 but the workers party failed to complete the workers name list or provide documents or evidence related to the above demand to the Arbitration Council.

The Arbitration Council determines that the one week duration from the hearing date on 30 October 2008 until 07 November 2008 is enough for the workers party to complete the name list of workers who demand the company to reimburse the medical check fee.

Generally, in prior cases, the Arbitration Council decided to reject the demand of the workers if there is not enough evidence (*See Arbitral Awards 63/04-Shine Well, issue 4, 79/05-Evergreen, issue 1, 99/06-South Bay, issue 5, 74/07-Global Apparel, issue 2, 91/07-J K, issue 2, 94/07-Fortune Garment, issue 6 and 8, 44/08-Siev Quinh, issue 1 & 3, 101/08-G D M, issue 1 & 2, 108/08-Hugo, issue 4 and 115/08-Top One, issue 1*).

In this case, the Arbitration Council also agrees with the decisions of the Arbitration Council in the previous cases above as well. Thus, in this case the Arbitration Council decides reject the demand of the workers for the company to reimburse the medical check fee according to actual cost the workers paid.

Issue 2 : The workers demand that the Company provide full wages when it does not have work for them to perform and provide reimbursements [for their past wages]

Related to this demand, the workers party clarified in the hearing that the workers no longer demanded the company reimburse an additional 50% of the wage during the [past] period when company did not have work for the workers to perform because the workers did not remember the dates that there was no work in the past. Thus the workers demand the company to pay full wages when the company has no work for the workers to perform in the future. So the Arbitration Council will consider follows:

In principle, according to the Labour Law provisions regarding the suspension of the labour contracts of workers, the suspension [] shall be made according to the procedure of the Labour Law as mention in Article 71(11) under the following reasons:

“1- when the enterprise faces a serious economic or material difficulty or any particularly unusual difficulty, which leads to a suspension of the enterprise operation not exceed two months.

2- this suspension operation shall be under the control of the Labour Inspector.”

In addition, Article 72(1) of the Labour Law states that “*the suspension of a labour contract effects only the main obligations of the contract, that are those under which the worker has to work for the employer, and the employer has to pay for the worker, unless there are provisions to the contrary that require the employer to pay the worker.....*”

According to the meaning of these provisions related to the suspension of the labour contract, generally the company shall provide notice to the Director of the Department of Labour Inspection for examination and [verification] from the Labour Inspector around the issue of this suspension of the labour contract. It means that the Labour Inspector has the duty to examine and advise on the suspension of the labour contract by the employer as to the actual situation of the serious economic difficulty (See Arbitral Award 27/08-Archid, issue 6).

The Arbitration Council determines that the Labour Law allows the company to suspend the labour contract but the employer shall provide notice to the Labour Inspector about the reason which leads to the suspension of the labour contract of the worker and the duration of this suspension.

If the company followed the correct procedures for suspension in accordance with the Labour Law and this suspension was under the control of the labour inspector, then the company would have no duty to pay the wages of workers (See Article 72(1) of the Labour Law). But if the company does not obey the Labour Law on the suspension of the labour contract of workers as mention above, the company is obligated to pay 100% of wages for workers even if there is no work for the worker to perform (See *Arbitral Award 21/03-Loyal, issue 8, 01/04-New point, 46/04-M & A, issue 1, 60/06-New Max, issue 2, 74/07-Global Apparel, issue 1, 27/08-Archid, issue 6, 28/08-Finegis, issue 1 &2 and 53/08-Yung Wah 1, issue 1*).

In this case, the employer and the worker parties confirm that, in the past, the company did not suspend the labour contract of the workers during the period company had no work for the worker to perform. This means that the company did not provide notice to the Labour Inspector regarding such [work suspensions]. However, the company and the worker agreed that when the company has no work for the worker to perform, the company pays 50% of the wage to workers. So the Arbitration Council determines that in this case, the company had no work for the worker to perform, the company did not comply with the Labour Law’s provisions on [work suspension]. Thus, the company has a duty to pay 100% of the wage to the workers.

