



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអន្តរាគ្មាន

THE ARBITRATION COUNCIL

Case number and name: 143/08-Charm Textile

Date of Award: 9 December 2008

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **Ly Tayseng**

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

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

DISPUTING PARTIES

Employer party:

Name: **Charm Textile Co., Ltd.**

Address: Banlasaet, Sangkat Khmounh, Khan Russey Keo, Phnom Penh

Telephone: 012 551 035 or 092 431 720 Fax: N/A

Representative:

- | | |
|---------------------|----------------------------------|
| 1. Mr. Chem Chenda | Assistant to administration |
| 2. Mr. Heng Vireak | Administration officer |
| 3. Mr. Hong Sopheap | Officer in production department |

Worker party:

Name: **Free Trade Union of Workers of Kingdom of Cambodia (FTUWKC)**

Address: #16A, Street 376, Sangkat Boeung Keng Kang 3, Khan Chamkamorn, Phnom Penh

Telephone: 012 826 405 or 012 263 543 Fax: N/A

Representative:

- | | |
|---------------------|---|
| 1. Mr. Pao Sina | Officer of FTUWKC |
| 2. Mr. Khem Chamnan | Officer of FTUWKC |
| 3. Mr. Lak Tola | President of local union of FTUWKC |
| 4. Mrs. Ponh Siep | Vice-president of local union of FTUWKC |

5. Mr. Sut Bunkheang	Secretary of local union of FTUWKC
6. Mrs. Sok Sophorn	Representative of workers
7. Mr. Chhuon Kimlen	Worker
8. Mr. Long Sophy	Worker

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- The workers demand that the company continue to rent vans for their transport. The company states that it will provide transportation only for one more month (November 2008). From December on, the company will provide US\$ 5 per month for each worker as a transportation allowance.
- 2- The workers demand that the company maintain the monthly A-B bonus, attendance bonus and [living allowance] for workers who are working in the new building as long as there is no regulation which requires change [of their employment conditions]. The company agrees to maintain A-B bonus for both buildings but it cannot maintain the [same] attendance bonus and the [living allowance] for the workers who are working in the new building as it will follow the practice in the old building (attendance bonus: US\$ 5, living allowance: US\$ 6).
- 3- The workers demand that the company provide US\$ 10 as accommodation allowance because rental fees have increased. The company does not agree to the demand but it will follow the existing practice.
- 4- The workers who are working in the old building demand that the company provide from US\$ 5 to US\$ 6 for attendance bonus and from US\$ 6 to US\$ 10 for living allowance. The company does not agree to the demand but it will provide the same amount to workers in both the old and the new building: US\$ 5 for attendance bonus and US\$ 6 for living allowance.
- 5- The workers demand that the company pay their wages during working hours. The company states that it will allow 15 minutes during working hours for the payment of workers' wages.
- 6- The workers who are working in the old building demand that the company provide 1,000 riels as meal allowance for overtime work from 6:30 p.m. to 9:00 p.m. The company does not agree to the demand but it will follow the existing practice.
- 7- The workers who are working in the old building demand that the company deduct their attendance bonus pro rata to the number of days they are absent from work. The company follows the Ministry's Notification.

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. 1234 KB/AK/VK, dated 6 November 2008 was submitted to the Secretariat of the Arbitration Council on 6 November 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: 20 November 2008 from 2:00 p.m. to 5:30 p.m.

Procedural issues:

On 4 November 2008 the Department of Labour Disputes received a complaint through the telephone from the local union of FTUWKC regarding the demand for the company to improve working conditions. After that on that same day on 4 November 2008, the Department of Labour Disputes assigned an expert officer to resolve and conciliate this labour dispute with a result that 7 of 12 issues remained non-conciliated. The 7 non-conciliation issues were referred to the Secretariat of the Arbitration Council on 6 November 2008 through the non-conciliation report No. 1234 KB/AK/VK, dated 6 November 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 7 non-conciliation issues on 20 November 2008 at 2:00 p.m.

Both parties were present at the arbitral hearing. The Arbitration Council tried to ask for other information relevant to this dispute and attempted to further the conciliation on the 7 non-conciliation issues but did not receive a successful conciliation result. However, because the demand in issue 2 and issue 4 are the same, the worker party agreed to withdraw issue 4 from this case. Therefore, in this case the Arbitration Council will consider and resolve this dispute based on evidence and findings of fact 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. Heng Vireak, head of administration, as company representative to resolve labour dispute at the Arbitration Council, dated 30 November 2008.
2. Summary statement of the labour dispute by the company, dated 17 November 2008.
3. Certificate of commercial registration of Charm Textile Company, dated 11 September 2003.
4. Internal Work Rules of Charm Textile Company, dated 5 October 2004.

