

**KINGDOM OF CAMBODIA  
NATION KING RELIGION**

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**THE ARBITRATION COUNCIL**

**Case number and name: 20/06 - New Star Shoes**

**Date of Award: 31 March 2006**

**ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

**ARBITRATION PANEL**

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

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

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

**DISPUTING PARTIES**

**Employer party:**

Name: New Star Shoes Co., Ltd.

Address: National Road 4, Circumstance 1, Khan Mittapheap, Sihanoukville

Telephone: 034 32 02 91, 016 55 66 88      Fax: 034 93 96 10

Representative:

- |                        |               |
|------------------------|---------------|
| 1. Mr. Chiet Khemra    | GMAC Officer  |
| 2. Mr. Liv Y Chong     | Administrator |
| 3. Mr. Chhiv Young Yin | Administrator |
| 4. Mr. Chhin Soulaeng  | Interpreter   |

**Worker party:**

Name: Cambodian Labour Union Federation and New Star Worker Union

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

Telephone: 012 86 66 82      Fax: N/A

Representative:

- |                       |                                                         |
|-----------------------|---------------------------------------------------------|
| 1. Mr. Leang Sunheang | Vice-President of the Cambodian Worker Union Federation |
| 2. Mr. Chhin Sokhorn  | Officer of the Cambodian Worker Union Federation        |
| 3. Mr. Kim Pheareak   | Vice-President of the New Star Worker Union             |

## ISSUES IN DISPUTE

(In the non-conciliation report)

Based on the non-conciliation report, the non-conciliated issues are the demands of the workers presented as follows:

1. The workers demand the company not to deduct their wage while they have an official certified letter from the doctor during sick leave.
2. The workers demand the company to provide a detailed pay slip.
3. The workers demand the company to provide a day-care center and breastfeeding room, and allow one hour per day for breastfeeding.
4. The workers demand the company not to ignore any worker's resignation request.
5. The workers demand the company to pay three months wages in advance for any worker who takes maternity leave.
6. The workers demand that the company not ask them to work overtime on Saturday or on the day that they get paid.

### JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B (Articles 309 to 317) of the Labour Law (1997); the Prakas on the Arbitration Council 099/04; the Arbitration Council Procedural Rules which form an Annex to the same Prakas; and the Prakas on the Appointment of the Arbitration Council 513/05 (Third 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. However, the conciliation was unsuccessful, and the non-conciliation report No. 04/06 dated 20 January 2006 was submitted to the Secretariat of the Arbitration Council on 10 March 2006.

### HEARING AND SUMMARY OF PROCEDURE

**Place of hearing:** The Arbitration Council, Phnom Penh Center Building "A", Sothearos Blvd, Sangkat Tonle Basac, Khan Chamkamorn, Phnom Penh

**Date of hearing:** 21 March 2006 (2:00 p.m to 5:30 p.m.)

**Procedural issues:**

New Star shoes company is located at National road no. 4, Mondul 1, Sangkat 1, Methapheap district; Sihanoukville and employs a total of 2,017 workers. On 5 January 2006,

the Office of Labour and Vocational Training at the city received a letter from the Cambodian Labour Union Federation (CLUF) requesting aid in the resolution of the workers' complaint in respect of 14 issues. On 17 January 2006 the Office of Labour and Vocational Training at the city came to resolve the issues at the factory with the result that eight issues were successfully conciliated out of the 14 issues. The six unsuccessfully conciliated issues as described above were sent to the Arbitration Council on 10 March 2006. After receiving the case the parties to dispute were summoned by the Arbitration Council to appear at the hearing on 21 January 2006 at 2:00 p.m.

At the hearing the Arbitration Council sought additional information which was relevant to the dispute and also allowed the parties another opportunity to conciliate their dispute with the result that four issues were successfully conciliated; issues 2, 3, 4 and 6. Thus, the Arbitration Council will make its decision only in relation to issues 1 and 5 according to the provisions in the Labour law.