Clause 34 of Prakas 099 SKBY dated 21 April 2004 on the Arbitration Council states that “*within the limitations of the Labour Law and this Prakas, the arbitration panel has the power and authority to provide any civil remedy or relief which it deems just and fair, including orders to cease immediately any other illegal or prohibited conduct.....*”

Thus, the Arbitration Council decides that the company has to immediately cease the implementation of [work suspensions] which do not obey the Labour Law and must ensure that the company implements [work suspensions] in accordance with the Labour Law.

Regarding the demand of the worker that the company pay 100% of wages to workers when the company has no work for the workers to perform, this is a future demand. The Arbitration Council has determined that for a dispute which has not yet occurred, there are no facts or evidence related to any demand for the Arbitration Council to consider to make a decision.

Related to future demands, in previous cases the Arbitration Council has explained that “*the Arbitration Council is established to resolve labour disputes, not to resolve an issue which has not happened yet.*” (See *Arbitral Awards 10/03-Jacqsintex, issue 2, 14/06-Zheng Yong, issue 2, 42/07-South Bay, issue 3, 58/07-8 star sport wear, issue 1, 122/07-Geunine, issue 4, 27/08-Archid, issue 6 and 53/08-Yung Wah 1, issue 4*).

In this case, the Arbitration Council agrees with the explanation of the above panels because it is impossible to know what will happen in the future, whether this problem arises or not, where?, when?, the names of any worker who may be impacted, in which group?, in which section?, how many?, or how many days that the company has no work to complete? (See *Arbitral Awards 36/06-Mondotext, issue 5, 58/07-8 star sport wear, issue 1 and 27/08-Archid, issue 6*).

Therefore, the Arbitration Council decides not consider the demand of the worker that the company pay full wages when the company has no work to complete in the future.

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

DECISION AND ORDER

Issue 1: Reject the demand of the worker for the employer to reimburse the medical check fees to the workers according to the actual costs paid by the workers.

Issue 2:

- Order the company to cease immediately the implementation of suspensions of labour contracts which are not in accordance with the Labour Law and must ensure that the company implements suspensions of labour contracts in accordance with the Labour Law.
- Decline to consider the future-based demand of the worker for the company to pay full wages when the company has no work for worker to perform.

Type of Award: Non binding awards

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: **Ing Sothy**

Signature:

Arbitrator chosen by the worker party:

Name: **Liv Sovanna**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature:

Annex: The Arbitral Award of case 136/08-Supertex**Dissent to issue 1**

According to Clause 37 of the Prakas 099 SKBY dated 21 April 2004 of the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation, I, **Liv Sovanna**, would like to submit this dissent to issue 1 of the reasoning section of the Arbitral Award for case 136/08-Supertex as follows:

Issue 1 : The workers demand that the Company reimburse medical check fees (fees for the doctor certificate) to all workers according to the actual cost the workers paid

In the hearing employer and worker parties recognized that Supertex company always requires workers who passed the interview to fulfill other conditions including one condition that requires the workers to enclose their medical certificate. If there is no the medical certificate, the company does not sign the contract and the company does not pay for the medical check fee. The employer confirmed that the medical check is a prerequisite for the company before signing the contract. The company pays [for the medical check] if the company [directs the workers to complete periodical medical checks]. But the worker party testified that if there is not any written document with the name of the company that they will work for, the labour doctor will not perform the medical check. So we can note that workers who come to work for the Supertex Company in practice must pay for the medical check by themselves.

The Arbitration Council [should have] considered this issue as follows:

Article 247 of the Labour Law states that "*the Ministry in charge of labour shall issue a Prakas to determine:*

a) the conditions under which pre-employment, re-employment, periodical, and special physical exams are given;

c) the conditions under which employers are required to establish and provide at their expense:4- the medical exams of workers as stipulated in point a) of this article.

