



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

**ក្រុមប្រឹក្សាសវនកម្មជាតិ**

**THE ARBITRATION COUNCIL**

**Case number and name: 33/07- Goldfame**

**Date of Award: 30 April 2007**

### **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: **Goldfame Enterprises Knitters Limited**

Address: Kampong Pring Village, Sithbo Commune, Saang District, Kandal Province

Telephone: 012 535 955 Fax: N/A

Representative:

- |                     |                                   |
|---------------------|-----------------------------------|
| 1. Mr. Peter Yang   | Assistant to the company Director |
| 2. Mr. Try Soviniya | Administrative officer            |
| 3. Mr. Cheam Vanna  | Interpreter                       |

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

Name: **CLUF and local CLU at Goldfame Factory**

Address: #30 C, Street 371, Sangkat Toeuk Thla, Khann Russey Keo, Phnom Penh (in Borey Solar)

Telephone: 092 853 184 or 016 518 169 Fax: N/A

Representative:

- |                     |                        |
|---------------------|------------------------|
| 1. Mr. Som Onn      | Head of CLUF           |
| 2. Mr. Khin Sokhorn | Officer of CLUF        |
| 3. Mr. Thong Sovann | President of local CLU |

4. Mr. Kong Savuth	Vice-president of local CLU
5. Mr. Sann Chhorvin	Accountant of local CLU
6. Mr. Nai Vann	Advisor of local CLU
7. Mr. Rom Kem	Advisor of local CLU
8. Mr. Em Sam Art	Advisor of local CLU
9. Mr. Hin Chamnan	Assistant of local CLU

### **ISSUES IN DISPUTE**

(In the Non-Conciliation Report)

1. The workers demand that if a worker takes leave for one day, the company should deduct only US\$ 1. The employer does not agree and asks for time to consider.
2. The workers demand the company to increase the seniority bonus one more dollar per year for workers who have been working for 4 years and up. The employer does not agree.
3. The workers demand that, while the workers can stamp in by themselves, the company should stamp workers out, as they did in the past. The employer does not agree, [stating that this procedure] is required by the buyer.
4. The workers demand that those workers who have a written contract of fixed duration become an undetermined duration contract. The employer does not agree.
5. The workers demand the company to provide annual leave as follows: year 1: 18 days, year 4: 19 days, year 7: 20 days, [and so on]. The employer does not agree but requests to follow the Labour Law.
6. The workers demand the company to provide an additional US\$ 5 of wages for workers who have a wage of US\$ 50 and up. The employer does not agree to the increase.
7. The workers demand the company to pay the maternity leave of three months in advance by making a calculation based on the annual average. The employer does not agree with this way of calculating the annual average but will provide the three-month [payment] in advance, as requested, by taking main wages plus regular attendance bonus plus seniority bonus and pay 50 percent of this.
8. [The workers] request the company to pay the “assist in stitching check” and “fray-stitching check” sections by piece rate. The company does not agree.
9. The workers demand the company to determine the number of one dozen for workers in all sections. The company does not agree.
10. The workers demand the company to issue monthly pay slips to workers whose salaries are monthly based like the piece rate workers. The employer does not agree.

11. The workers demand the company to increase the piece rate price in all sections, to not transfer a shirt model to another company location when the employees disagree with the rate for the shirt model, and for the company to issue the piece rate in advance. The employer does not agree.
12. The workers demand the company to grant to the workers whose contracts were terminated in the past the right to come back to work. The employer does not agree.
13. The workers demand 100 percent of wages when there is no work for workers to do. The employer does not agree.

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

*The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B of the Labour Law (1997); the Prakas on the Arbitration Council No. 099 dated 21 April 2004; the Arbitration Council Procedural Rules which form an Annex to the same Prakas; and the Prakas on the Appointment of Arbitrators No. 099 dated 11 May 2006 (Fourth Term).*

*An attempt was made to conciliate the collective dispute that is the subject of this Award, as required by Chapter XII, Section 2A of the Labour Law. The conciliation hearing was unsuccessful, and the non-conciliation report No. 057 K.B.V/KN, dated 27 March 2007 was submitted to the Secretariat of the Arbitration Council on 28 March 2007.*

#### **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:** 11 April 2007 (From 8:00 a.m. to 12:00 p.m.)

**Procedural issues:**

After receiving the complaint, on 7 March 2007 the Department of Labour and Vocational Training assigned an officer to settle the dispute at the factory and the last conciliation was held on 22 March 2007 resulting in three of 16 issues being conciliated. The 13 non-conciliated issues were sent to the Arbitration Council on 28 March 2007 through the report of non-conciliated labour dispute No. 057 K.B.V/KN, dated 23 March 2007.

Upon receipt of the case, all parties to the dispute were summoned by the Arbitration Council to a hearing on 11 April 2007 at 8:00 a.m.