## **EVIDENCE**

**Witnesses and experts:** N/A

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

#### **Provided by the employer party:**

1. Letter from the Director of the company, dated 14 March 2006, delegating authority to Mr. Liv Y Chong, company Administrator, and Ms. Chhin Soulaeng, Translator.
2. Letter from the Director of the company, dated 14 March 2006, authorizing Mr. Chiet Khemra, Labour Dispute Resolution Officer, to accompany the company's representatives.
3. Brief of the company's dispute
4. Statute of New Star Shoes dated 10 August 1998
5. Certificate of T.P.D registration of New Star Shoes, No. 2431, dated 20 October 2005
6. Internal Work Rules of New Star Shoes, No. 014 dated 26 December 2001

#### **Provided by the worker party:**

1. Worker Union Registration, No. 842, dated 18 November 2005
2. Internal Work Rules of Ho Hing Company, registration number 177, dated 25 December 2002
3. Internal Work Rules of Great Union Cambodia Co. Ltd, registration number 070, dated 15 August 2000
4. Internal Work Rules of Dyo Star Industrial Co. Ltd, registration number 097, dated 13 September 2001

#### **Provided by the Ministry of Labour and Vocational Training:**

1. Letter No. 264 from H.E Nhep Bunchin, Minister of Labour and Vocational Training, requesting the resolution of the collective labour dispute at New Star Company.
2. Report No. 04/06 on the collective labour dispute resolution at New Star Hotel dated 20 January 2006 by Mr. Pang Vanreth, Chief of the Office of Labour and Vocational Training in Kandal Province.
3. Minutes of the conciliation of the collective labour dispute dated 17 January 2006.

Provided by the Secretariat of the Arbitration Council:

1. Invitation letter No. 107 to the worker party to attend the hearing dated 13 March 2006.
2. Invitation letter No. 106 to the employer party to attend the hearing dated 13 March 2006.
3. Letter No. 101 dated 10 March 2006 by the Arbitration Council to inform the Director of New Star about the selection of the Arbitrators hearing the dispute.

**FINDINGS OF FACT**

- Having examined the report of the collective labour dispute conciliation;
- Having listened to the statement of the representatives from the worker and the employer parties;
- Having reviewed other relevant documents.

**The Arbitration Council finds that:**

**1st issue:**

- The workers demand that the company apply its Internal Work Rules which are registered with the Ministry of Labour and Vocational Training and request the company not to cut the wages of those who take sick leave with an official doctor's certificate.
- The company argued that it does apply its Internal Work Rules in relation to sick workers as mentioned in clause 5, points 6-2 and 6-3.
- For sick workers who take leave with permission of three days and less, the company will not cut their wage. However, if a worker takes leave for more than three days the company will cut 1/52 of their wage and 1/26 of their skills bonus with reference to the number of days absent in excess of the three days, as provided by clause 5, points 6-2 and 6-3 of the Internal Work Rules. For example if a worker takes 5 days leave, the company will cut their wages and skills bonus (for the workers who receive a skills bonus) by only two days. Whereas the company will not provide any of the attendance bonus.
- The worker party agreed that the company complies with its own Internal Work Rules, but these Internal Work Rules give less benefit to the workers than other garment factories' which are located in Phnom Penh. The worker party argued that in general in

many companies, especially the companies located in Phnom Penh, the workers are allowed to take sick leave and in the first month the company provides full wages and in the second and third months the company gives 60 percent of their basic wage. Therefore the worker party requests that New Star Shoes provide the same wage as other companies to the workers. For their evidence, the workers provided two templates of Internal Work Rules from two garment companies to both the company and the Arbitration Council for consideration.

- The employer said that the Internal Work Rules of each company are different. If they are the same, it is useless to create company based Internal Work Rules.
- The company does follow its Internal Work Rules as stated in clause 5, point 6-3.

**Issue 5:**

- The workers demand the company to pay three months wages in advance of maternity leave because the workers' homeland is far away and they lack funds for buying medicine and paying for hospital services. The workers said that mothers are in a vulnerable health condition so it is very difficult for them to travel. In addition, traveling costs money.
- At the hearing the workers requested that if the company could not pay the whole three months wage in advance of maternity leave, the company could pay 50 percent, that is, for three months (90 days) the company could pay one and half a months wages in advance and another one and half months could be paid later.
- The company stated that it can pay neither three months nor one and half months in advance, the company can only pay the workers' monthly wages on the 17<sup>th</sup> of each month. For those workers who come back to work the company will pay on that day, it does not need to wait until the 17<sup>th</sup> of the month.
- The company recognized that the workers do encounter difficulties, but the company cannot pay in advance as requested by the workers because when the company has done this in the past, on the day the female workers are due to return to work, the workers have resigned [instead of returning to work] which means that the company loses experienced or skilled workers and it is difficult to recruit new workers to replace them.