B. Provided by the worker party:

1. Certificate of union registration of the local union of FTUWKC in Charm Textile Company No. 1531 KB/KV, dated 28 October 2008.
2. Statute of the local union of FTUWKC, dated 31 August 2008.

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

1. Report of collective labour dispute resolution at Charm Textile Company No. 1234 KB/AK/VK, dated 6 November 2008.
2. Minutes of collective labour dispute resolution at Charm Textile Company, dated 4 November 2008.

D. Provided by the Secretariat of the Arbitration Council:

1. Letter of invitation to invite the worker party to attend the hearing No. 702 KB/AK/VK/LKA, dated 14 November 2008.
2. Letter of invitation to invite the employer party to attend the hearing No. 701 KB/AK/VK/LKA, dated 14 November 2008.

FACTS

- Having reviewed the report of collective labour dispute conciliation
- Having listened to statements by the worker party and the employer party
- Having examined additional documents

The Arbitration Council finds that:

- Charm Textile Company commenced its operation in 2004. Currently it is employing a total number of 975 workers.
- Local union of FTUWKC in the company is the claimant in this case. The union mentions in the hearing that it has approximately 600 members but the union has not submitted any letter to request the company deduct union contribution fees. The

company states that it does not know the number of workers who are members of the union because the union has not notified the company.

- Local union of FTUWKC does not have most representative status.

Issue 1: The workers demand that the company continue to rent vans for their transport. The company states that it will provide transportation only for one more month (November 2008). From December on, the company will provide US\$ 5 per month for each worker as transportation allowance.

- Both parties acknowledge that the company rent vans to transport workers to work since the start of its operations in 2004. Both parties also agree that they never had any written agreement about this matter.
- The employer party claims that the company rent 6 vans to transport workers who live far from the company regardless if they work overtime or not. The rental cost is US\$ 370 per month for each van. Each van can transport approximately 60 to 70 workers. The vans take workers to their individual homes and pick them up to work. The workers do not object to the employer's statement above.
- On 28 October 2008 the company notified the workers that it would change this practice to a provision of US\$ 5 per month instead of providing transportation to the workers and this would start from December 2008.
- The company states that the reason that the company changes from renting vans to the provision of US\$ 5 per month was because it had economical difficulties due to the global economic crisis. However, the employer does not provide specific evidence to support this claim.
- When the Arbitration Council makes comparison between the cost of renting vans for the workers and the provision of US\$ 5 per months and found that they are not much different, the representative of the employer states that actually the reason that the employer does not continue to rent vans for the workers was because it wants the workers to change to rent their accommodation near the factory so that it would be easier to request them to work overtime.
- The workers claim that the amount of US\$ 5 per month is not sufficient for them to rent a van as the cost would be between US\$ 10 and US\$ 12 depending on the distance of their homes.

Issue 2: Workers working in new building demand that the company maintain the provision of US\$ 6 attendance bonus and US\$ 10 monthly [living] allowance as long as there is no regulation which requires change in the new building. Workers working in old building demand that the company increase their attendance bonus from US\$ 5 to

US\$ 6 per month and increase the monthly [living] allowance from US\$ 6 to US\$ 10 per month.

- In the hearing both parties agree that the company continue the provision of A-B bonus for workers working in both buildings and the parties agree to withdraw this point. Thus, the Arbitration Council will not consider regarding this A-B bonus.
- Charm Textile Company has two buildings. The first building (old building) started operations in 2004 and there are 721 workers working in this old building.
- The company states that in early October 2008 the company started operations in another new building and accepted workers transferred from another company, Cambo Fashion Co., Ltd, and maintained the same benefits and employment contract from the former factory. The new building has 221 workers working in it. The worker party does not object to this claim by the employer.
- The company party states that workers working in the old building receive US\$ 5 attendance bonus per month and US\$ 6 [living] allowance per month in accordance with the Law. The worker party does not object to this claim by the employer.
- The company adds that in the second building (new building) the company provides US\$ 6 attendance bonus per month and US\$ 10 [living] allowance per month because they used to receive this amount when they worked for their former factory. The company provided the payment to the workers (in new building) one time already in November 2008.
- The employer states that the company has a plan to change the provision for those workers in the new building to the same as those in the old building so to avoid feelings of jealousy and this would be from December onward.
- The worker party claims that those workers in the new building do not agree to such change; they request that the company maintain US\$ 6 attendance bonus and US\$ 10 [living] allowance per month. The workers in the old building request an increase to US\$ 6 for the attendance bonus and US\$ 10 for the living allowance because the provisions should be the same as they are working for the same employer.
- The company states that it has transferred workers from Cambo Fashion Co., Ltd, a branch of Charm Textile Company, and maintains their employment contracts, employment seniority and benefits they used to receive when they worked for their former factory. The workers did not sign new employment contracts but continue to use the old contract they had with their former factory.

Issue 3: The workers demand that the company provide an additional US\$ 5 per month for accommodation allowance, for an aggregate of US\$ 10 per month, because rental

fee has increased. The company party is unable to provide this but will continue the provision of US\$ 5 per month

- The workers and the employer agree that from 2004 the company provides US\$ 5 per month for the workers who do not need to use transportation and stay near the factory location, to rent their accommodation rooms. There are approximately 600 workers who receive this allowance.
- In the hearing the worker party claims that recently, the rental fee increased from US\$ 20 per month to US\$ 25 or US\$ 30 per month. The rental fee is only US\$ 20 per month because four workers can share one room . However, when the rental costs more than US\$ 20 per month, it is no longer sufficient for them to pay for rent so they demand for increase. The employer agrees with the statement but state that they cannot provide the increase as demanded by the workers as currently the company is trying to reduce expenses.
- Both parties have never had an agreement or collective bargaining agreement regarding this matter.

Issue 5: The workers demand that the company pay their wages during working hours.

- The workers request that the company pay their wages during working hours because on each payday in the past the company could not pay to some workers during working hours so some of them need to wait until 5:00 p.m. or 5:30 p.m. to obtain their wages. The company party does not object to this claim.
- The company pays workers on 10th of the month.
- Workers' working hours are:
 - o In the morning: from 7:30 a.m. to 11:30 a.m.
 - o In the afternoon: from 12:30 p.m. to 4:30 p.m.
- The company mentions in the hearing that it pays wages to the workers at 4:15 p.m. This means that the company pays the workers within the 15 minutes before the time the workers leave work. The company acknowledges that the duration of 15 minutes is not sufficient to pay workers' wages during working hours. However, if the company's payments run late for 30 minutes, it will include this period into overtime work. The workers do not object to this statement.
- The company adds that the payment of wages for workers is only ever 30 minutes late at most.
- The worker party states that they demand the company to pay their wages during working hours.

Issue 6: The workers demand that the company pays additional 1000 riels meal allowance for overtime work from 4:30 p.m. to 6:30 p.m.

- The workers and the employer state that the company provides 1000 riels meal allowance to those workers who volunteer to work overtime from 4:30 p.m. to 6:30 p.m.
- The workers states that they demand for an additional 1000 riels meal allowance for overtime work from 4:30 p.m. to 6:30 p.m. because market price of goods has increased so that the 1000 riels meal allowance provided by the company no longer sufficient for them to buy their meal.
- The company states that it is unable to provide as demanded and suggests following the Labour Law.

Issue 7: The workers demand that the company deduct their attendance bonus in proportion to the number of days they are absent (with permission)

- The worker party demands that when a worker takes leave for an important personal commitment with proper permission, the employer should deduct their attendance bonus in proportion to the number of days they are absent because the company has permitted the leave.
- So far, if workers take leave with permission from the company for one and a half days per month which is the number of days of annual leave they are entitled to, the company will maintain the US\$ 5 attendance bonus. However, for those who take leave for more than one and a half days per month, i.e., from two days up, the company will deduct the entire US\$ 5 regardless whether the workers take leave with or without permission.
- The workers agree with the fact that the employer maintains US\$ 5 attendance bonus for those workers who take leave with proper permission from the company for one and a half day because this is the annual leave workers are entitled to. However, for those workers who take leave with proper permission from the company for a period longer than that of annual leave, the company should deduct their attendance bonus in proportion to the number of days they are absent.
- The company states that it will maintain the existing practice.

REASONS FOR DECISION

In this case, the local union of FTUWKC in the factory who represents the workers makes a demand for workers working in the old and new buildings of Charm Textile Company. Thus, the Arbitration Council will consider as follows:

Article 268 of the Labour Law states, *“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 considers that Article 268 above means that a professional organization can enjoy rights and benefits recognized by the Labour Law when that professional organization is registered with the Ministry of Labour.

In addition, Clause 5 of Prakas 305, paragraph 1 states, *“Any union established in the enterprise or establishment class in compliance with Article 268 of the Labor Law, has the right to represent the interest of its members according to the conditions as mentioned in the Labour Law.”*

In this case, the Arbitration Council found that the local union of FTUWKC was registered with the Ministry of Labour and Vocational Training on 28 October 2008. Thus, this union can enjoy rights and benefits recognized by the Labour Law and it has the right to represent workers who are the union members as stipulated in Article 268 of the Labour Law and Clause 5, paragraph 1 of Prakas 305.

Therefore, the Arbitration Council will consider and resolve this case only for members of local union of FTUWKC in the factory.

Issue 1: The workers demand that the company continue to rent vans for their transport. The company states that it will provide transportation only for one more month (November 2008). From December on, the company will provide US\$ 5 per month for each worker as transportation allowance.

In this case, the employer has rented vans to transport workers who live far from the factory since 2004 until November 2008, regardless whether the workers perform overtime work or not; this practice is not recorded in any agreement in writing. However, in the hearing the employer states that from December onward the company will change from renting vans for the workers to providing US\$ 5 per month for those workers who live far from the factory. The company explained the reason for this change of practice is because the company is facing economical difficulties.

Hence, the Arbitration Council will consider whether the employer has the right to change from renting vans for workers' transportation to providing US\$ 5 per month.

The Arbitration Council finds that there is no Article or regulation that requires the employer to rent vans for workers' transportation to work. However, Article 13(2) of the Labour Law states, *“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 to 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 meaning of Article 13(2) of the Labour Law above, the Arbitration Council considers that an employment contract, collective bargaining agreement, agreement, or arbitral decision which provides benefits superior to what is provided in the law is not an obstacle and can be implemented.

Therefore, the Arbitration Council considers that the Labour Law does not prohibit the employer from renting vans for workers' transportation and the provision is better than what is provided by the law. Next, the Arbitration Council will continue to consider whether the past practice of the employer and the workers is an agreement that binds the employer to continue to rent vans for the workers.

In the hearing the employer and the workers state that the two parties had expressly agreed to this practice continuously for many years but it is not stated in writing in a contract, collective bargaining agreement or agreement. Therefore, the Arbitration Council found that the workers' demand does not have a supporting basis in an agreement in writing.

However, the Arbitration Council considers that the past practice between the employer and the workers has become a verbal agreement implemented since 2004 until 2008. Thus, the Arbitration Council considers that the company can change from renting vans for workers' transportation to the provision of US\$ 5, as long as the company proves the necessity of the company changing from renting vans to provision of money is reasonable. The company also needs to provide reasons to show that if it does not change from renting vans for the workers to providing money it will affect the company's economic situation. In this case, the company mentioned in the hearing that the reason that led to the change of practice from renting vans to the provision of US\$ 5 is because the company has economic difficulties due to the global economic crisis. However, the employer does not provide clear evidence regarding the company's economic difficulties. In the hearing the Arbitration Council allowed the worker party and the employer party to compare between renting vans for the workers and provision of US\$ 5 to each worker; the worker and employer party acknowledge that they are not much different. The company party also adds that the actual reason that the employer does not continue to rent vans for the workers is because it wants them to rent houses near the factory so that it would be easy to ask them to work overtime. Therefore, the Arbitration Council considers that the reasons provided by the employer regarding changing from renting vans for workers' transportation to provision of money are not reasonable.

Therefore, the Arbitration Council decides to order the employer to continue renting vans for workers' transportation.

Issue 2: Workers working in new building demand that the company maintain the provision of US\$ 6 attendance bonus and US\$ 10 monthly [living] allowance as long as there is no regulation which requires change in the new building. Workers working in old building demand that the company increase their attendance bonus from US\$ 5 to US\$ 6 per month and increase monthly [living] allowance from US\$ 6 to US\$ 10 per month.

Regarding this issue, the Arbitration Council will consider the two [bonuses] for: **(1)** workers working in the old building and **(2)** workers working in new building.

1. Workers working in the first building (old building):

Workers working in the old building demand that the employer increase their attendance bonus from US\$ 5 to US\$ 6 per month and that the employer increase their living allowance from US\$ 6 to US\$ 10 per month for the reason that the employer provides this to those workers working in the new building so that the employer needs to apply this to them because they are all workers of Charm Textile Company.

Hence, the Arbitration Council will consider whether the workers who are working in the old building are entitled to US\$ 6 attendance bonus and US\$ 10 living allowance per month.

a. Attendance bonus (from US\$ 5 per month to US\$ 6 per month)

Point 3 of the Notification 745 KKBV dated 23 October 2006 provides that *"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 3 of the Notification 017 dated 18 July 2000 states that *"Any workers who regularly work according to the regular working days per month shall have a bonus of at least 5 US dollars per month."*

In this case, both parties agree that the employer provides US\$ 5 attendance bonus in accordance with what is provided in the above Notification. Therefore, the Arbitration Council considers that the employer has implemented its obligation regarding provision of attendance bonus in accordance with Notification 017 above.

In this case the worker party demands that the employer provide an additional US\$ 1 on the US\$ 5. In relation to this case, the Arbitration Council finds that there is no legal labour regulation or any agreement that requires the employer to increase US\$ 1 on the attendance bonus of each worker. Therefore, the Arbitration Council considers that the workers' demand is for more than what is provided by the Law. Therefore, it is an interests dispute.

So far, for the interests dispute, the Arbitration Council always considers whether the union has the most representative status because the most representative status of a union provides legal qualification to the union to enter into a collective bargaining agreement in a company (see Article 96 paragraph 2B of the Labour Law and Prakas 305, Clause 9 paragraph 1) and legal entitlement to bring an interests dispute to the Arbitration Council for a solution.

In order to receive the most representative status, Article 277 of the Labour Law 1997 and Clause 6 of Prakas 305, dated 22 November 2001, require that the number of members in the union is at least more than half of the total number of workers in the factory; in addition, it needs to be registered at the Ministry of Labour and fulfil other requirements stated in the Article.

In previous cases, the Arbitration Council has declined to consider an interests dispute if the union who brought the labour dispute does not have the most representative status in the factory. (See Arbitral Awards 81/04-Evergreen, issue 4; 09/05-Kin Tai, issue 2; 84/07-Yung Wah 2, issue 1; 108/07-8 Star Sportswear, issue 3; 135/07-Wilson, issue 1 and 14/08-Quick Sew, issue 3; 101/08-GDM, issue 3; 108/08-Hugo, issue 2; and 117/08-Sky Nice, issue 1).

Based on the above findings of fact, the Arbitration Council finds that local union of FTUWKC does not have the most representative status in Charm Textile Company. Therefore, the union does not have the legal rights to enter into a collective bargaining agreement on behalf of all workers in the company. (See Prakas 305, Clause 9, paragraph 1).

In addition, Clause 43 of Prakas 099, dated 21 April 2004 states that, *“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.”*

Based on Clause 43 above, the Arbitration Council finds that if the Arbitration Council issues an arbitral award to resolve an interests dispute it will become a collective bargaining agreement for one year. The collective bargaining agreement would be applicable to all workers in the company and workers' right to strike could not be implemented to revise the collective bargaining agreement while it is still in effect. (See Articles 96 and 321, paragraph 2 of the Labour Law).

Therefore, the Arbitration Council decides to decline to consider the workers' demand for the company to provide the same amount of US\$ 6 attendance bonus as workers working in the new building.

b. Living allowance (from US\$ 6 per month to US\$ 10 per month)

Point 1 of Notification 032/08 KB/SChN, dated 17 April 2008 states, *“Provide an additional living allowance 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 U.S. dollars) per month. This allowance is not included as a part of the net wage (basic wage).”*

In this case, both parties agree that the employer provides the US\$ 6 living allowance in accordance with the provision provided in Notification 32/08. Therefore, the Arbitration Council considers that the employer has implemented its obligation regarding provision of living allowance in accordance with the Law. In this case the worker party demands that the employer provide an additional US\$ 4 on top of the US\$ 6. The Arbitration Council finds that there is no labour regulation or any agreement that requires the employer to increase the living allowance by US\$ 4 for each worker. Therefore, the Arbitration Council considers that the workers' demand is for more than what is provided by the Law. Therefore, it is an interests dispute. *(See above for reasoning regarding the decision related to an interests dispute).*

Therefore, the Arbitration Council decides to decline to consider the workers' demand for the company to provide additional US\$ 4 per month on their living allowance so that it is the same as the amount provided to workers working in the new building.

2. Workers working in the second building (new building):

Workers working in the new building demand that the employer maintain their US\$ 6 attendance bonus and US\$ 10 living allowance.

Based on the findings of fact, the employer states in the hearing that the workers working in the new building were transferred from Cambo Fashion Company and the employer of Charm Textile Company agreed to maintain their employment contract and other benefits they used to receive.

In addition, based on the summary statement by the employer, dated 17 November 2008, workers in Cambo Fashion Co., Ltd received US\$ 6 attendance bonus and US\$ 10 living allowance before they were transferred to Charm Textile Company.

Article 87(1) of Labour 1997 states that *“...If a change occurs in the legal status of the employer, particularly by succession or inheritance, sale, merger or transference of fund to form a company, all labor contracts in effect on the day of the change remain binding between the new employer and the workers of the former enterprise...”*

Based on Article 87(1) of Labour Law [] and the decision of the Arbitration Council in previous cases, the Arbitration Council considers that in general the change of legal status of the employer does not affect the labour contracts [of the workers]. *(See Arbitral Award 98/07-Sky Sino, issue 1; 83/08- Le Grand Café, issue 1 and 2; and 100/08-Gawon Apparel, issue 1)*

In the Arbitral Award 100/08-Gawon Apparel the Arbitration Council considers that “the change of employer’s legal status” means the change of the status of the employer or change of employer or simply means a change from the present employer to the new employer. According to Article 2 of Labour Law an employer can be a natural person or a legal entity. Therefore, the present employer and new employer can be either natural persons or a legal entity. For this reason, in the case of a change of employer, the new employer can be a new natural person or a new legal entity or former legal entity with new shareholders or [there can be the] addition or subtraction of the number of shareholders which changes of number of shares through sale, merger or transference of fund.” (See Arbitral Award 100/08-Gawon Apparel, issue 1).

In this case, the Arbitration Council agrees with the above interpretation which means that in general the change of legal status of the employer does not affect the labour contracts.

In this case, the employer did not clearly state how Charm Textile Company accepted workers transferred from Cambo Fashion Company which the employer claims that it is a branch of Charm Textile Company. However, the company states that it maintains the same benefits and employment contract they had with the former factory for the workers. Moreover, the employer already paid US\$ 6 attendance bonus and US\$ 10 living allowance for the workers transferred from Cambo Fashion Company for one time already in November 2008.

Thus, according to Article 87 of the Labour Law above, employer of Charm Textile Company needs to maintain benefits and employment contract the workers had with the former company until their employment contracts with Cambo Fashion Company expire or until they enter into a new employment contract with the company. This means that the company needs to provide US\$ 6 attendance bonus per month and US\$ 10 living allowance per month to workers working in the second building who were transferred from Cambo Fashion Company until their employment contracts with Cambo Fashion Company expire or they enter into new employment contracts with [Charm Textile] Company.

In conclusion, the Arbitration Council decides to order the employer to provide US\$ 6 attendance bonus per month and US\$ 10 living allowance per month to the workers until their employment contract with Cambo Fashion Company expire or they enter into new employment contract with [Charm Textile] Company.

Issue 3: The workers demand that the company provide additional US\$ 5 per month for accommodation allowance for an aggregate of US\$ 10 per month because rental fee has increased. The company party is unable to provide this but will continue the provision of US\$ 5 per month

The workers demand that the company increase the accommodation allowance the company provides every month from US\$ 5 to US\$ 10 for each worker because currently rental fees have increased from US\$ 20 to US\$ 25 or US\$ 30 per month.

In this case the Arbitration Council considers that the company provides US\$ 5 to workers who rent their accommodation near the company location; thus the employer has exceeded its obligations and provided more than what is required by the Law to the workers. In addition, the Arbitration Council does not find any law or regulation that requires the employer to pay US\$ 10 per month to each worker [as an accommodation allowance]. Therefore, this is an interests dispute. (See reasons for decision in issue 2 above regarding interests dispute.)

In conclusion, the Arbitration Council decides to decline to consider the workers' demand for the company to provide US\$ 10 to each worker for accommodation allowance.

Issue 5: The workers demand that the company pay their wages during working hours.

In this issue the workers demand that the company pay their wages during working hours for the reason that they cannot wait until 5:00 p.m. or 5:30 p.m. to receive their wages. The employer party states that generally wages are paid out from 4:15 p.m. and ending at 5:00 p.m. or sometimes 5:30 p.m.; and if the company is late for 30 minutes or more, the employer will count the time for overtime payment to the workers.

Article 115(3) 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.*" From this paragraph, the Arbitration Council considers that payment of wages shall not be made on a day that the workers are entitled to take a day-off. Thus, payment of wages shall be made on the day when the worker work and the **day** when the workers work refers to the duration within working hours.

Moreover, Article 137 of the Labour Law states, "*... the number of hours worked by workers of either sex cannot exceed eight hours per day, or 48 hours per week.*" According to Clause 4 of the company's Internal Work Rules regarding working hour:

"All workers should perform their work for 8 hours per day or 48 hours per week according to the following schedule:

- *In the morning: from 7:30 a.m. to 11:30 a.m.*
- *In the afternoon: from 12:30 p.m. to 4:30 p.m."*

Thus, according to the contents of Articles 115 and 137 of the Labour Law and the company's Internal Work Rules above, the Arbitration Council considers that the employer should pay wages to the workers during working hours (which means that wages should be paid and finished during working hours [in the morning] from 7:30 to 11:30 or in the afternoon from 12:30 to 4:30 p.m.).

When the employer is late up to 30 minutes or more in paying wages for the workers, then the employer includes this into overtime payments for the workers. The Arbitration Council considers such practice by the employer as not being valid because overtime work should on a voluntary basis.

The Arbitration Council considers that generally overtime work should be on a voluntary basis as mentioned in Prakas 80 SKBY, clause 4, dated 1 March 1999 that *“An arrangement for overtime work shall be executed on a voluntary basis, which means the owner or director of an establishment/enterprise shall not coerce or discipline the workers who do not volunteer to work overtime.”*

In previous Arbitral Awards the Arbitration Council decided to order the company to arrange workers to work overtime voluntarily (See Arbitral Awards 96/04-Sportex, issue 2 and 68/06-Hong Mei, issue 5).

Therefore, in this case, the Arbitration Council decides to order the employer to pay workers' wages during working hours.

Issue 6: The workers demand that the company pay an additional 1000 riels as meal allowance for overtime work from 4:30 p.m. to 6:30 p.m.

The company provides 1000 riels meal allowance to workers who volunteer to work overtime from 4:30 p.m. to 6:30 p.m. However, the workers demand that the company provide an additional 1000 riels for this overtime work because market price of goods has increased. Therefore, the Arbitration Council will consider 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 from 4:30 p.m. to 6:30 p.m. Thus, the Arbitration Council considers that the employer has fulfilled its obligation according to Notification 017. Furthermore, besides Notification 017 which provides 1,000 riels per day for meal allowance as mentioned above, there is no other provision that requires the company to provide an additional 1,000 riels as meal allowance to workers who work overtime from 4:30 p.m. to 6:30 p.m. 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 an additional 1,000 riels as meal allowance for workers who volunteer to work overtime.

In previous Arbitral Awards, the Arbitration Council considered, *“The Arbitration Council considers that when workers work overtime voluntarily, they should receive 1,000 riel for a meal allowance or one free meal. This means that even when the overtime is more than or less than two hours, the workers should still receive 1,000 riel or one free meal because the Notification mentions about one day.”* (See Arbitral Awards 53/05-Finegis, issue 3; 39/07-San San, issue 1 and 117/08-Sky Nice, issue 2).

In previous Arbitral Awards, the Arbitration Council 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; 53/07-E Garment, issue 5; and 117/08-Sky Nice, issue 2).

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 provided by the Law. Thus, this is an interests dispute. (See Reasons for Decisions in issues 2 and 3 above regarding an interests dispute).

Therefore, the Arbitration Council decides to decline to consider the workers’ demand for an additional 1,000 riels as meal allowance for overtime work from 4:30 p.m. to 6:30 p.m.

Issue 7: The workers demand that the company deduct their attendance bonus in proportion to the number of days they are absent (with permission)

The company deducts the entire US\$ 5 attendance bonus although the workers obtain proper permission for leave from the company; except when workers take their annual leave of one-and-a-half days per month and then the company does not deduct their attendance bonus. The worker party requests that the company only deduct the attendance bonus in proportion to the number of days they are absent. Therefore, the Arbitration Council will consider as follows:

Point 3 of Notification 745 KKBV, dated 23 October 2006 states that *“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 3 of Notification 017 SKBY, dated 18 July 2000 states, *“Any workers who regularly work according to number of working days per month shall have a reward at least 5 US dollars per month.”*

The Arbitration Council considers that the attendance bonus provided in this Notification is an incentive bonus to ensure praise to workers who come to work regularly for a full month and do not take leave (are absent) without a valid reason.

In relation to the attendance bonus, in previous cases the Arbitration Council has considered that *“attendance bonus” is an incentive bonus to ensure praise to workers who come to work regularly for a full month and do not take leave without a valid reason.*” (See Arbitral Awards 62/04-E Cent, issue 1; 63/04-Shine Well, issue 5; 15/05-Wing Tai 2, issue 1; 62/07-Hong Mei, issue 11; 106/07-M & V 3, issue 2; 115/07-Whitex, issue 1 and 121/08-Sinomax, issue 2).

In case 48/05-Manhattan, issue 1, the Arbitration Council interprets that, *“The Notification does not clearly state the number of working days to be considered as regular for workers to receive the attendance bonus.”* (See Arbitral Awards 48/05-Manhattan, issue 1).

In this case the Arbitration Council agrees with the above interpretation that this Notification does not clearly state the number of working days per month to be considered as regular for workers to receive the attendance bonus. However, according to Article 103 of the Labour Law, a bonus is a part of wage.

Article 103 of the Labour Law states, *“Wage includes, in particular:*

- *actual wage or remuneration;*
- *overtime payments;*
- *commissions;*
- *bonuses and indemnities*
- *profit sharing;*
- ***gratuities;***

Article 71(6) of the Labour Law states, *“The labour contract shall be suspended under the following reasons:*

Absent of the worker authorized by the employer, based on laws, collective agreements, or individual agreements.”

Article 72(1) of the Labour Law states, *“The suspension of a labour contract affects 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 the worker, unless there are provisions to the contrary that require the employer to pay the worker.”*

Thus, when the workers are absent with permission from the employer, their employment contract is suspended and they are not required to work for the employer and the employer is not required to pay wages to the workers unless there are provisions to the contrary that require the employer to provide wages to the workers. This means that the employer is not required to provide wages to the workers on the days the workers are absent with permission from the employer. However, on the days the workers are not absent (for example, on the day they come to work) the employer is required to pay the workers on those days.

Because attendance bonus is a part of wages and Notification 017, dated 18 July 2000, does not state clearly state the number of working days to be considered as regular for workers to receive the attendance bonus. Therefore, the Arbitration Council considers that the employer can deduct attendance bonus in proportion to the number of days the workers were absent with permission from the company.

In previous cases the Arbitration Council ordered the employer to deduct attendance bonus on the days the employer permit the workers to take leave. (See Arbitral Awards *57/07-Seratex, issue 3; 106/07-M & V 3, issue 2 and 115/07-Whitex, issue 1*).

In this case the Arbitration Council agrees with the interpretation in previous cases above. Therefore, the Arbitration Council decides to order the employer to deduct attendance bonus in proportion to the number of days the workers are absent with proper permission from the company.

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

DECISION AND ORDER

Issue 1:

- Order the employer to continue renting vans for workers' transportation.

Issue 2:

- Decline to consider the workers' demand for the company to provide the US\$ 6 attendance per month and US\$ 10 living allowance per month.

- Order the employer to maintain the provision of US\$ 10 living allowance and US\$ 6 attendance bonus for workers working in the new building who were transferred from Cambo Fashion Co., Ltd.

Issue 3:

- Decline to consider the workers' demand for the company to provide an additional US\$ 5 as accommodation allowance.

Issue 5:

- Order the employer to pay workers' wages during working hours.

Issue 6:

- Decline to consider the workers' demand for additional 1,000 riels as meal allowance for overtime work from 4:30 p.m. to 6:30 p.m.

Issue 7:

- Order the employer to deduct attendance bonus in proportion to the number of days the workers take leave (are absent) with proper permission from the company.

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: **Ly Tayseng**

Signature:

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: