



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

**ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល**

**THE ARBITRATION COUNCIL**

**Case number and name: 136/07 – Phnom Penh Garment**

**Date of Award: 8 January 2008**

### **ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

#### **ARBITRATION PANEL**

Arbitrator chosen by the employer party: **Ouk Ry**

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

Chair Arbitrator (chosen by the two Arbitrators): **Run Saray**

#### **DISPUTING PARTIES**

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

Name: **Phnom Penh Garment City Co., Ltd.**

Address: National road No. 2, Sangkat Chak Angre Krom, Khan Meanchey, Phnom Penh

Telephone: 012 766 423                      Fax: N/A

Representatives:

- |                         |                               |
|-------------------------|-------------------------------|
| 1. Mr. Ly Chheng        | Assistant to General Manager; |
| 2. Mr. Huy Sao Vannrith | Administrator;                |
| 3. Mr. Sok Sovann       | Administrative Assistant;     |
| 4. Mr. Yang Ty Eang     | Administrator;                |
| 5. Ms. Lor Bun Thavry   | Administrator.                |

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

Name: **Free Trade Union of Workers of Kingdom of Cambodia (FTUWKC) at Phnom Penh Garment**

Address: National road No. 2, Sangkat Chak Angre Krom, Khan Meanchey, Phnom Penh

Telephone: 012 880 039                      Fax: N/A

Representatives:

- |                     |                  |
|---------------------|------------------|
| 1. Mr. Chhun Sam On | FTUWKC Official; |
|---------------------|------------------|

- |                    |   |
|--------------------|---|
| 2. Mr. Van Seng Ly | FTUWKC Official;                                |
| 3. Mr. Kao Meng    | President of FTUWKC at Phnom Penh Garment;      |
| 4. Mr. Se Thy      | Vice-President of FTUWKC at Phnom Penh Garment; |
| 5. Ms. Heng Sochun | Secretary of FTUWKC at Phnom Penh Garment.      |

### **ISSUE IN DISPUTE**

(In the Non-Conciliation Report)

The workers demanded that the company provide them with a food allowance of US\$ 6.83 per month; the practice that has been followed and is stated in the contract between workers and the company. On the other hand, the company stated that it could provide such benefit only to workers who work overtime for the company.

### **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. 1300 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 Center, Building A, Sothearos Blvd., Sangkat Tonle Bassac, Khan Chamkarmon, Phnom Penh.

**Date of hearing:** 12 December 2007 (9:00 a.m.)

### **Procedural issues:**

Having received the complaint on 5 November 2007 from Free Trade Union of Workers of Kingdom of Cambodia (FTUWKC) at Phnom Penh Garment on the demand for resolution to an issue of collective labour dispute at the factory, the Department of Labour Disputes designated its expert official to settle and conciliate the dispute. The issue was not successfully conciliated and the non-conciliated issue was submitted to the Secretariat of the Arbitration Council on 6 December 2007.

Having received the case, the Secretariat of the Arbitration Council summoned the disputing parties to attend a hearing to conciliate the issue on 12 December 2007 at 9:00 a.m. Both parties were present at the hearing summoned by the Arbitration Council.

On the hearing day, the Arbitration Council made a further attempt to conciliate the non-conciliated issue as stated in the non-conciliation report of the Department of Labour Disputes, but the issue remained non-conciliated. Therefore, in this case the Arbitration Council considers the issue based on the evidence and the fact findings and statements of the disputing parties at 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. Internal Work Rules No. 045 of Phnom Penh Garment Company dated 7 May 1999;
2. Statute of Phnom Penh Garment dated 23 November 2006;
3. Invitation No. 680 dated 27 November 2007 to the Director of Phnom Penh Garment Company to conciliate the collective labour dispute;
4. Summary thesis on the demand of eight-hour meal allowance for workers at Phnom Penh Garment dated 8 December 2007;
5. Invitation No. 681 dated 27 November 2007 to the Director of Phnom Penh Garment Company to provide information;
6. Certificate No. 1002 dated 7 April 1999 on the trade registration of Phnom Penh Garment Company;
7. Letter of Power of attorney of Phnom Penh Garment Company's director dated 099 PPG/07 dated 11 December 2007.

#### Provided by the worker party:

1. Letter No. 947 dated 7 September 2007 on the request to acknowledge the new union leaders at Phnom Penh Garment Factory;
2. Registration Certificate of FTUWKC at Concept Garment Factory dated 14 May 2001;
3. Nine pages of tables describing workers' wage.

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

1. Report No. 1300 on the collective labour conciliation at Phnom Penh Garment Company dated 5 December 2007;
2. Minute of the collective labour conciliation at Phnom Penh Garment Company dated 29 November 2007.

Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 603 to the employer party to attend the hearing dated 7 December 2007;
2. Invitation No. 604 to the worker party to attend the hearing dated 7 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:**

- The company started its operation in 1996 employing 840 workers at present.
- Free Trade Union of Workers of Kingdom of Cambodia (FTUWK) has 302 members and the demand was made for all workers in the factory.
- Even when overtime work was not applicable, the employer has always provided US\$ 6.83 per month of meal allowance to workers since 1998. On 7 July 2007, the company shifted its practice to providing meal allowance to workers only when they work overtime.
- The union demanded that the company provide them with a meal allowance of US\$ 6.83 per month, which was given before. On the other hand, the company claimed that it could no longer provide such benefit, but the company agreed to give each worker 1,000 riels of meal allowance per day only when he or she is required to work overtime. In November 2006, the company had a new boss and all workers were accepted as senior workers.
- The employer claimed that the reason behind the provision of US\$ 6.83 meal allowance per month was that in 1998, many strikes took place in the neighboring factories. The company decided to buy rice, bread or packed lunch for workers to eat in the factory in an attempt to prevent workers from joining the on-going demonstrations or strikes at the nearby factories. Afterwards, the company gave workers money to buy rice, bread or packed lunch themselves and this practice was enjoyed until 7 July 2007.
- Furthermore since 2003, the company set up a standard amount of work to be completed by workers. The company allowed workers who finished the required amount of work to leave early. When there was much work, workers were asked to work until 6:00 p.m. at the latest and if any worker finished the required work amount before that, he or she would be allowed to leave before 6:00 p.m. but still they were considered as working until 6:00 p.m. When there was less work, the company asked

workers to work until 4:00 p.m. at the latest; but if any worker finished the required work amount before that, he or she would be allowed to leave early and still they were considered as working until 4:00 p.m. Even if workers were supposed to leave at 4:00 p.m. or at 6:00 p.m., they were still given a food allowance of US\$ 6.83 per month whether or not they worked overtime.

### **REASONS FOR DECISION**

#### **Workers demanded that the employer continue to provide them with the food allowance of US\$ 6.83 per month**

Workers demanded that the company continue to provide them with the food allowance of US\$ 6.83 per month, claiming that the company has applied such practice [since the beginning] so the company cannot just make the new changes without the agreement from workers. They added that the practice, which is better than what the law provides, is not against the law. The employer rejected the demand with the reason that what the company did was in compliance with the law and the company just wanted to treat everyone fairly. It is not fair to provide those who do not take overtime work with the meal allowance; however, what the company did was not against the law. The Arbitration Council will consider as follows:

Point 3 of Notification No. 745 dated 23 October 2006 of the Ministry of Labour and Vocational Training provides 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 4 of Notification 017 dated 18 July 2000 states that, *“Workers who voluntarily work overtime upon request from the employer shall receive a meal allowance of 1,000 riels per day or receive one free meal.”*

Regarding the content of Notification 017, it clearly shows that only workers, who voluntarily work overtime, are entitled to a meal allowance while workers, who do not work overtime, are not entitled to any meal allowance. In this case, the Arbitration Council notices that the provision of 1,000 riels was applicable to only workers who work overtime and it is certainly in compliance with Notification 017/00 above. The practice of providing US\$ 6.83 per month was a better practice compared to what is provided in the above Notification. Thus, the Arbitration Council shall consider other points or areas to see whether or not the employer is obliged to the practice which is better than what the law provides.

Article 13 (2) of the Labour Law stipulates that, *“Except for the provisions of this law that cannot be derogated in any way, the nature of public order of this law is not obstructive to the granting of benefits or the rights superior to the benefits and the rights defined in this*

*law, granted workers by a unilateral decision of an employer or a group of employers, by an employment contract, by a collective convention or agreement, or by an arbitral decision.”*

Based on the content of Article 13(2) of the Labour Law, the Arbitration Council sees that any labour contract, collective agreement, agreement or resolution of the Arbitration Council, which is better than the law, does not pose any barrier and it can be applicable.

Therefore, the Arbitration Council considers that the Labour Law does not prohibit the provision of US\$ 6.83 meal allowance per month to workers, which is much better than the benefits states in Notification 745/06.

Once the facts are thoroughly examined, the Arbitration Council notices that the initial cause for the provision of US\$ 6.83 per month was aimed at discouraging workers from joining demonstrations that took place in other factories and to encourage workers to work harder. However, in 2007 the employer shifted the practice for fear of developing jealousy among workers because workers who do not work overtime also receive the meal allowance.

However, the Arbitration Council notices that the new practice was applicable to all workers and no worker was discriminated against. Of course those, who worked overtime, received overtime allowance while those, who did not work overtime, would not receive the allowance.

Furthermore, the company did not show any concrete information regarding the cases of jealousy among workers and none of the workers has ever made any complaint about the jealousy.

Therefore, the Arbitration Council will continue to consider whether or not the practice constituted an agreement which obliged the employer to provide US\$ 6.83 of meal allowance per month to workers.

In the hearing, both the employer party and the worker party stated that both parties clearly agreed to such practice and the practice was enjoyed for many years but no written contract, collective agreement or other type of agreement was made. Thus, the Arbitration Council finds that the workers' demand does not have written support.

However, the Arbitration Council considers that the practice, which was complied with by both the employer party and the worker party, constituted an oral agreement and was practiced from 1998 to 2007.

Article 65 (2) of the Labour Law stipulates that, *“It can be written or verbal. It can be drawn up and signed according to local custom. If it needs registering, this shall be done at no cost.”*

Article 65 (3) of the Labour Law stipulates that, *“The verbal contract is considered to be a tacit agreement between the employer and the worker under the conditions laid down by the labour regulations, even if it is not expressly defined.”*

Based on the content of Paragraphs 2 and 3 of Article 65 of the Labour Law, the Arbitration Council considers that a contract can also be verbal and the verbal agreement shall be considered as the agreement between the employer and the workers.

Article 22 of Decree No. 38 on contract and outside contract responsibility states that, *“A contract is considered as the law for both parties. A contract shall be amended only with the approval from both parties. The contract shall be complied with in good will and in accordance to the purpose of both parties. The contract is effective only on the contracting parties.”*

According to the above law, the Arbitration Council considers that the contract can only be amended with the agreement from both parties.

In this case, the employer shifted from the provision of US\$ 6.83 to all workers to the compliance of 017/00 by providing 1,000 riels to only workers who work overtime.

Therefore, the Arbitration Council considers that both parties had complied with the practice, which is the issue in dispute, for a long time so that the employer could not unilaterally shift the practice without the agreement from workers. According to the above testimonies and reasons, the Arbitration Council decides to order the company to continue providing the meal allowance of US\$ 6.83 per month to workers.

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

**DECISION AND ORDER**

Order the company to continue providing workers with US\$ 6.83 meal allowance per month.

**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: **Ouk Ry**

Signature: .....

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Run Saray**

Signature: .....

## **Kingdom of Cambodia**

**Nation      Religion      King**

### **Dissenting Opinion to the Arbitral Award for Phnom Penh Garment City Co., Ltd**

Since the agreement between the employer and workers was made verbally, the Arbitration Council must explore the actual agreement with the contract of both parties.

According to the previous practice, workers claimed that the agreement to provide meal allowance to workers was aimed at encouraging workers to work harder through taskwork. That means when there was more work, workers were asked to leave at 4:00 p.m., 6:00 p.m. or 9:00 p.m. If the workers finished before 4:00 p.m., 6:00 p.m. or 9:00 p.m., they would be allowed to leave early and the company paid each worker the meal allowance of US\$ 6.83 per month as well as the overtime work wages, if they performed [such OT work]. Thus, we can claim that the agreement was already implemented without any opposition from either the employer or the workers. Therefore, the key factor of the implemented agreement was that the employer was the one who set the amount of the taskwork and the finishing time which was the employer's privilege to manage and direct the production to achieve profits. In this regard, the employer has the privilege to stop the taskwork and introduce a piece rate system or to not limit the amount. If the Arbitration Council finds that the employer has no such privilege, it was against the Labour Law and Free Market Law which were guaranteed by the Constitution of the Kingdom of Cambodia. On the other hand, workers must understand that when the employer provided them with the meal allowance, that meant the employer had the privilege to effectively manage, organize and apply any means to ensure smooth production and profit making which includes the introduction of taskwork and non-taskwork. This shows that the employer was not obliged to provide the meal allowance to workers who did not work overtime based on reason that the employer no longer practices taskwork.

Phnom Penh, January 7<sup>th</sup>, 2008

Signature

**Ouk Ry**