**REASONS FOR DECISION**

**Issue 1:**

The worker party demand that the employer pay those workers who take sick leave certified a doctor's certificate. The Arbitration Council will therefore consider whether the Labour Law or other relevant codes clearly mention paid sick leave.

Article 71(3) [of the Labour Law] states that a labour contract shall be suspended when a worker is absent reason of illness, certified by a qualified doctor. The duration of the absence may be up to six months but it can be extended until there is a replacement. This Article does not mention that workers are entitled to paid sick leave, it only states that 1) the sick leave is guaranteed for 6 months and 2) that the labour contract is suspended during the sick leave. Article 72(1) provides that when a labour contract is suspended, the employer has no duty to pay wages to the worker and the worker is not obliged to work for the employer.

In regards to this issue, the Ministry in charge of Labour has not issued any Prakas relevant to paid sick leave for workers. The Ministry has only included the provision of paid sick leave in a model of Internal Work Rules (see the Annex to Notice 014/02). At present in actual practice, when the Labour Inspection Department check the Internal Work Rules of a company or enterprise, the Labour Inspectors require the company or enterprise to include provisions related to paid sick leave in the Internal Work Rules (see 30/04 - Honey Wear). Thus the law does not give workers the right to paid sick leave (ee 26/03 – Sportswear, 30/04 – Honey Wear, 55/04 – You Change).

However, the Arbitration Council notes that even though the Law does not provide for full wages during sick leave, in actual practice, the Internal Work Rules of many enterprises gives workers the right to a partial wage during sick leave. In such situations, the Internal Work Rules give more protection to workers than the Labour Law.

During the hearing, the worker party recognized that the company follows clause 5, point 6(3) of the company's Internal Work Rules dated 28 November 2001. Clause 5, point 6(3) of the Internal Work Rules state that sick workers must ask for permission to take sick leave. They also have to have a doctor's certificate or affirmation from the care-taker of the person. If there is no affirmation as stated, the absence will be considered leave due to a personal commitment [rather than sick leave]. Sick leave of three days will result in a 1/26 cut of the skill bonus, calculated on a daily basis and all of the wages of the days the worker was not present at work. Sick leave of more than three days, will result in a cut to the basic wage of 1/52 and a 1/26 cut to the bonus. This means that if a worker is on leave for three days, the factory does not cut the basic wage but it will cut the regular attendance bonus and skill bonus (incentive bonus) in an amount of 1/26 calculated by the number of days of the absence (for workers with skill). In the hearing, the employer party asserted that for those workers who ask for sick leave for more than three days, the company will maintain the three days wages but the company will cut wages from the day(s) in excess of three. For example, a worker asks for five days sick leave. The

company cuts the wage and skill bonus only from the two days after three, that is, the company does not cut the wage and skill bonus from the whole five days.

In cases where the company does not follow clause 5, point 6(3), the Arbitration Council considers that the workers would have the right to demand a wage payment from the company. However, as described above the workers do not argue that the company does not follow its own Internal Work Rules.

The worker party argued that the workers demand the company maintain wages when workers take sick leave as is practiced in other companies because when comparing the company's Internal Work Rules [to others], the New Star company provides less benefits to its workers than other companies.

In this case, the workers provided the Internal Work Rules of two garment factories in Phnom Penh to support their claim. The Internal Work Rules of the two companies state that for those workers who take sick leave certified by a doctor, the company will provide full wages in the first month of absence. In the second and third months, the company will provide 60 percent wages. The meaning of Article 13 of the Labour Law is that the Law allows employers to give more benefits than are stated by the Law to workers, but not less than that. The Arbitration Council finds that the Internal Work Rules of New Star Company as stated in clause 5, point 6(2) and 6(3) provide better benefits to workers than those set out in the Labour Law. But, if these benefits are compared with the two above mentioned companies, New Star Company provides a lower benefit to workers who take sick leave.