Both parties attended the hearing as summoned by the Arbitration Council. The Arbitration Council sought other information relevant to this case and attempted to conciliate further the 13 non-conciliated issues with the result that issue 1 and 9 were resolved. Thus,

the Arbitration Council will consider and settle the remaining 12 non-conciliated issues based on the evidence and findings of fact as follows:

## **EVIDENCE**

**Witnesses and experts:** N/A

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

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

1. Company's Internal Work Rules, dated 12 September 2003
2. Investment license granted by Cambodian Development Council, No. 1052/97, dated 11 July 2000
3. Letter to authorize Mr. Peter to represent Goldfame company to settle the labour dispute at the Arbitration Council

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

1. Letter by CLUF to the head of the Department of Labour and Vocational Training of Kandal Province regarding the request to settle the complaint and requests of workers at Goldfame Factory, No. 1722 SSKK, dated 7 March 2007
2. Workers' complaint and requests, dated 6 March 2007
3. Letter to request for negotiation by workers to settle some labour disputes, dated 6 March 2007
4. Certificate of registration of local CLU at Goldfame factory, No. 551, dated 18 February 2004

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

1. Report of the collective labour dispute resolution at Goldfame company, No. 057 K.K.B.V/KN, dated 23 March 2007
2. Minutes of the collective labour dispute conciliation, dated 22 March 2007

#### **Provided by the Secretariat of the Arbitration Council:**

1. Invitation letter No. 138 K.K.B.V//Ak/VK/LKA dated 4 April 2007 to invite the worker party to attend the hearing.
2. Invitation letter No. 137 K.K.B.V//Ak/VK/LKA dated 4 April 2007 to invite the employer party to attend the hearing.

## **FACTS**

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

**The Arbitration Council finds that:**

**Issue 1:**

- Goldframe Enterprises Knitters Limited Company employs a total number of approximately 5,000 workers. The company started its operation in 1997.
- In this company, there are four unions: local CAWDU, local CLU, local KYTU, and Union of Solidarity. Among these four unions, none has most representative status.
- The workers demand the company deduct only US\$ 1 from the regular attendance bonus if they take only one day leave. In the hearing the worker party stated that this leave refers to that which was permitted by the employer.
- Both parties agreed that the practice has been so far to deduct the US\$ 5 regular attendance bonus when a worker takes one day leave. The workers' demand is for the company to start [the new] practice from now on.
- No contract, CBA, agreement, or past practice between the company and the workers has mentioned that the workers can take one day leave and the company deducts only US\$ 1.

**Issue 2**

- The workers demand the company to increase seniority bonus by US\$ 1 per year to workers who have been working for the company from 4 years up. The workers demand this for general workers in the whole factory and the demand is for the practice to start from now on.

<b>Year of work</b>	<b>Employer's practice regarding provision of seniority bonus</b>	<b>Workers' demand</b>
Worked for 1 year up	Provide US\$ 2 per month	Agree to the practice
Worked for 2 year up	Provide US\$ 3 per month	Agree to the practice
Worked for 3 year up	Provide US\$ 4 per month	Agree to the practice
Worked for 4 year up	Provide US\$ 5 per month	Agree to the practice
Worked for 5 year up	No more increase	Demand for US\$ 1 increase every year consecutively

**Issue 3**

- The workers demand that for stamping in, the workers perform it themselves, but when stamping out, the factory perform it, like before. The employer does not agree,

claiming that the change to the workers to stamp out by themselves is a requirement by the buyer in order to be clear in recording the workers' time out.

- Since the company started its operation in 1997, the workers stamped in by themselves when they came to work and at the lunch break, and the company stamped them out when it was time to go home.
- In the hearing, the workers mentioned that the reasons that they want the company to stamp out for them at the lunch break and when they leave work are because they do not want to waste time, that they want to have order in the company, and especially because this had been practiced since the company started operating. The workers add that this practice has changed since 26 March 2007. The company does not object to this claim.
- The union claimed that workers spend about two minutes to leave the factory when the company stamped out for them in the past. When the workers have to stamp out by themselves, the union claims the workers spend 5 to 10 minutes. The company objected to this claim, stating that the stamping machine is used by about 120 to 150 workers and normally workers spend only 3 to 5 minutes to stamp out by themselves. The worker party did not object to this claim. The Arbitration Council concludes that the workers spend about 3 to 5 minutes to stamp out from the factory.

**Issue 4**

- The union demands that workers who have written contracts of fixed duration be changed to undetermined duration contracts.
- The Arbitration Council requested that the union provide the names and seniority of the workers who make the demand or their contracts in writing to the Arbitration Council to support this demand. But the union did not provide these documents.

**Issue 5**

- The workers demand the company to increase annual leave by one year for every three years of work.

<b>Year of working</b>	<b>Paid annual leave practiced by the employer</b>	<b>Paid annual leave demanded by the workers</b>
Year 1, 2 and 3	18 days	18 days
Year 4, 5, and 6	18 days	19 days
Year 7, 8, and 9	18 days	20 days
Year 10...	...	...

- The workers demand the company to compensate for the annual leave in the past which the company did not increase for them and also demand this to be practiced from now on. In relation to the issue which the union demands for the company to reimburse the leave, the Arbitration Council required the union to provide the names and seniority of the workers who are making the demand. However, the union did not provide evidence to the Arbitration Council.