Clause 2(d) of the Inter Prakas 1191 SHV.PrK.ChMP dated 21 November 2006 on the employment card fee, employment card and medical check fee of the Ministry of Economy and Finance and the Ministry of Labour and Vocational Training states that “*For the service fee on the medical check in which the employer must pay, must be determined as follows:... d-For each Cambodian worker, 12 000 Riel (twelve thousand Riel).*”

Based on the meaning of Article 247 (a) and (c) of the Labour Law and Clause 2(d) of the Inter-Prakas 1191 SHV.PrK.ChMP dated 21 November 2006 on the employment card fee, employment card and medical check fee of the Ministry of Economy and Finance and the Ministry of Labour and Vocational Training, the Arbitration Council understands that the employer has a duty to pay workers the medical check fee. The explanation [by the employer] that the pre-employment medical check is a prerequisite which the company announced to workers does not absolve the employer of his/her responsibility.

In addition, the Arbitration Council noticed that in the previous awards, the Arbitration Council ordered the employer to pay workers the medical check fee for those who paid the medical check fee themselves. (See Arbitral award 21/03-Loyal, issue 7, 19/04-Kbal Koh 2, issue 2, 53/04-Kong Hong 3, issue 3, 59/05-Tack fat, issue 5, 05/06-W & D, issue 1, 56/07-Golden Crown, issue 2, 86/07-Target Shoes, issue 2, 93/07-Global Footwear, issue 2, 98/07-Sky Sino, issue 2, 40/08-Suprem Garment, issue 4 and 52/08-Supreme Garment, issue 1).

In this case, the Arbitration Council also agrees with the decisions of the Arbitration Council in the previous awards; that is, employer has a duty to pay its workers the medical check fee.

In this Arbitral Award of case 136/08-Supertex, I agree with the explanation that KYFTU has no right to represent the workers, so the decision related to this case is relevant to only those 40 workers who have given their thumbprint authorisations and are the plaintiffs. But I would object to the decision that rejects the workers demand in accordance with my explanation and decision as follows:

Art 120 of the Labour Law states that: “*The statute of limitation for a lawsuit for the payment of wages is three years from the date the wage was due.*

Claims subject¹ to the statute of limitation of a lawsuit include the actual wage, perquisites and all other claims of the workers resulting from the labour contract, as well as the indemnity in the event of dismissal.”

Through this meaning, I understand that the claim for this medical check fee results from the labour contract because workers are required to have the certificate of the medical

¹ Claims subject means claims demand for compensation or debt

check, and statute of limitation for a lawsuit for the payment of wages is only 3 years. So the statute of limitations for a claim for medical check fees is 3 years.

But when did this statute of limitations begin to run? The Arbitration Council in case 61/07-M & V 3 explained that based on Article 120 of the Labour Law, the statute of limitations² for claims demanding wages, including for medical check fee, is three years from the date workers are entitled to receive these benefits, which can be the date of signing the labour contract, the first day that workers start working or the workers' [pay day] .

In this case, I also agree with the explanation of the Arbitration Council in the above previous case as well, the statute of limitation for medical check fee demands is three years from the date that the employer has a duty to reimburse this money to the workers. Because the Supertex company required the workers to include the medical certificate as a condition of signing the labour contract; the employer can know [the workers has completed the medical check] and has a duty to reimburse this money to the workers on the day of signing the labour contract as well. So the statute of limitation must run from the labour contract signing date, this means that the 3 years of the statute of limitations is counted backwards 3 years from 03 October 2008 which is the date that workers filed the complaint (at the Ministry of Labour and Vocational Training) to demand employer to reimburse the medical check fee.

Thus, in this case, the Arbitration Council should decide to order the employer reimburse the medical check fee to the 40 plaintiffs workers who have worked since 03 October 2005 until the date the complaint was filed on 03 October 2008.

Arbitrator chosen by Union Workers

Liv Sovanna

² The statute of limitation of the complaint is duration that parties have the legal right to make a demand.