The Arbitration Council considers that Article 13 of the Labour Law does not prohibit an employer from giving benefits to workers that are (i) better than the law requires, and (ii) less than what other employers provide to workers. Thus, New Star's practice regarding payments during sick leave does not violate Article 13 of the Labour Law.

In conclusion, the Arbitration Council finds that the workers' demand that the company retain wages for workers who take sick leave is a demand above that set out in Law. This is therefore an interests dispute. In regards to interests disputes, to date, the Arbitration Council has always considered whether the union who brought the claim to the Arbitration Council to resolve has most representative status. In previous Arbitral Awards setting out Arbitration Council jurisprudence, the Arbitration Council has always noted that if a union does not have most representative status, then it does not have the appropriate legal status to bring an interests dispute to the Arbitration Council to be settled (see 60/04-United Art; 99/04-AIA, 45/05-B&N, 11/06-Fortune).

In order to have most representative status, Article 277 of the Labour Law 1997 states that the union must be registered and fulfill all terms and conditions which are set out in that Article.

In this case the Arbitration Council finds that the workers' union at New Star does not have most representative status. Therefore, to be consistent with previous Arbitral Awards, the Arbitration Council considers that the union at New Star factory has not yet sufficiently fulfilled the criteria set out in the Law in order to have the dispute related to the common interests of the workers in the New Star Company resolved by the Arbitration Council.

Therefore the Arbitration Council declines to consider the workers' demand that the company should not cut the wages of workers who take sick leave with proper medical certificates.

**Issue 5:**

The worker party demands that the company pay three months wages to women workers who take maternity leave. However, during the hearing, the workers amended their demand and sought only one and half a month's wages in advance of the leave and another one and half months wages when the women workers return to work.

Article 116 of the Labour Law states that "Employees' wages must be paid at least once per month", but the 1997 Labour Law does not specifically state what date the employer must pay wages. Thus the date of the pay day is based on the decision of the employer's manager.

In addition, Article 2 of the Labour Law gives rights and the power to the employer to direct and supervise human resources in the company as long as the supervision and direction are in conformity with the law (see 28/04-Raffles Grand D'Angkor; 49/04-Ho Hing; 03/05-Flying Dragon; 15/06-Xing Tai). This means that the employer has the right to determine the pay day for each month, as long as the determination is in accordance with the Law which states that the payment be made at least once a month.

In this case the Arbitration Council determined at the hearing that the date for the monthly payment at the company is on the 17<sup>th</sup> of each month. This fulfills the terms of the Labour Law, that is, that the employer will pay wages to workers at least once per month. However, the workers demand that the company pay three months wages in advance to female workers who take maternity leave for the following reasons; these female workers' homes are far from the factory, they lack money to buy tablets and pay for hospital expenses, the workers have just had a baby so are not yet back to full strength or health which makes it difficult to travel, and as traveling costs money [they do not have enough money to cover these expense].

The Arbitration Council and the company understand that there are difficulties for the female workers, but the Arbitration Council notes that there are no provisions in the Labour Law which set out a requirement for an advance wage payment for workers who take maternity leave (see 94/04-Eternity). Demands which concern benefits that are more than what is stated in the

Law are interest disputes. Therefore the Arbitration Council declines to consider the demand with respect to Issue 5 that the company pay three months wages in advance for workers who take maternity leave based on the same reasons as described with respect to Issue 2 mentioned above.

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

**DECISION**

**Issue 2:** Decline to consider the workers’ demand that the company not cut wages from workers who take sick leave with an official doctor’s certificate.

**Issue 5:** Decline to consider the workers’ demand that the company pay three months wages in advance to workers who take maternity leave.

**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 with the Secretariat of the Arbitration Council within this time period.

**SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:**

**Arbitrator chosen by the employer party:**

Name: **Ouk Ry**

Signature: .....

**Arbitrator chosen by the worker party:**

Name: **An Nan**

Signature: .....

**Chair of Arbitration Panel:**

Name: **Pen Bunchhea**

Signature: .....