#### **Issue 6**

- The workers demand the company to increase by US\$ 5 the wages of the workers whose wages are US\$ 50 and up, based on the reason that the increase of wages only for workers whose wages are less than US\$ 50 is not fair for those who already earn more than US\$ 50.
- Both parties accept that from the beginning of 2007 the company increased the workers' wages from US\$ 45 to US \$50 following Notification No. 745 KKBV of the Ministry of Labour and Vocational Training. For any worker whose wages were higher than US\$ 50, the company did not increase them.
- The union acknowledges that what it is demanding is above what is stated in the Labour Law and adds that the union has the right to demand what is above the minimum level provided by the Law.
- The union does not show clearly the workers for whom the demand is made, but only mentions that it is demanding for workers whose wages are from US\$ 50 and up.

#### **Issue 7**

- The workers demand the company to pay maternity wages of 50 percent of the monthly average wage for three months. The money should be paid only one time before the workers take their maternity leave. To calculate an average wage per year the workers say that the company should take the total wage including overtime wage to add up together for twelve months and divide the total by 12.
- The company does not agree. The company provides the three months maternity allowance to workers before they take the maternity leave. The maternity leave the company provides is 50 percent of the main wage, seniority bonus and regular attendance bonus.
- The workers demand the company to start practicing this from now on but do not demand the company to compensate any specific wages for the past period.

#### **Issue 8**

- The workers in the stitching control and fray-stitching control sections work in a stable wage system. The union claimed that the workers work very hard but that they receive only US\$ 50 per month. The union demands the company to pay the workers by a piece rate.
- The workers stated that some workers are able to earn more than their wage; so if they work for a stable wage, they do not have an incentive to work [as hard].
- The company stated that it has to control the company's production because some workers can work fast but some are slow and cannot work to earn the [minimum] wage, so that the company has to add [additional wages] for them. Thus to assure the scale and technical skill of the production line of the company, the company cannot follow this request. In addition, the company stated that if these workers receive a piece rate, it will result in many mistakes because these are the final checking sections.

#### **Issue 9**

- On this point, the parties reached an agreement in the hearing. Thus the Arbitration Council will not take it for consideration.

#### **Issue 10**

- As practiced by the company, the employer issues salary slips to piece rate workers. However, for workers on a monthly based salary, the employer does not issue the pay slip for them.
- The workers demand the company to issue a pay slip to workers on a monthly based salary like it does to the piece rate workers.
- The workers state that the provision of a pay slip can allow workers to get detailed information about their wages, such as on how much wage the workers receive in this month, and how much overtime and daytime work [they performed], and especially when the company terminates workers' contracts or dismisses workers, how much the workers received from the company and if these numbers were correct. This would ensure that workers receive their payment from the company without any doubts.

#### **Issue 11**

- Since early 2007, the minimum main wages for workers in the textile, garment, and shoe industries has increased from US\$ 45 to US\$ 50 following Notification No. 745 KKBV, dated 23 October 2006.

- The workers demand the company to increase the piece rate to a proper rate for workers in all sections, as the minimum wage has now been increased from US\$ 45 to US\$ 50.
- The company states that for each PN (model of clothes) the company conducts a test seven days before issuing the piece rate. If the rate of a PN decreases, the company opens it up for all workers to request the company to fix the PN. However, the workers mentioned that no PN has decreased so far.
- The union did not mention how much the piece rate is and did not mention what they want the piece rate to be. The union does not show either how much the workers who are making this demand earn per month.
- There is no evidence to show that the piece rate the employer determines causes the piece rate workers to receive wages that are less than the minimum wage of US\$ 50 per month.

#### **Issue 12**

- The workers demand the company to give priority to workers whom the company terminated in the past when hiring because these former workers have the experience and skills [necessary] for the job.
- The union did not offer the names of those who make this demand.
- The union did not show if the people who make this demand are union members or have signed a letter to delegate their rights to the union to make this demand.
- Both parties agreed that the terminated employment contracts of these workers were in accordance with the Labour Law.
- The company asserts that the company always gives priority to workers who have experience and are former employees of the company when hiring; and [only] if a section has a lot of work, will the company recruit new workers. However, now the company does not have [enough] work for the [current] workers to do, thus it cannot rehire these workers.

#### **Issue 13**

- When there is not enough work for workers to do, the employer provides 100 percent of wages to the workers and requires the workers to stamp in at work and follow the company's rearrangement of workers, assigning workers from sections which do not have enough work to other sections with work. In the hearing, the workers demand to not be rearranged anymore, but agree to still come and stamp in at work.
- At the time that this demand was made, the company had not transferred workers to work in other places because it had enough work for workers [in all sections] to do.

This demand is for the transfer of workers in the future. The union did not provide evidence to show which sections the employer transferred workers to and from.

## **REASONS FOR DECISION**

### **Issue 1**

The workers demand the company to deduct only US\$ 1 of the regular attendance bonus if the workers take one day leave with proper permission from the employer. In the hearing, the worker party clarified [that the leave stated in the demand is] general leave with permission.

Point 3 of Notification 745 KKBV, dated 23 October 2006 states, “[b]enefits 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 that, “[w]orkers who come to work regularly on regular working days of a month shall receive a bonus of at least \$ 5.00 per month.” The Arbitration Council notes that the regular attendance bonus of US\$ 5 stated in the Notification means that this incentive bonus will be provided only to workers who come to work regularly. This Notification does not state clearly how to apply this to workers who are absent with proper permission from the employer.

The Arbitration Council considers that the attendance bonus is an incentive bonus for workers who have been working for one month without taking leave without proper permission from the employer. Workers who take leave without proper permission do not have the right to receive this regular attendance bonus. However, this attendance bonus is not intended to penalize those workers who take leave with proper permission.

In previous arbitral awards, the Arbitration Council interpreted that workers are entitled to an attendance bonus in proportion to the number of days they come to work if they take leave for a personal commitment, in cases where the employer properly allows for this leave. (See arbitral award 52/05-Hoy Fu, Issue 2; 62/06-Ecent, Issue 1; 45/05-B&N, Issue 6)

In this case, the Arbitration Council agrees with the interpretation in previous awards that the workers are entitled to receive an attendance bonus in proportion to the number of days they come to work . However, in this case, the union at Goldfame Factory demands the employer to deduct US\$ 1 from the attendance bonuses if the workers take one day leave with permission from the employer.

The Arbitration Council considers that the Arbitration Council has the right and jurisdiction to settle a dispute only in regards to the dispute brought and claim(s) made.

Therefore, the Arbitration Council decides that the employer must deduct from the attendance bonus only US\$ 1 [when one day of leave with permission is taken during the month].

## Issue 2

The company provides a seniority bonus of US\$ 2 to workers when they have worked for one year and add one more dollar every year for year 2, year 3, and year 4. After working for 5 years up, the employer does not add to this seniority bonus anymore. The workers demand the employer to provide one more dollar of seniority [bonus] every year after they have worked for 5 years and up.

Point 3 of Notification 745 KKBV, dated 23 October 2006 states, “[b]enefits workers used to receive from Notification No. 017 SKBY dated 18 July 2000 on points 3, 4, 5 and 6 shall be retained.”

Point 5 of Notification 017 SKBY dated 18 July 2000 states, “*Workers who have been working for a long time in a factory or an enterprise shall receive a working bonus as follows:*

- 5.1: have been working from 1 year up shall receive a seniority bonus of \$ 2.00 per month.*
- 5.2: have been working from 2 years up shall receive a seniority bonus of \$3.00 per month that is \$ 2.00 of the first year plus \$ 1.00 of the second year.*
- 5.3: have been working from 3 years up shall receive a seniority bonus of \$4.00 per month that is \$ 2.00 of the first year plus \$ 1.00 of the second year and \$ 1.00 of the third year.*
- 5.4: have been working from 3 years up shall receive a seniority bonus of \$ 5.00 per month that is \$ 2.00 of the first year plus \$ 1.00 of the second year, \$ 1.00 of the third year and \$ 1.00 of the fourth year...”*

This Notification mentions only work from 4 years and up, and that the workers should receive a seniority bonus of 5 US\$ per month, but it does not mention working for 5 years and up. The wording in point 5 of this Notification does not show that workers can receive a greater seniority bonus after working for 5 years and up either. Therefore, the Arbitration Panel considers that the Notification does not require the employer to add one more dollar every year after year 5 and on.

In the company there is no agreement, CBA, or past practice in accordance with the workers’ demand. Therefore, the workers’ demand for the employer to add US\$ 1 from year 5 and on is an interests demand which above what is provided by the law. This means that this labour dispute is an interest dispute.

Generally, the Arbitration Council considers an interest dispute only when the union who brings the case is a union with the most representative status in the factory. The most representative status of the union provides the legal qualification to negotiate and create a CBA in a factory and the legal right to bring an interests dispute to the Arbitration Council for

settlement. In order to attain most representative status, Article 277 of the Labour Law 1997 states, the union has to be registered and fulfill the other conditions stated in this Article. (See Arbitral Award 57/04-Evergreen; 60/04-United Art, Issue 3; and 08/07-Siu Quinh, Issue 3)

In this case, the local CLU at Goldfame factory does not have the most representative status. Therefore, the Arbitration Council decides not to consider the union's demand on this issue.

### **Issue 3**

The workers demand the company to stamp the workers out when they leave work. Workers claim that, for a long time, the employer used to stamp the workers out when they left the factory and that this practice maintained good order when the workers left the factory. The employer does not agree to the demand, explaining that [having the workers stamp themselves out] is a requirement from the buyer.

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 arbitral awards, the Arbitration Council interpreted this Article to mean that the employer has the right to supervise and direct its enterprise as long as the supervision and direction are in accordance with the law and reasonable. (See arbitral awards 12/06-Quick Sew, Issue 5; and 108/06-Trinunggal Komara).

The employer requires the workers to stamp themselves out when they leave the factory. The Arbitration Council considers that this arrangement is within the employer's legal right to supervise [operations]. The company has enough machines for the workers to do their own stamping. Each machine is for about 120 to 150 workers. The workers need to spend only 3 to 5 minutes to stamp. The Arbitration Council considers that this duration is not so long as to affect the workers' time. Therefore, this arrangement is in accordance with the law and reasonable.

