



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាសវនកម្មជាតិ

THE ARBITRATION COUNCIL

Case number and name: 139/08-Supreme Garment

Date of Award: 27 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: **An Nan**

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

DISPUTING PARTIES

Employer party:

Name: **Supreme Garments Pte. Ltd.**

Address: Deum Mean Village, Deum Mean Commune, Ta Khmao District, Kandal Province

Telephone: 012 817 369

Fax: N/A

Representative:

- | | |
|----------------------|----------------------------------------------------|
| 1. Mr. Por Kong | General Manager of Supreme Garments company |
| 2. Mr. Chhen Takkhei | Head of Administration of Supreme Garments company |

Worker party:

Name: **Cambodian Labour Union Federation (CLUF) and local union of Cambodian Labour Union (CLU) at Supreme Garments Company**

Address: #788, Street 474, Sangkat Boeung Tror Bek, Khan Chamkamorn, Phnom Penh

Telephone: 011 674 506

Fax: N/A

Representative:

- | | |
|----------------------|----------------------------------------------|
| 1. Mr. Seng Menghong | Dispute resolution officer of CLUF |
| 2. Mrs. Souk Thea | President of CLU at Supreme Garments Company |
| 3. Mrs. Meas Sopheak | Secretary of CLU at Supreme Garments Company |

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- The workers demand that the company pay the US\$ 6 living allowance to women workers who take the 90-day maternity leave and reimburse the amount from the date the Notification was issued. During maternity leave, the company pays only US\$ 3.
- 2- The workers demand that the company allow 5 hours in the morning for pregnant women workers whose pregnancy are from 3 months and up to have a pregnancy examination which means they should work only 3 hours and the company should maintain their wages and other benefits. The company does not agree to the demand.
- 3- The workers demand that the company use 6-month fixed duration contracts. The company does not agree to the demand.
- 4- The workers demand that the company pay 2,000 riels for meal allowance or provide a free meal when they work over time for 2 hours. The company does not agree to the demand.
- 5- The workers demand that the company provide US\$ 5 per month as an incentive bonus in addition to the existing provisions. The company does not agree to the demand.
- 6- The workers demand that the company arrange annual leave for the workers in accordance with the Labour Law. The company does not agree to the demand but requests to provide payment in lieu of the leave.
- 7- The workers demand that the company calculate payment for maternity leave based on the average of wages and perquisites earned during the last 12 months. The company requests time for consideration.
- 8- The workers demand that the company pay 3 months of payments to female workers before they take the maternity leave. The company request to make payments every month.

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. 493/08 KB/KN, dated 20 October 2008 was submitted to the Secretariat of the Arbitration Council on 30 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: 17 November 2008 (at 8:00 a.m.)

Procedural issues:

On 15 November 2008 the Department of Labour Disputes of Kandal province conducted conciliation on 13 issues with a result of 5 successfully conciliated issues. The 8 remaining non-conciliated issues were referred to the Secretariat of the Arbitration Council on 30 October 2008.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer party and the worker party to the hearing and conciliation on the 8 non-conciliation issues on 17 November 2008 at 8:00 a.m. Both parties were present as invited by the Arbitration Council.

On the hearing day, the Arbitration Council attempted to further the conciliation on the 8 non-conciliation issues and achieved a successful conciliation result on 3 issues: issue 2, issue 5 and issue 6. Therefore, in this case the Arbitration Council will consider only issue 1, issue 3, issue 4, issue 7 and issue 8 based on evidence and reasoning as follows:

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

A. Provided by the employer party:

1. Letter to authorize Mr. Por Kong, general manager, and Mr. Chhen Takkhei, head of administration of Supreme Garments company, dated 17 November 2008.
2. Business certificate of Supreme Garments company No. 67/2004, dated 6 April 2004.
3. Certificate of registration for value added tax of Supreme Garments company No. 845 PD ATB, dated 31 December 1998.
4. Certificate of registration in the General System of Preferences of Supreme Garments company No. 3540 PN.BAP, dated 14 November 2001.
5. Certificate of commercial registration of Supreme Garments company No. 4179 PN.NTK, dated 4 December 2000.
6. Letter to the Arbitration Council to clarify the 5 non-conciliation issues by Supreme Garments company No. 0015/08 SP, dated 21 November 2008.

7. Sample of fixed duration contract of Supreme Garments company.
8. Sample of probationary contract of Supreme Garments company.
9. Payroll of Supreme Garments company to Line A for August 2008.
10. Payroll of Supreme Garments company to Line B for August 2008.
11. Payroll of Supreme Garments company to Line C for August 2008.
12. Payroll of Supreme Garments company to Line D for August 2008.
13. Payroll of Supreme Garments company to Packing (day shift) for September 2008.
14. Incentive payment document, 10 sheets of paper.

B. Provided by the worker party:

1. Certificate of union registration of local union CLU at Supreme factory, dated 8 September 2003.
2. Letter to recognize leadership of local union CLU at Supreme factory No. 2919 KKBV/AK, dated 9 December 2004.
3. Letter to recognize 2nd mandate leadership of local union CLU at Supreme factory No. 309 KKBV/AK/VK, dated 1 March 2006.
4. Letter to recognize new leadership of local union CLU at Supreme factory No. 1419 KKBV/AK/VK, dated 25 December 2006.
5. Letter to recognize new leadership of local union CLU at Supreme factory No. 358 KKBV/AK/VK, dated 17 March 2008.
6. Letter to certify union registration of local union CLU at Supreme factory, dated 8 September 2003.
7. Minutes of discussion meeting between employer party and worker delegate and committee of local union, dated 17 September 2005.

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

1. Report of collective labour dispute resolution at Supreme Garments company No. 493/08 KB/KN, dated 20 October 2008.
2. Minutes of collective labour dispute conciliation at Supreme Garments company, dated 15 September 2008.

D. Provided by the Secretariat of the Arbitration Council:

1. Letter of invitation to invite the worker party to attend the hearing, No. 687 KB/AK/VK/LKA, dated 3 November 2008.
2. Letter of invitation to invite the employer party to attend the hearing, No. 686 KB/AK/VK/LKA, dated 3 November 2008.

The Arbitration Council finds that:

- Supreme Garments company is located in Deum Mean Village, Deum Mean Commune, Ta Khmao District, Kandal Province. It employs approximately 800 workers.
- Local union CLU is the claimant in this case. Based on the claim by the worker party, local union CLU has approximately 125 members. According to the worker and the employer party, there is no union with the most representative status in the factory.

Issue 1: The workers demand that the company provide US\$ 6 living allowance to women workers who take the 90-day maternity leave and reimburse this amount of money from the date of the Notification

- The workers and the employer state that the company provides US\$ 3 to women workers who take the 90-day maternity leave.
- The workers demand that the company provide the US\$ 6 living allowance to women workers who take the 90-day maternity leave and that the company reimburse the US\$ 3 to women workers who take the 90-day maternity leave because according to point 2 of the minutes of the [labour advisory committee], dated 5 May 2008, the provision of this living allowance is not attached to any condition.
- The worker party claims that there are 2-3 women workers who take maternity leave. The company party does not object to the claim of the workers.
- The workers do not mention in what month the women workers took the leave, exactly how many [took such leave] or whether they have received the payment provided by the company.
- The company does not agree to the demand and states that it will continue to provide US\$ 3 to women workers who take the 90-day maternity leave and it does not agree to reimburse the US\$ 3 because the Labour Law states that women workers are entitled to half-pay during maternity leave.

Issue 3: The workers demand that the company use 6 month contracts

- The workers and the employer state that there are two types of contract in this company: fixed duration contracts and undetermined duration contracts.
- Approximately 300 workers have fixed duration contracts and approximately 348 workers have undetermined duration contracts.
- There are two types of fixed duration contracts: three-month contracts for men workers and 5-month contracts for women workers.
- In 2005 the workers and the company entered into an agreement that states:

- "... 2. All workers who start their employment in 2005 will have written fixed duration contracts.
- 3. The written contract is for a period of 6 months; detailed information is stated in the contract."
- The worker party demands that the company implement this agreement made in 2005. The company does not agree to this because the agreement is implemented only for those workers who started their employment in 2005.
- The worker party cannot show the number of workers who started their employment in 2005. The Arbitration Council ordered the workers to provide a list of names of workers who started their employment in 2005 by 21 November 2008. The worker party did not provide the list of workers who started their employment in 2005 to the Arbitration Council by the deadline.

Issue 4: The workers demand that the company provide 2000 riels for meal allowance when they work over time for 2 hours.

- The workers demand that the company provide 2000 riels for meal allowance when the workers work overtime for two hours because the market price of goods has increased so that the 1000 riels currently provided by the company is not sufficient to buy a meal.
- The company states that it cannot provide this because the majority of companies still provide 1000 riels for meal allowance when workers work overtime for 2 hours.
- In the hearing the workers reduced the amount of their demand to 1500 riels which means that they request for an additional 500 riels on top of the 1000 riels provided by the company for meal allowance for 2 hours of overtime work.
- The company suggests that it would take this issue for a discussion with the Chief Director and would give a response by 21 November 2008. On 21 April 2008 the Arbitration Council received a response from the company through the Letter No. 0015/08 PS dated 21 November 2008 that the company can provide only 1000 riels as meal allowance during overtime work and the letter suggests that the Arbitration Council should make a decision on this issue.
- The Arbitration Council considers that [the dispute between] the worker party and the employer party relates to the amount of 1500 riels for meal allowance for 2 hours of overtime work.

Issue 7: The workers demand that the company calculate payment for maternity leave based on the average of wages and perquisites earned during the last 12 months.

- The workers demand that the company calculate payment for maternity leave based on the average of wages and perquisites earned during the last 12 months in accordance with Article 168 of the Labour Law, excluding the US\$ 6 living allowance.
- The company does not agree but will follow the current method of calculation by using the main wage, and adding the seniority bonus, attendance bonus and US\$ 6 living allowance, and dividing this sum by 2 to determine the maternity payment for each month. This calculation is based on the Labour Law (the company does not remember which Article).
- The company also suggests that it would take this issue for discussion with the Chief Director and would provide a response by 21 November 2008. On 21 April 2008 the Arbitration Council received a response from the company through the Letter No. 0015/08 PS dated 21 November 2008 that the company cannot calculate maternity leave based on the average of wages earned during the last twelve months and the letter suggests that the Arbitration Council should make a decision on this issue.

Issue 8: The workers demand that the company pay 3 months of maternity payment in advance to female workers when they apply for maternity leave.

- The workers demand that the company pay the three months of wages to women workers in advance when they apply for permission to take maternity leave for the reason that during delivery they will need a lot of money. In addition, some workers' homes are far so it is difficult for them to come to get their wage.
- The company party does not agree and insists that this should be paid monthly because it can affect the monthly account statement. The employer states that those workers who live far from the factory can authorize their husband or wife, relatives or friends to receive the payment on their behalf.
- In the hearing the company requests to take this issue for discussion with the Chief Director and would give a response by 21 November 2008. On 21 April 2008 the Arbitration Council received a response from the company through the Letter No. 0015/08 PS dated 21 November 2008 that the company would pay the payment every month and the letter suggests that the Arbitration Council should make a decision on this issue.

REASONS FOR DECISION

Issue 1: The workers demand that the company provide US\$ 6 living allowance to women workers who take the 90-day maternity leave and reimburse this amount of money from the date of the Notification

Point 1 of Notification 032/08 KB/SJN, dated 17 April 2008 states, “An additional living allowance is provided to support workers, apprentices, casual or floating workers, probationary workers and full-right workers who are working in the garment and shoe making factory, enterprise, establishment in the amount of US\$ 6 (six US dollars) per month. This allowance is not included as a part of the net wage (basic wage).”

The Minutes of the Meeting regarding Procedures for Providing the Cost of Living Allowance of Six US\$ 6 (six) for Textile, Garment and Shoe Workers, dated 5 May 2008 states,

1- For the first month of employment, new workers who have worked for less than twenty six (26) days of the monthly work days until payday shall be entitled to the COLA as follows:

- a. Those who have worked for thirteen (13) days and below shall be entitled to half of the COLA, i.e. three (3) US dollars.
- b. Those who have worked for fourteen (14) days and above shall be entitled to the full COLA, i.e. six (6) US dollars.

2- All workers/employees, both new workers/employees who start the succeeding month of employment and old workers/employees of all types, shall be entitled to the full COLA, i.e. six (6) US dollars without any condition.

In case 119/08-New Hung Wah, the Arbitration Council interprets, “Based on the content of the minutes of the meeting above, it means that all workers working for the company from the second month onward will receive full living allowance of US\$ 6 (six) without any condition. In this case the Arbitration Council considers that the terms “**without any condition**” refer to unpaid leave with permission from the employer. Moreover, according to point 1 of Notification 032/08, this allowance shall not be included in the calculation of the actual wage (main wage). Thus women workers should be entitled to full living allowance of US\$ 6 (six) without any condition.” (See Arbitral Award 119/08-New Hung Way, issue 3).

In this case, the Arbitration Council agrees with the interpretation above which means that the full allowance of US\$ 6 (six) per month should be provided to the workers without any condition although the women workers take maternity leave they are entitled to the allowance as long as they fulfill the condition mentioned in point 2 of the Minutes regarding Procedures for Providing the Cost of Living Allowance of US\$ 6 (six) for Textile, Garment and Shoe Workers, dated 5 May 2008.

Point 3 of Notification 032/08 KB/SJN, dated 17 April 2008 states, “The above mentioned additional allowance is enforceable from April 2008 onwards.”

Therefore, the Arbitration Council orders the company to provide reimbursements in the amount of US\$ 3 to women workers who took maternity leave from April 2008.

Issue 3: The workers demand that the company implement 6 months contract

Article 65 of the Labour Law states, *“A labour contract establishes working relations between the worker and the employer. It is subject to ordinary law and can be made in a form that is agreed upon by the contracting parties.”*

Article 1 of Decree 38 Kr.J regarding Contract and other Liabilities states, *“A contract is an agreement between two or more persons to create, change or terminate one or more obligations which bind them.”*

Article 22 of Decree 38 Kr.J regarding Contract and other Liabilities states *“A contract is the law between the parties.”*

Based on the contents of three the Articles above, in previous cases the Arbitration Council has explained that *“Article 65 of the Labour Law subjects the employment contract to ordinary law (common law) which means that an employment contract is subject to Decree 38 Kr.J regarding Contract and Other Liabilities. Based on Article 1 and Article 22 of Decree 38 Kr.J above, an employment contract can be made only with agreement of the worker party and the employer party and no third party to the contract (workers and employer) can force any one party to enter into a contract.”*

Thus, the Arbitration Council considers that the demand for the employer to sign 6 months contracts can be possible only when the employer party agrees to this. However, in this dispute the employer party does not agree to this. The Arbitration Council who is a third party cannot force a party to the contract to implement an obligation which is against the will of the parties, so long as the contract is not in contravention to legal provisions.

Therefore, the Arbitration Council decides to reject this demand.

However, in this case, the worker party demands that the company follow the agreement entered into between the employer and the workers in 2005 which states,

“... 2. All workers who start their employment in 2005 will have written fixed duration contracts.

3. The written contract is for a period of 6 months; detailed information is stated in the contract.”

In the hearing the company party claims that the agreement is applicable only to those workers who started their employment in 2005 but not to those who began their work after 2005. The worker party, on the other hand, claims that the agreement is applicable to all workers who start their work after 2005. Besides this agreement, the workers do not provide any other evidence to support their claim. Based on the contents of this agreement, the Arbitration Council considers that employment contract in this company must be in writing and of a duration of 6 months. However, the agreement clearly states that this is only for those workers who start their employment **in 2005** but it does not state that this is for those

who start their work **after 2005**. Therefore, the Arbitration Council considers that the agreement is applicable only to those workers who began their work in 2005.

In this case the Arbitration Council ordered the workers to provide evidence to prove names of workers who started their employment in 2005 whose employment contracts are of a duration less than 6 months but the worker party does not provide such evidence. Thus, the Arbitration Council considers that the company is not in violation of the agreement.

Generally, in previous cases, the Arbitration Council always rejects the demand of the workers if there is not sufficient 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-*JK*, issue 2; 94/07-*Fortune*, issue 6 and 8; 44/08-*Siu Quinh*, issue 1 and 3; 101/08-*GDM*, issue 1 and 2; and 108/08-*Hugo*, issue 4; and 115/08-*Top One*, issue 1).

In conclusion, the Arbitration Council rejects this demand.

Issue 4: The workers demand that the company provides 2000 riels for meal allowance when they work overtime for 2 hours.

Based on the findings of fact above, the workers demand that the company provides 1500 riels as meal allowance when they work overtime for 2 hours. Thus, the Arbitration Council will consider this issue as follows:

Point 3 of Notification 745 KKBV, dated 23 October 2006 states, "*Benefits workers used to receive from Notification No. 017 SKBY dated 18 July 2000 on points 3, 4, 5 and 6 shall be retained.*"

Point 4 of Notification 017 SKBY, dated 18 July 2000 states, "*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.*"

In this case, the Arbitration Council found that the employer provides 1,000 riels when the workers volunteer to work overtime. Thus, the Arbitration Council considers that the employer has fulfilled its obligation according to Notification 017.

Besides Notification 017 which provides 1,000 riels per day for meal allowance as mentioned above, there is no other article that requires the company to provide meal allowance in an amount more than 1000 riels to workers who work overtime regardless of the number of hours of the overtime work. Moreover, the Arbitration Council does not find that the two parties have any agreement or written collective bargaining agreement that requires the employer to provide 1500 riels as meal allowance for workers who volunteer to work overtime for 2 hours.

In previous Arbitral Awards, the Arbitration Council has considered that, "*when workers work overtime voluntarily, they should receive 1,000 riel for a meal allowance or one free meal.*" (See Arbitral Awards 53/05-*Finegis*, issue 3; 39/07-*San San*, issue 1).

In previous Arbitral Awards, the Arbitration Council has declined to consider the workers' demand for the company to provide 2,000 riels as meal allowance when workers work overtime for two hours. (See Arbitral Awards 66/06-Gold Lida, issue 3; 51/07-Goldfame, issue 4; and 53/07-E Garment, issue 5).

In this case, the Arbitration Council agrees with the interpretation of the Arbitration Council in previous cases.

Thus, the Arbitration Council considers that the workers' demand does not have a supporting legal ground and this demand is more than what is provided by the Law. Thus, this is an interests dispute.

Generally, for interests disputes, the Arbitration Council always considers whether the union has most representative status. According to the findings of fact, the Arbitration Council finds that the union does not have most representative status. The Arbitration Council considers that most representative status gives legal qualification to the union to negotiate and establish a collective bargaining agreement in a company and the legal rights to bring a dispute to the Arbitration Council for resolution. In order to receive the most representative status, Article 277 of the Labour Law 1997 states that the union needs to register and fulfill other conditions mentioned in this Article.

Thus, the union does not have the legal right to make a collective bargaining agreement on behalf of all workers in the factory (See Article 96(2B) and Prakas 305, clause 9, paragraph 1). This is the right of the registered union with a majority of membership who fulfilled other criterions mentioned in Article 277 of the Labour Law. Therefore, in order to be consistent with pervious cases, the Arbitration Council considers that the union does not have sufficient legal qualification to represent workers to resolve a dispute related to collective interests of all workers in the company.

In addition, Clause 43 of Prakas 099, dated 21 April 2004 states, *"An arbitral award which settles an interest 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."*

The Arbitration Council has found that if the Arbitration Council issues an award on this issue, it will become a collective bargaining agreement applicable to all workers in the company who will lose their right to strike to make a demand related to interests in the future. Thus, it will create unfairness for other workers. (See Arbitral Awards 57/04-Evergreen; 60/04-United Art, issue 3; 08/07-Siu Quinh, issue 3, 33/07-Goldfame, issue 2; 51/07-Goldfame, issue 4).

Furthermore, so far the Arbitration Council has concluded that a union without most representative status does not have rights to bring an interests dispute to the Arbitration

Council for resolution. (See Arbitral Awards 57/04-Evergreen; 60/04-United Art, issue 3; 08/07-Siu Quinh, issue 3).

In this case, the union does not have most representative status. Therefore, the Arbitration Council decides to reject the workers' demand.

Issue 7: The workers demand that the company calculate payment for maternity leave based on the average of wages and perquisites earned during the last 12 months.

Based on the findings of fact above, the workers demand that the company calculate their maternity leave [payment] based on the average of wages and perquisites earned during the last twelve months excluding the US\$ 6 living allowance. Based on reasons for decision in the above issue, workers who take maternity leave are entitled to full US\$ 6 of living allowance per month. Thus, the Arbitration Council considers that the US\$ 6 living allowance is not involved in the calculation for the average of payment for maternity leave. Thus, the Arbitration Council [will consider the] demand for the company to provide maternity payment based on average of wage and perquisites earned during the last twelve months as follows:

Article 183 of the Labour Law states, *“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...”* This Article does not explain the meaning of the terms wage and perquisites.

According to Arbitral Awards 49/04-Ho Hing and 68/04-City New, the Arbitration Council decided that women workers who take maternity leave are entitled to 50 percent of the average of total monthly wages. The total monthly wages is equals to the total amount of wages earned during the last twelve months divide by twelve.

Based on the above reasoning, the Arbitration Council considers that during maternity leave women workers are entitled to 50 percent of the average of one month of wages for three months of maternity leave. The average of one month of wage should be calculated based on the average of wages earned during the last twelve months divided by 12. Thus, those who take 3 months of maternity leave are entitled to the average of one month of wage divided by two and multiply by three (three months).

In this case, the company practices the calculation of maternity leave by taking wages and other perquisites, including US\$ 6 living allowance, to divide by 2.

Based on the interpretation in the reasons for decision in issue 1, US\$ 6 living allowance shall be provided to workers without any condition. The Arbitration Council considers that the living allowance is a type of perquisites with the special condition that it must be provided to workers in accordance with Notification 032/08 KB/SJN, dated 17 April 2008 and the explanatory Minutes dated 5 May 2008. (See further in the reasons for decision in issue 1).

Therefore, the Arbitration Council considers that living allowance should not be included in the calculation of maternity payment.

Issue 8: The workers demand that the company pay 3 months of maternity payment in advance to female workers when they apply for maternity leave.

Article 183(1) of the Labour Law states, *“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.”*

In the findings of fact, the Arbitration Council found that the company pays full payment to the workers which equals to 50 percent of wages and perquisites. The Arbitration Council considers that the implementation by the employer is in accordance with Article 183 of the Law.

Paragraph 3 of Article 115 of the Labour Law states, *“Payment shall not be made on a day-off. If payday falls on such a day-off, the payment of wages shall made a day earlier.”*

In previous Arbitral Awards, the Arbitration Council interprets Article 115 of the Labour Law to mean that *“women workers are entitled to 50 percent of wages and perquisites for the period of 90 days maternity leave before they start taking the leave.”* (See Arbitral Awards 57/06-Evergreen, issue 6; 97/06-New Max, issue 1; 114/08-Whitex, issue 1).

In this case, the Arbitration Council agrees with the interpretation of the Arbitration Council in previous cases that women workers are entitled to 50 percent of wages and perquisites for the period of 90 days maternity leave before they start taking the leave. However, in this case the employer does not agree to pay the whole amount of payment to the workers because this will affect the monthly account statement. The Arbitration Council considers this argument is inconsistent with the contents of Article 115 of the Labour Law above because this is an obligation of the employer.

Therefore, to be consistent with the contents of Article 115 of the Labour Law and previous Arbitral Awards, the Arbitration Council decides to order the company to pay three months of payment for maternity leave to women workers before the leave starts.

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

DECISION AND ORDER

Issue 1: Order the company to provide the US\$ 6 living allowance to women workers who take the 90-day maternity leave from the date of the Notification 032/08 KB/SJN, dated 17 April 2008 and the explanatory Minutes dated 5 May 2008 and provide reimbursements in the amount of US\$ 3 to women workers who took maternity leave from April 2008.

Issue 3: Reject the demand for the company to implement 6-month contracts.

Issue 4: Decline to consider the demand for 1500 riels meal allowance when workers work overtime for two hours.

Issue 7: Order the company to calculate payment for maternity leave based on the average of wages and perquisites earned during the last 12 months, excluding the US\$ 6 living allowance.

Issue 8: Order the company to pay three months of payment for maternity leave to women workers before the leave starts.

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 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: **An Nan**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: