



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

**ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល**

**THE ARBITRATION COUNCIL**

**Case number and name: 17/10 – Zongtex Garment**

**Date of Award: 5 March 2010**

### **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: **Zongtex Garment Manufacturing Co., Ltd**

Address: Trapeang Romchek Village, Chaom Chao Street, Chaom Chao Quarter, Dangkor District, Phnom Penh.

Telephone: 012 618 915 Fax: N/A

Representative: N/A

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

Name: Trade Union Federation – Workers' Rights Promotion Trade Union in Zongtex Garment.

Address: Trapeang Romchek Village, Chaom Chao Quarter, Dangkor District, Phnom Penh.

Telephone: 012 690 594 Fax: N/A

Representative:

- |                    |   |
|--------------------|---|
| 1. Mr. Cheng Neng  | President of Workers' Rights Promotion Trade Union                    |
| 2. Mr. Sok Vicheth | Official of Workers' Rights Promotion Trade Union                     |
| 3. Mr. Chan Dara   | President of Workers' Rights Promotion Trade Union in Zongtex Garment |

- |                    |  |
|--------------------|--|
| 4. Ms. Buth Touch  | Vice-President of Workers' Rights Promotion Trade Union in Zongtex Garment |
| 5. Ms. Nal Neng    | Secretary of Workers' Rights Promotion Trade Union in the factory          |
| 6. Mr. Chan Sary   | Union member   |
| 7. Mr. Chhon Thavy | Union member   |

### **ISSUES IN DISPUTE**

(In the Non-Conciliation Report)

1. The workers demand that the company pay a meal allowance once a week.
2. The workers demand that the company deduct their attendance bonus in proportion to the number of days they take leave.
3. The workers demand that the company maintain the same amount of seniority bonus for the veteran workers who worked in the previous company, for some time.
4. The workers demand that the company should not force them to work overtime.
5. The workers demand that the company make it possible for them to seek leave for personal commitment.
6. The workers demand that the company arrange a medical room downstairs at their workplace.
7. The workers demand that the company pay them on a Saturday that falls between the 5<sup>th</sup> and 10<sup>th</sup> day of every month.
8. The workers demand that the company provide a meal allowance in the amount of 2,500 riels by 8:30 p.m.
9. The workers demand that the company allow pregnant workers to leave work 15 minutes early.
10. The workers demand that the company increase the number of toilet cards to two or three cards for each group.
11. The workers demand that the company make a sufficient provision of medical supplies.
12. The workers demand that the company allow women workers to breastfeed their babies for one hour per day.
13. The workers demand that the company not deduct their attendance bonus if they are 30 minutes late due to traffic congestion.

### **JURISDICTION OF THE ARBITRATION COUNCIL**

*The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B (Article 309 to 317) 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. 190 dated 2 September 2009 (Seventh 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. 118 dated 11 February 2010 was submitted to the Secretariat of the Arbitration Council on 11 February 2010.*

#### **HEARING AND SUMMARY OF PROCEDURE**

**Place of hearing:** The Arbitration Council, Building No. 72, Street 592 Corner of Street 327 (Opposite Indra Devi High School) Boeung Kak 2 Quarter, Tuol Kok District, Phnom Penh.

**Date of hearing:** 22 February 2010 at 8:00 a.m.

#### **Procedural issues:**

On 5 February 2010, the Department of Labour Disputes received a complaint by phone from a worker on strike demanding the improvement of working conditions. Then, the Department of Labour Disputes assigned expert officials to deal with the dispute, and to make a final conciliation on 9 February 2010 with the result of 13 non-conciliation points because the company party was absent. The 13 non-conciliation points were submitted to the Secretariat of the Arbitration Council on 11 February 2010 through a report on the collective labour dispute resolution No. 118 dated 11 February 2010.

Having received the case, the Secretariat of the Arbitration Council summoned the company and worker parties to a hearing to conciliate the 13 non-conciliation points on 22 February 2010 at 8:00 a.m. However, the company party did not appear before the hearing for an unspecified reason.

On the hearing day, the worker party decided to withdraw eight of the 13 points such as issues 4, 5, 6, 7, 8, 9, 11 and 13. In the hearing, the worker party put forward another issue which took place after the case had been sent to the Department of Labour Disputes. Therefore, in this case, the Arbitration Council will consider issues 1, 2, 3, 10, 12 and the additional issue based on evidence and reasoning as follows:

#### **EVIDENCE**

**Witnesses and experts:** N/A

#### **Documents, Exhibits and other evidence considered by the Arbitration Council**

Provided by the employer party:

- N/A

Provided by the worker party:

- Intervention and authorisation letters dated 5 February 2010;
- Wage pay slips;

- Image files;
- Receipt of the case from the Department of Labour Disputes of the Ministry of Labour and Vocational Training dated 27 January 2010;
- Letter No. 093/09 of the Workers' Rights Promotion Federation Trade Union on the announcement of the elected union leader in Zongtex Garment factory dated 13 January 2010;

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

- A report No. 118 dated 11 February 2010 on the collective labour dispute resolution in Zongtex Garment;
- Minute on the collective labour dispute resolution dated 9 February 2010 in Zongtex Garment;

Provided by the Secretariat of the Arbitration Council:

- Invitation letter No. 087 dated 12 February 2010 for the employer party to choose an arbitrator;
- Minute dated 15 February 2010 on the selection of arbitrators from the lists proposed by the Employers' Association;
- Invitation letter No. 098 dated 16 February 2010 for the employer to attend a hearing;
- Invitation letter No. 099 dated 16 February 2010 for the worker party to attend a hearing;

**FACTS**

- Having examined a report on the collective labour dispute resolution
- Having listened to the arguments of the representatives of the workers, and
- Having reviewed additional documents

**The Arbitration Council finds that:**

- The worker party argued that the company called, Perfecta commenced its operations in 2005. In early 2010, it appointed a new manager with a new name: Zongtex Garment Manufacturing. The company currently employs approximately 330 workers.
- The union party which represents the plaintiff in this case is the Workers' Rights Promotion Federation Trade Union in Zongtex Garment Manufacturing, but the union has not yet been registered at the Ministry of Labour and Vocational Training. At the date of the hearing, it was in the process of applying for registration.

- Intervention and authorisation letters dated 5 February 2010 by 332 workers in Zongtex Garment Manufacturing, seeking intervention and assistance from the Workers' Rights Promotion Federation Trade Union to deal with all the issues in this case. The Arbitration Council finds that of the 322 workers, some workers affixed their thumbprints to the letters and others did not. Therefore, the Arbitration Council will decide the case for the workers who had affixed their thumbprints to the letters.

**Issue 1: The workers demand the company pay them for a meal allowance once per week.**

- The worker party said the working hours for the workers end at 4:00 p.m. However, the company adds overtime work for them to do from 4:00 p.m. to 6:00 p.m. It provides 1,000 riels of meal allowance within a fortnight – either on the 20<sup>th</sup> day and/or the 5<sup>th</sup> day of each month. At times, the payment of meal allowances is delayed to once per month, which makes the timing of the payment to be irregular.
- The worker party clarified the reason for this demand is that the workers were faced with difficulties in buying food and paying for other living expenses; they made the demand so that they could have enough money to have their meals early and start the overtime work on time; the workers find it tough to wait until the 20<sup>th</sup> and 5<sup>th</sup> days of each month. Furthermore, the amount of payment is irregular as well. The workers added that another issue is that the (Labour) Law states the payment for meal allowances shall be paid once per day so that workers could buy their meals and have sufficient energy to do their work.
- The worker party went on to say that they have never had any agreement with the company with regard to the payment of meal allowances.
- All arguments by the worker party mentioned above were not confirmed by the company because the employer party was absent on the hearing day.

**Issue 2: The workers demand that the company deduct their attendance bonus in proportion to the number of days they take leave.**

- The worker party argued that both Perfecta, the previous company and Zongtex Garment, the new one, provide US\$ 6 of attendance bonus per month when the workers come to work for the whole month.
- The worker party said the previous company in the past had deducted the attendance bonus in proportion to the numbers of days the workers took leave with permission from the company – one day of absence was a deduction by 20 cents equalling 800 riels regardless of how many days the workers took leave with permission. On the other hand, since the new employer has taken over, the company told team leaders

during a meeting that the company would not deduct the attendance bonus of workers who took leave for two days with permission. However, in case of absence for more than two days, the company would deduct all of the US\$ 6 of attendance bonus. In February 2010, the company convened another meeting and declared that even if workers take leave for half a day with permission, their attendance bonus will be deducted by US\$ 5.

- The company had implemented the deduction of the attendance bonus in proportion to the absent days since the previous company operated in 2005. Therefore, the workers demanded the company stick to the principles as enforced by the previous employer.
- All arguments by the worker party mentioned above were not confirmed by the company because the employer party was absent on the hearing day.

**Issue 3: The workers demand that the company maintain the same amount of seniority bonus for the veteran workers who have worked in the previous company for some time.**

- The worker party clarified that they demanded the company maintain the seniority bonus because they are veteran workers who have worked for the previous company for a long time. The workers received between US\$ 2 and US\$ 5 of seniority bonus per month according to their seniority status. However, since the company has a new manager with a new name, Zongtex Garment from 1 January 2010, it has not maintained the seniority bonus to these workers.
- The worker party argued that on 4 February 2010, the company issued pay slips as soon as they knew the Perfecta company was changed to Zongtex Garment Manufacturing, and the seniority bonus for workers were lost and certain alterations of the company's past practices were made.
- The workers added that the company convened a meeting in late 2008 with team leaders about the new company, 5% severance pay and remuneration. They said some team leaders did not notify them of the new company, termination payment and remuneration.
- The workers asserted that when the company terminated their contracts, the employer paid them annual remuneration (payment in lieu of remaining annual leave), final wages, and 5% severance pay. The company did pay them in accordance with the period of contract.
- The workers maintained that the company gave them new piece rate cards in January 2010.

- The workers went on to say that the original company, Perfecta, operated in 2005 under the supervision of Director Chhin (his name was commonly known to the workers) and when it changed to a new company, a new director took over, but his name was unknown to the workers. As for the Administrator, the previous one was named Singh, but the new one's name was unknown.
- According to a letter No. 4901 dated 17 December 2009 of the Ministry of Commerce confirming the recognition of the company, the Arbitration Council finds that the new company is Zongtex Garment Manufacturing registered ID Inv. 1526/09 E dated 14 December 2009. Zongtex Garment Manufacturing is under the supervision of Chen Chung Fa.
- All arguments by the worker party mentioned above were not confirmed by the company because the employer party was absent on the hearing day.

**Issue 12: The workers demand that the company allow women workers to breastfeed their babies for one hour per day.**

- The worker party clarified that the company in the past never allowed pregnant workers to breastfeed their babies. Ms. Buth Touch asserted that she has a baby, but the company has never let her breastfeed her baby.
- The worker party contended that women workers who have babies demanded the company allow them to breastfeed their babies for one hour per day – half an hour in the morning and half an hour in the evening – in accordance with the Labour Law. Thus, they requested the company to abide by the Labour Law.
- All arguments by the worker party mentioned above were not confirmed by the company because the employer party was absent on the hearing day.

**Additional issue: The workers demand the company reinstate those suspended without passing entrance tests and probationary periods.**

- The workers argued that the company terminated the contracts of the workers on 10 February 2010 by collecting the workers' cards, paying them 5% of severance pay, and telling them to affix the thumbprints to three papers without specifying the content of the papers. The workers added that by the time they received their final payment on 10 February 2010, their fixed duration contracts had not yet expired.
- The workers added that they went on strike demanding the resolution in these issues on 5 February 2010, and continued their strike until 16 February 2010. The 13 issues-dispute in this case can be found in the non-conciliation report of the Ministry of Labour and Vocational Training dated 9 February 2010.

- The worker party asserted in the hearing that of the 322 claimants, some agreed to resume their work by taking an entrance test and working for a probationary period of two months before taking on the status of regular workers. As for others, they disagreed with the company's pre-conditions for employment. If any workers refused to accept the conditions set by the company, the employer would not reinstate them. The company has been operating with about half of the workers along with a number of newly-recruited workers. The company has announced new job opportunities to recruit more workers.
- As for those who did not agree to the conditions set by the company for taking a test and working for a two-month probationary period before being recruited as regular workers, they are staying at their respective homes, demanding the employer reinstate them by continuing with the conditions set out by the previous employer.
- All arguments by the worker party mentioned above were not confirmed by the company because the employer party was absent on the hearing day.

#### **REASONS FOR DECISION**

On the hearing day, the company party did not appear before the hearing at the invitation of the Secretariat of the Arbitration Council. Therefore, before interpreting the issues in this case, the Arbitration Council will consider whether or not the arbitrators may hold a hearing in absentia of the employer.

Clause 21 of the *Prakas* 099 dated 21 April 2004 states, "*In case either party receives a proper invitation, but fails to appear before the arbitrators for an unspecified reason, the arbitrators may proceed with their proceedings at a time when that party is absent or conclude the proceedings by issuing an arbitral award.*"

With regard to the content of Clause 21 of *Prakas* No. 099 dated 21 April 2004, in previous cases, when either party is properly invited but fails to appear before the arbitrators for an unspecified reason, the Arbitration Council may decide to proceed with its process in the absence of that party. (See Arbitral Award No. 53/04 – Koung Hong, AA 63/04 – Shine Well, AA 148/07 – Pay Her; and AA 99/09 – Kingsland).

In this case, only the worker party attended the hearing at the invitation of the Arbitration Council. However, the employer party neither appeared before the hearing, nor specified a reason for its absence.

Therefore, in order to comply with the previous cases, the Arbitration Council in this case decides to carry on with its proceedings by holding a hearing in the absence of the employer party and in front of the worker party to judge the case submitted to the Arbitration Council based on evidence and interpretation of the workers in the hearing.

**Issue 1: The workers demand the company pay them a meal allowance once per week.**

In this case, the company provided the meal allowance for overtime work once a fortnight on the 20<sup>th</sup> and 5<sup>th</sup> days of each month, but, at times, the company has not paid the worker on a regular basis. Thus, the worker demanded the company provide meal allowances for overtime work once per week because they are faced with difficulties in buying food and meeting the cost of other living expenses.

Therefore, the Arbitration Council will consider whether or not the workers have the right to make a demand for the company to provide them with meal allowances once per week.

Article 116 of the Labour Law stipulates, "*Labourers' wages shall be paid at least two times per month, at a maximum of sixteen-day intervals. Employees' wages must be paid at least once per month...*"

Based on the above article, the Arbitration Council finds that labourers' wages shall be paid at least twice per month, and workers' wages shall be paid once per month. The Labour Law determines the period of payment only.

However, in this case, the workers demanded the company provide them with meal allowance for overtime work once per week. Thus, the Arbitration Council will consider whether or not the meal allowance is considered as wages and whether the workers may be paid for a meal allowance for overtime work once per week.

Article 103 of the Labour Law stipulates, "*Wage includes, in particular:*

- *actual wage or remuneration;*
- *overtime payments;*
- *commissions;*
- *bonuses and indemnities;*
- *profit sharing;*
- *gratuities;*
- *the value of benefits in kind;*
- *family allowance in excess of the legally prescribed amount;*
- *holiday pay or compensatory holiday pay;*
- *amount of money paid by the employer to the workers during disability and maternity leave.*

*Wage does not include:*

- *health cares;*
- *legal family allowance;*
- *travel expenses;*

*benefits granted exclusively to help the worker do his or her job."*

Based on the content of Article 103, Paragraph 1, Point 2 of the Labour Law above, the overtime payment forms a part of wages. At the same time, the Arbitration Council finds that the workers can be paid for a meal allowance for overtime work only when the workers work overtime because the meal allowance is related to overtime wages. Thus, the question is whether or not the meal allowance for overtime work can be part of the overtime wages.

The Arbitration Council finds that the overtime meal allowance is not part of overtime wages because the allowance is offered for a meal, not the profit resulting from the overtime work. If the employer does not provide a meal allowance, then a meal should be offered to workers, free of charge. Thus, the overtime meal allowance is not related to the overtime wage during overtime work.

Point 3 of Notification No. 745 dated 23 October 2006 stipulates, “*Other perquisites provided to the workers in accordance with Notification 017 dated 18 July 2000 in Points 3, 4, 5, and 6 shall be maintained.*”

Point 4 of the Notification No. 017 dated 18 July 2000 stipulates, “*Workers who volunteer to work overtime at the request of an employer shall be provided with 1,000 riels of meal allowance per day or with a meal free of charge.*”

According to the notification above, the Arbitration Council finds that the notification makes no mention of the timing of payment. However, the employer is obligated to offer a meal free of charge to overtime workers. The Arbitration Council finds that the provision of the free meal is a boost for workers to work overtime after the regular working hours because a meal is a fundamental and indispensable need for humans, and it should be provided by the employer. Therefore, even though an employer does not provide a meal to overtime workers, Notification No. 017 dated 18 July 2000 requires the employer to provide a meal allowance in lieu of a free meal of 1,000 riels per day.

Thus, based on the above interpretation, the objective of Notification 017 dated 18 July 2000 is to ensure that workers are provided with a meal during overtime work regardless of whether the employer offers a free meal or 1,000 riels of meal allowance per day. Notification 017 dated 18 July 2000 does not mention the period of overtime meal payment.

Therefore, the Arbitration Council finds that the payment of a meal allowance to workers should be given at an appropriate time which ensures that the workers could afford to buy food during overtime work; there is no specification that the allowance should be paid on a daily, weekly or monthly basis. The most important thing is that the workers could afford to manage their expenditure on the meals.

According to the decisions of the Arbitration Council in previous cases, a free meal should be provided every day during overtime work. Thus, it is reasonable that the meal allowance should be paid to workers on a daily basis. (See Arbitral Award 47/07 – Chung Fai, Reason for decision, issue 5; AA 79/07 – Terratex, Reason for decision, issue 5; and AA 85/09 – Nan Kuang, Reason for decision, issue 10).

In this case, the Arbitration Council agrees with its previous interpretation in Arbitral Awards that a daily payment may or may not be appropriate, depending on the circumstances because, at times, even if the workers are not provided with a meal allowance everyday, they still could manage to buy food during overtime work, and sometimes they could afford to spend their wages received in the week or month for food during overtime work.

Based on the facts in this case, the workers requested the employer to pay them a meal allowance once per week so that they could afford to buy food during overtime work as the workers lack enough resources for food and dealing with their living expenses. Moreover, the employer did not appear at the hearing, so the company failed to give reasons why it provides a meal allowance once a fortnight.

The Arbitration Council finds that the workers have sensible motives to demand the employer provide a meal allowance once per week to support their need for food during overtime work.

Thus, the Arbitration Council orders the employer to provide an overtime meal allowance once per week for overtime workers.

**Issue 2: The workers demand that the company deduct their attendance bonus in proportion to the number of days they take leave.**

In this issue, the workers demanded the employer deduct their attendance bonus in proportion to the days they took leave with permission from the company according to the principles of the previous employer. Thus, the Arbitration Council will consider the issue as follows:

Point 3 of the Notification No. 745 dated 23 October 2006 stipulates, “*Other perquisites provided to the workers in accordance with Notification 017 dated 18 July 2000 in Points 3, 4, 5, and 6 shall be maintained.*”

Notification No. 017 dated 18 July 2000, Point 3, states, “*Workers who come to work on a regular basis every month shall be provided with at least US\$ 5 of attendance bonus per month.*”

The Arbitration Council is of the view that the attendance bonus in the above notification is an incentive for workers who come to work regularly for a whole month without absence.

In previous cases regarding the attendance bonus, the Arbitration Council finds, “*The attendance bonus is an incentive for workers who come to work on a regular basis for a whole month without being absent for an unspecified reason.*” (See Arbitral Award 62/04–Ecent, Reason for decision, issue 1; AA 63/04– Shine Well, Reason for decision, issue 5; AA 15/05–Wing Tai 2, Reason for decision, issue 1; AA 62/07–Hong Mei, Reason for decision, issue 11; AA 106/07–M & V 3, Reason for decision, issue 2; AA 115/07–White Text, Reason for decision, issue 1; and AA 121/08–Sinomax, Reason for decision, issue 2).

In Arbitral Award 48/05–Manhattan, Reason for decision, issue 1, the Arbitration Council interprets that “*the Notification makes no clear mention of how many days the workers work will be considered regular work and how much the workers should be paid.*” (See Arbitral Award No. 48/05–Manhattan, Reason for decision, issue 1).

In this issue, the Arbitration Council also agrees with its interpretation of previous cases in that the Notification makes no precise mention of how many days of work will be considered as regular work and how much the workers should be paid. However, according to Article 103 of the Labour Law, the attendance bonus is part of wages.

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

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

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

*Absence of the worker authorised by the employer, based on laws, collective agreements, or individual agreements.*”

Article 72, Paragraph 1 of the Labour Law stipulates, “*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 an employer, their contracts are suspended, and the workers are not obligated to work for the employer any longer. In turn, the employer is not obliged to pay the workers except for the regulation requiring the employer to provide a payment to the workers. It means that the employer is not obligated to pay workers who are absent with permission from the company. However, when the workers are not absent (that is, present on working days), the employer is required to pay workers on those days.

In conclusion, the attendance bonus is part of wages, and Notification No. 017 dated 18 July 2000 does not clarify how many days of work per month will be considered to be regular work, nor how much the payment should be. Thus, the Arbitration Council finds that in this case, if the employer is subject to providing US\$ 6 of attendance bonus to workers who take leave with permission from the company, it is unfair for the employer to pay the workers who do not come to work for the company. Nonetheless, if the workers take leave with proper permission from the company, and do not receive the attendance bonus, it is also unfair for the workers because the company granted leave to the workers.

Therefore, the Arbitration Council finds that the employer may deduct the attendance bonus in proportion to the number of days the workers take leave with proper permission from the company.

In previous cases, the Arbitration Council orders the employer to deduct the attendance bonus in proportion to the number of days the employer grants leave to workers. (See Arbitral Award No. 57/07 – Ceratext, Reason for decision, issue 3; AA 106/07 – M & V 3, Reason for decision, issue 2; AA 115/07 – White Text, Reason for decision, issue 1).

In this case, the Arbitration Council agrees with the interpretation in previous Arbitral Awards. Thus, the Arbitration Council decides that the employer shall deduct the attendance bonus in proportion to the number of days the workers take leave with proper permission from the company.

**Issue 3: The workers demand that the company maintain the same amount of seniority bonus for the veteran workers, who have worked for the previous company for some time.**

The worker party asserted that they demanded the employer maintain the seniority bonus provided to the workers. The Arbitration Council will consider whether or not the company has to keep the seniority bonus offered to the workers.

Based on the facts, the former company, Perfecta, was shifted to the new one called Zongtex Garment Manufacturing. Thus, the Arbitration Council will consider whether or not the new company is legally bound to provide the seniority bonus to the veteran workers who have worked for a long time.

Article 87, Paragraph 1 of the Labour Law stipulates, *“If a change occurs in the legal status of the employer, particularly by succession or inheritance, sale, merger or transference of funds to form a company, all labour contracts in effect on the day of the change remain binding between the new employer and the workers of the former enterprise.”*

The Arbitration Council in Case 21/05 – Sinomax, Reason for decision, issue 1, interprets Article 87, Paragraph 1 of the Labour Law above that *“...All contracts or agreements between workers and the former employer shall be extended except that there are other contracts or agreements or new internal work rules...”*

Based on Article 87, Paragraph 1 of the Labour Law, and jurisprudence of the Arbitration Council in the previous case, the Arbitration Council is of the same view as interpreted before that all contracts or agreements between workers and the former employer shall be extended except for other new contracts or agreements in force.

Based on the facts, the workers argued that the former company, Perfecta, operated from 2005. As for the letter No. 4901 dated 17 December 2009 issued by the Ministry of Commerce which confirms the registration of the company, the Arbitration Council finds that the new company that replaced the old one is Zongtex Garment Manufacturing, Registration ID Inv. 1526/09 E dated 14 December 2009. Therefore, the Arbitration Council is of the opinion that the new company was formed by legal means, and is recognised as a natural person from the date of registration by the Ministry of Commerce on 17 December 2009. Therefore, all employment contracts of the workers with the former company that had not expired until 17 December 2009 shall be renewed with the new company.

In addition, the worker party said the company convened a meeting in late 2009 with team leaders about the new company, 5% severance pay and remuneration. Moreover, the workers asserted that when the company terminated their contracts, it provided remuneration (payment in lieu of remaining annual leave), final wages, and 5% severance pay. The workers received all of these payments on 25 January 2010. However, the company had not

provided payment for the termination of valid fixed duration contracts. The employer party did not appear at the hearing. Thus, the Arbitration Council will consider the arguments of the workers, evidence and fact-finding as follows:

Based on the facts, the Arbitration Council finds that the valid employment contracts between the workers and the employer from 17 December 2009 were terminated by providing the 5% severance pay and remuneration on 25 January 2010 before their contracts expired without specifying whether or not the termination was a consequence of serious misconduct committed by workers. (*Labour Law, Article 73, Paragraph 3 entitles the worker to damages in an amount at least equal to the remuneration he would have received until the termination of the contract*). The employer signed new contracts with workers who had worked at the former company until there was a new company. Overall, the workers were employed by both the new and former companies.

The Arbitration Council considers whether or not the workers under the new company's contracts are entitled to their seniority bonus since they started work with the former employer and were in employment with Perfecta until the new employer took over operations.

The Arbitration Council in Case 75/05 – Fortune Garment interpreted the term of “seniority” as ... *“The labour seniority is the period of subsequent working which vests more rights or privileges in workers based on the period of work for an employer... The seniority will not exist as soon as the workers quit that enterprise...”* (See also Arbitral Award 68/05 – Gold Lyda).

The Arbitration Council in this issue agrees with its interpretation in previous cases that seniority is the period of subsequent working which vests more rights or privileges in workers based on the period of work for an employer. The seniority will cease as soon as the workers quit that enterprise.

Based on the above facts, the workers' employment contracts with the former employer had been extended from 17 December 2009. Then, the new employer terminated the contracts with the workers and signed new contracts. Thus, the Arbitration Council finds that the new employer had a continuous working relationship with the veteran workers. The workers in this issue were still working with both the new and former employers. So, the seniority of the workers has to continue despite the termination or extension of the contracts. Therefore, in order to comply with the jurisprudence of the Arbitration Council in previous

cases, the Arbitration Council in this case decides that the seniority of the workers shall continue from the work for the former employer to that for the new employer.

In summary, the Arbitration Council orders the employer to continue providing a seniority bonus to the workers who once received it before in accordance with the previous practice.

**Issue 10: The workers demand that the company increase the number of toilet cards to two or three cards for each group**

In this issue, the worker party asserted that the company provided them with cards to lock the toilet, notably one card for each team which has approximately 40 workers. Providing one card for each team is not sufficient for workers to use the toilet because they have to wait until the card was available, thus making it more difficult for them to use the toilet. For that reason, the workers demanded the company provide each team with three cards to make it easier for them to use the toilet. Therefore, the Arbitration Council will consider whether or not the demand is reasonable and whether or not the employer has the right to subject the workers to the condition of using only one toilet card.

According to *Prakas* No. 052 of the Ministry of Social Affairs, Labour, Vocational Training, and Youth Rehabilitation dated 10 February 2000, Clause 1, “*The employers of enterprises, establishments as stipulated in Article 1 of the Labour Law shall put in place toilets with sanitation within its premises for the workers to use.*”

Clause 2 of *Prakas* 052 of the Ministry of Social Affairs, Labour, Vocational Training, and Youth Rehabilitation dated 10 February 2000 states, “*The number of toilets shall be arranged separately for men and women according to the numbers of workers as follows:*

Numbers of Workers (Men or Women)	Numbers of Toilets
1 – 15 workers	1
16 – 35 workers	2
36 – 55 workers	3
56 – 80 workers	4
81 – 110 workers	5
111 – 150 workers	6
151 – 1,000 workers	Add 1 for 50 workers
More than 1,000 workers	Add 1 for 70 workers

Based on the content of Clauses 1 and 2 of *Prakas* No.052 above, it means the employer must arrange appropriate and sanitary toilets for the workers. The number of toilets shall be determined based on the number of workers. In fact, in Clause 2 of *Prakas* No. 052 above, *three toilets for 36 to 55 workers* means the employer must organise three toilets for 36 to 55 workers to use at the same time so the toilet cards must also comply with the spirit of *Prakas* that the employer must prepare three toilet cards for three toilets so that the workers could use them at the same time.

Based on the facts, the Arbitration Council notes the employer has already organised toilets for the workers; however, the workers are required to use punch-in cards provided to each of the sections, which makes it more difficult for them to use the toilet. The Arbitration Council is of the view that this restriction on the use of the toilet does not comply with *Prakas* to the detriment of the health of the workers if they cannot go to the toilet on time.

However, the Arbitration Council acknowledges that the employer has the right to management and supervision to ensure that the production line operates smoothly, within the limits of the management and supervision being reasonable and lawful. Therefore, the Arbitration Council will consider whether or not the provision of punch-in cards for toilet use is lawful and reasonable.

Paragraph 2, Article 2 of the Labour Law states, “*Every enterprise may consist of several establishments, each employing a group of people working together in a defined place such as in factory, workshop, work site, etc., under the supervision and direction of the employer.*”

In previous cases, the Arbitration Council found that Article 2 of the Labour Law means that the employer is entitled to manage and supervise the company as long as it follows the law. (See *Arbitral Award 17/03; AA 18/03–Ho Hing, issue 5; AA 28/04-Grand D’Ankor, issue 2; AA 20/6-New Star, issue 5; AA 17/07-Charm Textile, issue 3; AA 116/07-Grace Sun, issue 2; AA 47/08-Grand Text, issue 2*).

In this issue, the Arbitration Council finds that the employer has the right to manage and supervise the company including the right to manage the number of those who use the toilets to ensure that the production line is not disrupted and that the workers’ health will not be harmed unless the activities are not against the laws.

In this case, the Arbitration Council finds that one punch-in card for each group will present the difficulties for them to use the toilets because they have to wait a long time. According to *Prakas* No.052, the workers should have proper access to toilets and the employer shall organise at least three punch-in cards for the workers because three toilets are fit for at least 40 workers in each group to use at the same time. Therefore, the use of one punch-in card for each group that consists of 40 workers does not comply with *Prakas*

No.052 above. Therefore, the employer shall provide three punch-in cards as demanded by the workers.

In conclusion, based on the explanation and Arbitral Awards referred to above, the Arbitration Council orders the company to provide the workers with three punch-in cards for each group to use toilets.

**Issue 12: The workers demand the company give women workers one hour to breastfeed their babies.**

In this issue, the workers demand the company give women workers one hour during working hours to breastfeed their babies because the company never allowed the women workers to do so. Therefore, the Arbitration Council considers the issue as follows:

Article 184 of the Labour Law states, *“For one year from the date of child delivery, mothers who breast-feed their children are entitled to one hour per day during working hours to breast-feed their children. This hour may be divided into two periods of thirty minutes each, one during the morning shift and the other during the afternoon shift. The exact time of breast-feeding is to be agreed between the mother and the employer. If there is no agreement, the periods shall be at the midpoint of each work shift.”*

Article of 185 of the Labour Law states, *“Breaks for breastfeeding are separate from and shall not be deducted from normal breaks provided for in the labour law, in internal regulations of the establishment, in collective labour agreements, or in local custom for which other workers in the same category enjoy them.”*

Based on the contents of Articles 184 and 185 of the Articles above, the Arbitration Council finds the women workers are entitled to a one hour break to breastfeed their babies after giving birth and the employer is also obliged to follow the law.

In previous cases, the Arbitration Council clarified the employer shall allow women workers one hour to breastfeed their babies for one year after giving birth (*See Arbitral Award 94/04–Eternity issue 11; AA 45/05–B&N, issue 4; AA 08/07–Siu Quinh, issue 7*).

In this case, the Arbitration Council agrees with the interpretation of previous cases that the employer shall give women workers one hour to breastfeed their babies for one year after giving birth; however, in this case, based on the facts, the worker party stated in the hearing that the company never allow the women workers to breastfeed their babies for one hour. The Arbitration Council finds this is practice is against the Labour Law.

Therefore, the Arbitration Council orders the company to give women workers one hour to breastfeed their babies for one year after delivery.

**Additional issue: The worker party demands the Company reinstate the workers who were terminated.**

Based on the facts, the company dismissed the workers who went on strike demanding the 13 issues be dealt with by the company. Therefore, before the Arbitration Council considers the demand for the company to reinstate the workers under the previous working conditions, who were terminated the Arbitration Council considers whether or not it has an obligation to consider the issue.

Article 312 of the Labour Law (1997) states, *“The Council of Arbitration has no duty to examine issues other than those specified in the non-conciliation report or matters, which arise from events subsequent to the report, are the direct consequence of the current dispute...”*

Generally, the Arbitration Council only considers the issue stated in the non-conciliation report. The Arbitration Council will not consider the issues which are not stated in the non-conciliation report unless these issues are the direct consequences of the issues in non-conciliation report. (See *Arbitral Award 16/06-LS; 42/07-South Bay, issue 3; 06/08-kingland, issue 2; 34/09-Suntex and 160/09-Cosmo Textile*).

In this case, the Arbitration Council agrees with the interpretation of Arbitration Council in previous cases that the issues which are not in the non-conciliation report will not be considered by the Arbitration Council unless they are the direct consequence of the issues stated in the non-conciliation report. Based on the facts, the company terminated the contracts of the workers on 10 February 2010 after the 13 issues were stated in the non-conciliation report of the Ministry of Labour on 9 February 2010. Moreover, when the workers first started to complain about the issue, the company did not terminate the workers. Therefore, the Arbitration Council considers the above issue is a direct consequence of the issues in non-conciliation report. Hence, the Arbitration Council considers the issue as follows:

Article 330 of the Labour law states, *“A strike must be peaceful. Committing violent acts during a strike is considered to be serious misconduct that could be punished, including work suspension or disciplinary layoff.”*

Paragraph 2, Article 332 of the Labour Law, states *“A strike suspends the labour contract. During a strike, the allowance for work is not provided and the salary is not paid.”*

In the Arbitral Award 160/09-Cosmo Textile, additional issue, the Arbitration Council considers the employer cannot impose reinstatement conditions on the workers who go on strike.

According to Article 330 and Paragraph 2, Article 332 of the Labour Law and Arbitral Award 160/09-Cosmo Textile, additional issue, the Arbitration Council considers when strikes occur, except for violent strikes, the employer cannot terminate the workers who are on strike and impose a condition on the workers in exchange for ending the strike to be reinstated after the strike.

Based on the facts, the workers went on strike to claim for 13 issues in this case on 5 February 2010 and continued to strike until 16 February 2010. The workers argued the company terminated the workers when they were paid wages on 10 February 2010 and imposed a condition that the workers who wanted to continue to work for the company must be re-interviewed and sign a two-month probationary contract; after which they would become permanent workers. The workers argued that their fixed duration contracts were not yet expired when wages were paid on 10 February 2010. The employer was absent on the hearing day; therefore, the Arbitration Council can only consider the arguments of the workers. Based on the facts above, the Arbitration Council considers no fact or evidence confirms that the strike of the workers from 5 February 2010 to 16 February 2010 was a violent strike. Therefore, the dismissal of the workers who went on peaceful strike when their contracts are not yet expired does not comply with Article 330 and Paragraph 2, Article 332, of the Labour Law. Moreover, the employer cannot impose conditions (to be re-interviewed and to sign a two-month probationary contract) on the workers.

In conclusion, the Arbitration Council orders the company to reinstate the workers under the previous conditions set by the former company.

#### **DECISION AND ORDER**

**Issue 1:** Order the employer to provide a meal allowance for overtime work once per week to workers who work overtime.

**Issue 2:** Order the employer to deduct the attendance bonus in proportion to the number of days the workers take leave.

**Issue 3:** Order the employer to continue providing a seniority bonus to workers who used to receive the bonus provided by the former employer.

**Issue 10:** Order the employer to organise three punch-in cards for workers to use toilets.

**Issue 12:** Order the employer to allow women workers one hour per day to breastfeed their babies for one year from the date of delivery.

**Additional issue:** Order the employer to reinstate workers under the same conditions as with the former employer.

#### **Type of Award: Non binding or binding awards**

##### *1- 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: .....