The Arbitration Council considers that the employer has the right to require that the workers stamp themselves out and thus rejects the workers' demand for the employer to stamp them out when they leave the factory.

Therefore, the Arbitration Council declines to consider the workers' demand.

### **Issue 4**

The union demands that workers with fixed duration contracts become workers with undetermined duration contracts.

In order to consider and decide on this demand, the Arbitration Council has to base [its decision] on the specific names of the workers who make the demand, the workers' type of contract, and workers' employment seniority. In this case, the union that makes the demand does not show any specific evidence to support their claim to the Arbitration Council.

In previous arbitral awards, the Arbitration Council rejected demands if the party who made the demand did not have specific evidence to support the demand. (See arbitral awards 63/04- Shine Well, Issue 4; and 99/06-South Bay, Issue 5)

In this case, the Arbitration Council agrees with the reasoning in these previous arbitral awards. Therefore, the Arbitration Council decides to reject the union's demand for the workers who have fixed duration contracts to become undetermined duration contract workers.

### **Issue 5**

Goldfame company provides 18 days of annual leave to its workers each year. The workers demand the company to increase their annual leave by one day for every 3 years they have worked for the company, meaning that in year 1, 2 and 3 the workers are entitled to 18 days of annual leave, and for years 4, 5, and 6, the company increases the annual leave to 19 days per year, and for years 7, 8, and 9, the company increases the annual leave to 20 days per year.

The company does not agree to the demand, basing its position on Article 166, paragraph 4 of the Labour Law which states that the length of paid leave as stated above is increased according to the seniority of workers at the rate of one day per three years of service; the company interprets the Article to mean that the annual leave should be increased only for workers who have been working for three years, and for the years after, the workers should receive only 18 days of annual leave.

On the issue regarding the right to paid annual leave, the union makes the demand on two points. For the first point, the union demands the company to compensate the annual leave to the workers for the past time who, the union claims, never received their paid annual leave properly.

In previous arbitral awards, the Arbitration Council decided to reject the demand if the party who made the demand did not show specific enough evidence to the Arbitration Council as the basis for consideration in the demand. (See arbitral award 63/04-Shine Well, Issue 4; and 99/06-South Bay, Issue 5).

In this demand, the union which is the claimant party does not provide to the Arbitration Council specific evidence, for example, who the workers who make this demand are, and how many years of seniority they have. Because there is no specific evidence, the Arbitration Council does not have enough of a basis to consider the union's demand on this

point. Therefore, the Arbitration Council decides to not consider the union's demand for the employer to compensate their paid annual leave to workers whom the union claims did not receive their annual leave properly according to the Labour Law.

In the second point of the demand, the union demands the employer to practice the paid annual leave properly according to the Labour Law from now on.

Paragraph 4 of Article 166 of the Labour Law states, *“Unless there are more favorable provisions in collective agreements or individual labour contracts, all workers are entitled to paid annual leave to be given by the employer at the rate of one and a half work days of paid leave per month of continuous service...”*

*The length of paid leave as stated above is increased according to the seniority of workers at the rate of one day per three years of service.”*

The Arbitration Council considers that the wording in Article 166 at paragraph 4 which states, “is increased according to the seniority of workers at the rate of one day per three years of service,” is not clear and can lead to different understandings and cause different interpretations.

In this case, the Arbitration Council agrees with the interpretation in previous arbitral awards. Thus the Arbitration Council will interpret the above mentioned Article 166 based on law, the principle of equity, and the intention of the Labour Law as follows:

### **1. Principle of Law**

In terms of Article 166 above, the Arbitration Council considers that the increase to the number of [days of] annual leave depends on the increase of the workers' employment seniority in the factory or enterprise. The term “**seniority**” at work should be interpreted consistently with the idea used in other Articles of the Labour Law.

The idea of employment seniority in other Articles of the Labour Law, for example Article 73, Article 75, Article 89 and Article 89, is used with an intention to mean that the longer a worker works for a company, the more rights and benefits the worker should receive. Article 73 and 75 of the Labour Law states that the increase of the period of notification to terminate an employment contract is based on the duration of a contract or the duration which the worker has worked for the employer.

According to Article 75, a worker who has been working for an enterprise for 6 months to 2 years consecutively is entitled to receive a minimum period of advanced notification [of termination] of 15 days, and for 5 years to 10 years, the period of advanced notification increases to 2 months. Thus, by looking at the increase, the rights a worker should receive increases according to the stage of time stated.

When a contract is terminated, if it is between years 5 and 10, the worker should receive a notification of termination at least 2 months in advance. This means that the rights a worker should receive in each stage cannot regress.

Likewise, Article 89 of the Labour Law states that the increase of dismissal compensation is based on the duration of a worker's employment. Workers who have been working for 6 months to 1 year should receive compensation equal to 7 days of their wages and perquisites. The amount of compensation increases to 15 days if the worker has been working for more than one year. The right to receive dismissal compensation always increases and is a right that a worker should receive automatically according to the duration he or she has been working for the employer and this right cannot be reduced.

Article 95 of the Labour Law addresses mass lay-offs, in which the employer has to consider the workers' employment seniorities, and states that workers who have less seniority should be terminated first.

Therefore, the Arbitration Council considers that employment seniority provides additional rights or benefits to workers based on the duration of consecutive employment for the employer. Generally, workers who have greater seniority can receive more benefits than workers who have less seniority, for example, the benefits related to the transfer of work, promotions, notifications for dismissal, annual leave, and priority for re-hiring, etc. Rights and benefits workers receive from seniority is not dependent upon productivity, nor do they increase based upon workers' income, such as in the case of bonuses, but are **rights the workers should legally receive automatically** based upon the length of time they have been working for the employer. This right cannot be reduced or changed according to the situation or by the employer's will or any agreement or be attached to any other condition except those changes that provide benefits to the workers that are greater than those stated by the law. This seniority will discontinue only when the workers stop working for the company.

## **2. Principle of Equity**

An economic study showed that workers' understanding of skilled tasks and their efficiency increase over the time they work for the employer. The longer the duration the workers work for the employer, the better and faster the workers get and the more the employer benefits from the workers, as they can produce more products with better quality. Therefore, it is reasonable for the employer to provide some benefits and encouragement to workers who have been working in the enterprise for a longer period of time and that these benefits continuously increase as their understanding, skills, and efficiency in their work

improve. Therefore, according to the principle of equity, the workers should receive more annual leave and it should not be decrease while their seniority increases.

### 3. Purpose of the Labour Law

In addition, *the purpose of the Labour Law is for the benefit of both the workers and the employers.* Therefore, the content of Article 166, paragraph 4 which states [that annual leave], *“is increased according to the seniority of workers at the rate of one day per three years of service,”* intends to encourage workers to work harder and longer for their employer because the longer they work for the employer, the more benefits they will receive, i.e., they will receive more annual leave than those workers who have less seniority than them. If they want to leave the employer for a new one, they will lose these benefits. The employer, on the other hand, also benefits from the workers who have been employed for a longer time: **first**, work experience and fast work; **secondly**, honesty and willingness to continue work; and **third**, an understanding between the employer and the workers. (See arbitral award 62/04-Ecent, Issue 8; 68/05-Gold Lida and 81/06-Supreme, Issue 2).

In conclusion, Article 166 of the Labour Law means:

- At year 1, 2 and 3, workers are entitled to 18 days annual leave.
- At year 4, 5, and 6, workers are entitled to 19 days annual leave.
- At year 7, 8, and 9, workers are entitled to 20 days annual leave.
- Workers are entitled to receive one additional day of annual leave for every three years of consecutive service.

Therefore, in this case, the Arbitration Council decides that workers are entitled to an increase of one day annual leave for every three consecutive years of employment.

### Issue 6

Since the beginning of 2007, the minimum wage applied to workers in the textile, garment, and shoe industries has increased from US\$ 45 to US\$ 50. Based on the increase of the minimum wage, the workers demand from the company an increase of US\$ 5 more for workers who earn US\$ 50 and up.

Point 1 of Notification 745 KKBV, dated 23 October 2006 states that workers who are regular [workers] shall receive a minimum wage of US\$ 50 per month. The Arbitration Council notes that this notification is only to ensure the minimum wage of US\$ 50 per month but is not meant to increase by US\$ 5 the wages for workers in general. Therefore, the workers who receive more than the minimum wage of US\$ 5 per month are not entitled to an increase of wages, according to this Notification.

In addition, in this case, the Arbitration Council found that there is no agreement, CBA, or past practice which is in accordance to the workers' demand. In conclusion, the

Arbitration Council rejects the workers' demand that the employer add US\$ 5 for workers whose wage is US\$ 50 and up.

## **Issue 7**

For workers who take maternity leave, the union demands the company to provide 50 percent of wages received (the wage of the last twelve months before the maternity leave divided by 12) multiplied by three for the period of three months of maternity leave. The union party demands that maternity leave [be calculated by] the amount of all wages received, including overtime. The employer provides 50 percent of only main wages, attendance bonuses, and seniority bonuses, then multiplies it by three for the period of three months of maternity leave, but does not include overtime.

Article 182 of the Labour Law gives the privilege to women who work in enterprises covered by the Labour Law to take leave for 90 days maternity leave.

Article 183 of the Labour Law states, *“During the maternity leave as stipulated in the preceding article, women are entitled to half of their wage, including their perquisites, paid by the employer... However, the wage benefits specified in the first paragraph of this article shall be granted only to women having a minimum of one year of uninterrupted service in the enterprise.”*

Article 183 provides to women who have at least one year of seniority a right to receive half their wages including perquisites which the employer has an obligation to pay [during maternity leave]. However, the Article does not clearly state what is included in the wages. Thus the Arbitration Council will look at other Articles in the Labour Law to interpret this Article 183.

Article 103 of the Labour Law states, *“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.”*

Article 103 clearly mentions it that overtime is [a part of] wage. Therefore, women who take 90 days maternity leave should receive 50 percent of wages including overtime as a basis for calculation.

In previous arbitral awards, the Arbitration Council has decided that wages during maternity leave are the wages of the last twelve months before the woman takes maternity leave, divided by twelve to get the monthly average, then divided by two to find 50 percent of that, multiplied by three for the duration of 90 days (three months) which is the period of maternity leave. (See arbitral awards 68/04-City New, Issue 4; and 18/06-GHG, Issue 3)

In this case, the Arbitration Council agrees with the interpretation in the previous arbitral awards. Therefore, the Arbitration Council decides that the employer should pay women who have at least one year of seniority with the company and who take maternity leave, 50 percent of their wages, including overtime wages, as a basis for calculation. These wages are the wages in the last twelve months before the women take maternity leave, divided by twelve to get the monthly average, then divided by two [to get 50 percent], and then multiplied by three [to get three months].

## **Issue 8**

The workers request the company to change the workers in the stitching control and fray-stitching control [sections] into piece rate workers because these workers have been working hard but receive only US\$ 50 wages.

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 arbitral awards, the Arbitration Council interpreted Article 2 of the Labour Law to mean that the employer has the right to arrange and direct the enterprise as long as the arrangement is in accordance with the law and reasonable. (See reason in Issue 3 above).

The employer’s right to arrange includes the right to determine the wage system, i.e., which section should work in monthly wages and which should be piece rate. In this case, the Arbitration Council considers that the employer has the right to determine the monthly wage system in Goldfame company and that the arrangement should be done in accordance with the law and be reasonable.

In addition, Notification 745 KKBV, dated 23 October 2006, point 1, states that the minimum wage of workers in garment textile and shoe production is US\$ 50 per month.

In this case, the workers recognize that according to the employer’s wage system, no worker has received less than the minimum wage determined by the Labour Law. Thus, the

Arbitration Council considers that the employer already respects its obligations determined by the Labour Law regarding the minimum wage. In addition, if these workers were to become piece rate workers, many mistakes in production could occur because this section is the final checking section.

Thus, the Arbitration Council declines to consider this demand.

#### **Issue 10**

The workers demand the company to provide salary slips to workers who receive monthly-based wages so that workers may receive their wages from the company without any doubt.

In this case, the workers stated that the provision of salary slips can provide detailed information on the amount of the wages, overtime, the number of working days and holidays, and especially when the employer terminates a contract, how much a worker earned from the employer and whether or not it is correct. The employer states that the company provides this salary slip to piece rate workers only, but that it is considering preparing this salary slip for workers who work for monthly-based wages too.

Article 112 (B) of the Labour Law states, *“The employer must take measures to inform the workers in a precise and easily comprehensible fashion of:*

*a) ...*

*b) The items that make up their wage for every pay period when there is a change to the items.”*

This Article means that whenever there is a change in the workers' wages, the employer has to inform them clearly about the wages. (See arbitral award 05/06-W&D).

The Arbitration Council notes that there are many factors that can make a change in the workers' wages, for instance, the absence of workers can have an affect on the attendance bonus and the duration or number of overtime hours the workers have worked. The changes in these factors can cause changes to the wages workers receive each payday. For the case of Goldfame factory, workers perform overtime work frequently. The Arbitration Council notes that the overtime can be less or more, based on the facts, and it can be different at each pay time. Thus, Article 112 (B) of the Labour Law requires Goldfame Company to inform the workers in a precise and easily comprehensible fashion each time of payment.

However, Article 112 (b) of the Labour Law only requires the employer to inform the workers in a precise and easily comprehensible way generally. The methods to inform are many and [the Labour Law] does not require the issuing of a salary slip to workers. The issuing of a salary slip to all workers can be a heavy load for the employer. However, in the case of Goldfame Company, the employer has already practices the provision of a salary slip

to piece rate workers. If the employer arranges to issue salary slips to workers as a way to inform them of their wages, the employer does have more of a workload to arrange salary slips than before. However, the arrangement of the salary slip is a systematic arrangement in a technical way; this means that it is repetitive work which allows the employer to arrange it quickly, reduces time spent and increases work efficiency. The Arbitration Council also notes that the arrangement to have salary slips, which contain detailed information about wages, is also an arrangement to make [the payment] transparent and to eliminate workers' doubts regarding their wages. This practice can improve the industrial relations between employers and workers. Therefore, in this case, the Arbitration Council decides that the employer has to arrange to issue salary slips to monthly-based wage workers.

#### **Issue 11**

The workers demand the company to increase the piece rate in all sections.

The workers stated in the hearing that, as of now, the wages have been increased from US\$ 45 to US\$ 50 per month, and that, for those workers who cannot work up to US\$ 50 wages per month, the company adds an additional amount [so that the wage reaches the minimum]. Thus the company should increase the piece rate for piece rate workers in all sections as well. The Arbitration Council will consider [this type of claim] only when the union who is the party to the claim has shown specific evidence to the Arbitration Council to support its claim. However, in this case, the union does not reveal to the Arbitration Council which section(s) the piece rate workers are in, how many of them there are, and how much they earn from that piece rate, and the amount that they demand the piece rate to be increased by.

In previous arbitral awards, the Arbitration Council has rejected parties' demands if the party who brought the demand did not show specific evidence to support the claim. (See arbitral award 63/04-Shine Well, Issue 4; and 99/06-South Bay, Issue 5).

In this case, the Arbitration Council concurs with the reasoning in the previous awards. Thus, the Arbitration Council does not consider the workers' demand for the company to increase piece rate in all sections.

#### **Issue 12**

The workers demand the company to grant the right to workers who have been dismissed by the company to come back to work. The union agrees that the company terminated the workers' contracts in accordance with the Labour Law.

Clause 19 of Prakas 099 SKBY regarding the Arbitration Council, dated 21 April 2004, states, *"A party may appear before the arbitration panel in person, be represented by a*

*lawyer who is a member of the Bar Association of the Kingdom of Cambodia, or be represented by any other person expressly authorized in writing by that party.”*

In the hearing, the union did not expressly mention the identity of those who demanded to come back to work. The Arbitration Council finds that the union does not have an authorization letter in writing from the workers who make the demand to bring this dispute on their behalf. This means that the union does not have the legal right to represent these people. Furthermore, the union does not inform the Arbitration Council of the identity of the party who is making the demand. Therefore, the Arbitration Council decides to not consider the union’s demand for the company to grant the right to the workers whose contracts were terminated by the company to come back to work.

### **Issue 13**

The employer provides 100 percent of wages to the workers when there is not enough work, but it requires the workers to come to stamp in and to be transferred from sections which do not have enough work to the sections which have work to do. In the hearing, the workers agree to come to stamp in, but demand that the company not transfer them to work in other places where there is work to do. The company agrees to provide one hundred percent of wages but states that the workers shall stay under the company arrangement.

Article 2 of the Labour Law states, *“All natural persons or legal entities, public or private, are considered to be employers who constitute an enterprise, in the sense of this law, provided that they employ one or more workers, even discontinuously.*

*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.*

*A given establishment shall be always under the auspices of an enterprise. The establishment may employ just one person. If this establishment is unique and independent, it is both considered as an enterprise and an establishment.”*

In previous cases, the Arbitration Council interpreted Article 2 to mean that the employer party has the right to arrange and direct the company as long as that arrangement and direction is in accordance with the law and is reasonable. (See reasoning in issue 3 above).

In case 17/03 and 18/03-Ho Hing, the Arbitration Council found that the employer’s right to arrange and direct the company includes the right to transfer workers from place to place, providing that certain conditions are met: (1) no deduction of wage, (2) no transfer of workers to a far-away location, (3) no change of working shift from the night shift to the day shift or vice versa, (4) no substantive change in skill.

In this case, the workers demand the company to not transfer them from sections which do not have enough work to other sections where there is work to do. The Arbitration Council considers that when a transfer affects one of the four conditions mentioned above, the transfer affects a worker's rights. Thus, this dispute is a dispute about rights. However, as of the hearing, there had been no transfer of workers because the company had enough work for workers to do. Thus this is a dispute about rights in the future.

In previous arbitral awards, the Arbitration Council has not made a decision on a rights dispute [about an alleged future violation] because the Arbitration Council cannot know in advance what will happen [in the future]. (See arbitral award 10/03-Jaqsintex, Issue 2; 42/05-Yong Wa, Issue 2 and 99/06-South Bay, Issue 8).

In this case, the Arbitration Council agrees with the previous interpretation set out in the arbitral awards. Thus, the Arbitration Council declines to consider this dispute.

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

## **DECISION**

### **Issue 1**

- The employer should deduct only US\$ 1 from the regular attendance bonus for workers who are absent for one day with proper permission from the employer.

### **Issue 2**

- Decline to consider the demand in this issue.

### **Issue 3**

- Reject the workers' demand that requests the employer to continue to stamp out for workers when they leave the factory.

### **Issue 4**

- Reject the union's demand to change workers from fixed duration contracts to undetermined duration contracts.

### **Issue 5**

- Reject the union's demand that the employer pay back past annual leave to workers.
- The employer must provide the workers the right to one more day of annual leave every three years.

### **Issue 6**

- Reject the workers' demand for the company to add US\$ 5 to the wages of those workers whose salary is US\$ 50 and up.

### **Issue 7**

- The employer must pay the total three months of maternity leave allowance to women workers who take maternity leave by taking the annual average plus overtime

work as the basis for calculation, i.e., take the [total of the] salary in the last 12 months, divided by 12 to find an average wage per month, and then divide by 2 and multiply by 3.

**Issue 8**

- Decline to consider the demand in this issue.

**Issue 10**

- The employer must issue salary slips to workers whose salaries are monthly-based for each payday, as provided to the piece rate workers.

**Issue 11**

- Decline to consider the demand for the company to increase the piece rate for piece rate workers in all sections.

**Issue 12**

- Decline to consider the union's demand for the employer to grant the right to return to work for workers whom the company has dismissed.

**Issue 13**

- Decline to consider the demand in this issue.

**Type of Award: Non binding**

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 Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: .....