



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាសវនកម្មជាតិ

THE ARBITRATION COUNCIL

Case number and name: 37/08-Yung Wah I & II

Date of Award: 04 April 2008

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **Mar Samborana**

Arbitrator chosen by the worker party: **Tuon Siphann**

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

DISPUTING PARTIES

Employer party:

Name: **Yung Wah Industrial (Cambodia) Co. Ltd., I & II**

Address: Prek Samrong Village, Ta Khmao Commune, Kandal Province

Telephone: 012 510 966

Fax: 023 983 368

Representative:

- | | |
|---------------------|-------------------------|
| 1. Mr Ng Min Cauan | General Affairs Manager |
| 2. Mr. Som Uy Pisey | Administration Officer |
| 3. Tao Davuth | Administration Officer |
| 4. Ly Muy Chheng | Administration Officer |

Worker party:

Name: **Khmer Youth Federation Trade Union (KYFTU) and local Khmer Youth Trade Union (KYTU) at the Company**

Address: Prek Samrong Village, Ta Khmao Commune, Kandal Province

Telephone: 012 907 902

Fax: N/A

Representative:

- | | |
|----------------------|-------------------------------|
| 1. Mr. Huy Sopharith | Coordination officer of KYFTU |
| 2. Mr. Ses Sophy | Coordination officer of KYFTU |

3. Mr. Peo Sithorn	President of KYTU at Yung Wah I
4. Chea Srey Neang	President of KYTU at Yung Wah II
5. Mr. Huy Peo	Vice-president of KYTU at Yung Wah I
6. Ms. Sem Kosal	Secretary of KYTU at Yung Wah I
7. Chhom Rattana	Secretary of KYTU at Yung Wah II

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- The workers ask that the Company provide them with a bonus of US\$ 20 per month. The Company does not agree.
- 2- The workers ask that the Company provide them 2,000 riels for meal allowance. The Company does not agree.
- 3- The workers demand that the Company provide six cans of milk formula for 24 months for women workers who have taken their maternity leave. The Company does not agree but will follow the existing practice
- 4- The workers demand that the Company allow women workers to take 100 days off for maternity leave and pay three months of their maternity wage in advance. The Company does not agree.
- 5- The workers demand that the Company dismiss A Che Y, factory manager. The Company does not agree to the demand but will follow the agreement dated 11 January 2008.
- 6- The workers demand that the Company allow them to take one hour off for lunch break. The Company does not agree but will follow the existing practice.
- 7- The workers demand that the Company allow them come in and out of work through the front door. The Company does not agree but will follow the existing practice.
- 8- The workers demand that they work only in the morning on Saturday. The Company does not agree.
- 9- The workers demand that the Company provide them with US\$ 40 per month for baby sitting. The Company 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 Labor Law (1997); the Prakas on the Arbitration Council No. 099 dated 21 April 2004; the Arbitration Council Procedural Rules which form an Annex to the same Prakas; and the Prakas on the Appointment of Arbitrators No. 076 dated 10 May 2007 (Fifth Term).

An attempt was made to conciliate the collective dispute that is the subject of this Award, as required by Chapter XII, Section 2A of the Labour Law. The conciliation hearing was unsuccessful, and the non-conciliation report No. 127/08 KB/KN, dated 29 February 2008 was submitted to the Secretariat of the Arbitration Council on 04 March 2008.

HEARING AND SUMMARY OF PROCEDURE

Place of hearing: The Arbitration Council, Phnom Penh Center, Building A, Sothearos Blvd., Sangkat Tonle Basak, Khann Chamkarmorn, Phnom Penh.

Date of hearing: 18 March 2008 (From 8:00 a.m. to 12:00 p.m.)

Procedural issues:

On 16 January 2008, the Department of Labour and Vocational Training of Kandal Province assigned an officer to conciliate a collective labour dispute on 21 issues and 12 issues were conciliated. The remaining nine non-conciliation points were submitted to the Secretariat of the Arbitration Council on 4 March 2008.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer party and the worker party to the hearing and conciliation on the nine non-conciliation issues on 18 March 2007 at 8:00 a.m.

Both parties were present as invited by the Arbitration Council. The Arbitration Council attempted to ask for more information relevant to this dispute and further the conciliation on the nine non-conciliation issues with a result that one issue, issue 7, was conciliated and issue 5 and issue 8 were withdrawn. Thus, the Arbitration Council will consider the remaining non-conciliation issues - issue 1, issue 2, issue 3, issue 4, issue 6 and issue 9 - based on the evidence and clarification by the parties in the hearing as follows:

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party:

1. Certificate of commercial registration of Yung Wah Industrial (Cambodia) Co. Ltd., No. 981 PN.NTK, dated 27 March 1998;
2. Memorandum and Statute of Yung Wah Industrial (Cambodia) Co. Ltd., dated 22 January 1999;
3. Internal Work Rules of Yung Wah Industrial (Cambodia) Co. Ltd., No. 008/06 KBV, dated 29 May 2006;
4. Letter No. 494/2007 YV, regarding request to maintain the same overtime working hours by the Company, dated 23 July 2007;

5. Agreement between the employer with the worker union in solving collective labour dispute of Yung Wah 1 and 2 Company in case 146/07, dated 11 January 2008;
6. Request letter by the worker party to request for the Company to maintain the same overtime working hours, dated 21 July 2007.

Provided by the worker party:

1. Certificate of union registration of local KYTU at Yung Wah 1, day shift, No. 1347 KB/VK, dated 9 January 2008;
2. Certificate of union registration of local KYTU at Yung Wah 3, No. 1018 KKBV/VK, dated 03 October 2006.

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

1. Report of collective labour dispute resolution at Yung Wah Industrial (Cambodia), Co. Ltd., No. 127/08 KB/KN, dated 29 February 2008;
2. Minutes of collective labour dispute conciliation, dated 26 February 2008.

Provided by the Secretariat of the Arbitration Council:

1. Invitation letter No. 194 KB/AK/VK/LKA, dated 14 March 2008 to invite the company party to attend the hearing;
2. Invitation letter No. 195 KB/AK/VK/LKA, dated 14 March 2008 to invite the worker party to attend the hearing.

FACTS

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

The Arbitration Council finds that:

- Yung Wah 1 Company employs approximately 3,200 workers and Yung Wah 2 Company employs approximately 5,300 workers. Thus the total number of workers is approximately 8,500 workers.
- There are three unions in Yung Wah 1 Factory and four unions in Yung Wah 2: (1) C.CAWDU, (2) KYFTU, (3) CLUF, and (4) CUF. These unions do not have the most representative status.
- KYFTU is the complainant in this case. KYFTU has 1,200 members in Yung Wah 1 and 700 members in Yung Wah 2.

Issue 1: The workers demand that the Company provide US\$ 20 per month for attendance bonus

- The Company provides US\$ 5 per month for attendance bonus according to Notification 017 SKBY, dated 18 July 2000 to those workers who come to work regularly within a month. As a practice, the Company separately provides 400 riel per day in addition to the attendance bonus.
- The workers demand that the Company provide US\$ 20 attendance bonus per month in order to encourage workers to work harder. The workers states that this demand is not provided in the Law but they make the demand because market prices of goods has increased. The Company party, on the other hand, states that it cannot provide as demanded because the Law does not require the employer to pay US\$ 20 attendance bonus to workers; in addition, the Company already provide an incentive of 400 riel per day.

Issue 2: The workers demand that the Company provide 2,000 riel meal allowance to those workers who work overtime from 3:00 p.m. to 5:00 p.m.

- The Company provides 1,500 riel meal allowance to those workers who volunteer to work overtime.
- The worker party requests the Company to add 500 riel more on the 1,500 riel to make it 2,000 riel. The workers state that the Labour Law does not provide the benefits they are demanding. However, they make this demand based on the reason that the market price of goods, specifically food and rice, has increased.
- The Company party does not agree to the demand stating that the increase of price of commodities affects not only the workers but also the Company.

Issue 3 and Issue 9: The workers demand that the Company provide 6 cans of milk formula for 24 months and US\$ 40 for baby sitting to women workers who have a baby

- In 2002, the Company conducted a survey over the need to establish a daycare center to find out how many workers wanted a daycare and how many of them wanted milk formula in lieu of a daycare center. The employer states in the hearing that the result of the survey showed that majority of workers wanted milk formula in lieu of a daycare center. For that reason, the Company provided milk formula in lieu of daycare center.
- Currently there are approximately 500 women workers at Yung Wah 1 and 716 at Yung Wah 2 who have babies. Thus, there are approximately 1,200 of them.
- As a practice, the Company provides 2 cans of milk formula per month to women workers for a period of 18 months in lieu of building a daycare center in the Company.

- The workers demand that the Company provide additional 4 cans of milk formula per month because two cans of milk formula given is not sufficient to feed their baby; in addition, the price of milk formula has increased. Because the mothers do not have much time to take care of their babies, milk formula makes it easier for them.
- The workers also demand that the employer provide US\$ 40 per month for baby sitting. The worker party reasons that according to the Labour Law, if the employer builds a daycare center, it would no longer need to provide milk formula or baby sitting fee because when they have a daycare center, it implies that they will have to have baby sitter.
- The company party states that the Company is not able to provide as demanded by the workers but it will give 2 cans of milk per month for 16 months.

Issue 4: The workers demand that the Company allow women workers to take 100 days and pay three months of their wage before the [maternity] leave

- Currently, the Company implements a 90-day maternity leave. The Company pays half of the wage to women workers who take the three-month maternity leave in the month following the month when the leave application is lodged, one or two days after the normal payday of other workers. According to the normal payday schedule mentioned by the employer, it means for example if the last working month of the worker is in January, then the payment for maternity leave would not be in January with the last wage (January) but it would be in February at the same time with the normal payday of all the workers in February.
- The worker party claims that in some cases, for example, workers take leave on the first or second of the month but the Company does not pay maternity leave to them but wait until they come back to work to pay it.
- The Company states that its practice regarding maternity leave is in accordance with medical letter of pregnancy check up and the leave is granted from the 8th month of the pregnancy but for those women who give birth prematurely, the leave is flexible to the real situation.
- The worker party demands that the Company pay the maternity leave at the same time when they receive their last wage before the leave starts to avoid having to come back to the factory again and in order to have sufficient money to prepare themselves for safe labour. The Company rejects the demand and claims that this is contradictory to the Company's established accounting system.
- The workers also demand that the maternity leave is 100 days for the reason that women workers could rest for a longer period of time so that they become a bit stronger. In addition, the worker party claims that the actual number of post-natal

days is less than two months because it takes approximately more than one month for the women workers to take leave before the delivery (from the 8th month of the pregnancy). The Company does not agree and maintains that women workers take 90 days for maternity leave.

Issue 6: The workers demand for one hour lunch break

- The Company arranges a schedule of 45 minutes for workers to have their lunch from 11:00 a.m. to 11:45 a.m. The workers demand a one hour lunch break from 11:00 a.m. to 12:00 p.m.
- Clause 4 of the Company's Internal Work Rules registered at the Ministry of Labour on 29 May 2006 states, *"If work is arranged in shifts, the Company will arrange the shifts in rotating shifts according to the Company's schedule which will allow 1 (one) hour meal break at the middle of each shift..."*

REASONS FOR DECISION

Issue 1: The workers demand that the company provide US\$ 20 per month for attendance bonus

The workers demand that the Company provide US\$ 20 per month for attendance bonus in addition to the US\$ 5 provided by the Labour Law to those workers who work regularly for 26 days per month because the market price of goods has increased and to encourage worker to work harder.

The Arbitration Council considers that the workers' demand for the Company to provide an additional US\$ 20 for attendance bonus is not a rights dispute but an interests dispute because the workers are demanding something more than the minimum right provided by the Labour Law as stated in Notification 017 SKBY, dated 18 July 2000 and Notification 745 KKBV, dated 23 October 2006. Under these Notifications, those workers who work regularly on the number of days they should work are entitled to an attendance bonus of US\$ 5.

In previous cases, in relation to interests demands, the Arbitration Council has made a detailed analysis and a consistent conclusion that generally only the union with the most representative status can bring an interests dispute to the Arbitration Council for resolution. (See Arbitral Awards 81/04-Evergreen, issue 4; 09/05-Kin Tai, issue 2; 84/07-Yung Wah II, issue 1; 08/07-8 Stars Sportswear, issue 3; and 135/07-Wilson, issue 1).

In addition, In addition, Clause 43 of Prakas 099, dated 21 April 2004 states that, *"An arbitral award which settles an interest dispute takes the place of a collective bargaining agreement and shall remain in effect for one year from the date on which it becomes final*

unless the parties agree to make a new collective bargaining agreement replacing the award.”

The Arbitration Council has found that if the Arbitration Council issues an arbitral award on this issue it will become a collective bargaining agreement applicable to all workers in the company and it will cause other workers to lose their right to strike to demand for an interests dispute in the future which can lead to unfairness and injustice for other workers.

In this case, the Arbitration Council agrees with the interpretation of the Arbitration Panel in previous cases that only the union with the most representative status can bring an interests dispute to the Arbitration Council for resolution. In order to obtain the most representative status, Article 277 of the Labour Law 1997 states that the union needs to be registered and fulfill other conditions stated in the Article.

In this case, based on the above finding of facts, the Arbitration Council found that the local KYTU at Yung Wah 1 and 2 does not have the most representative status. Thus, the local union of KYTU at Yung Wah 1 and 2 does not have a legal right to make a collective bargaining agreement on behalf of all workers in the whole factory.

Therefore, the Arbitration Council decides to decline to consider the workers' demand for the Company to provide US\$ 20 per month attendance bonus.

Issue 2: The workers demand that the Company provide 2,000 riel to those workers who do overtime work

In the hearing, the worker party states that this is a demand for 500 riel meal allowance in addition to the 1,500 riel per month provided by the company for meal allowance.

The Arbitration Council considers this as a demand for more than the rights provided by the Labour Law through Notification 017 SKBY, dated 18 July 2000 and Notification 745 KKBV, dated 23 October 2006. According to these Notifications, the employer is obliged to provide a meal or an amount of money equal to 1,000 riel when the workers volunteer to work overtime for the employer. In addition, the workers' demand is more than the 1,500 riel meal allowance agreed and provided by the employer to those workers who work overtime for the employer. Therefore, this is an interests dispute.

Because the union does not have the most representative status, the Arbitration Council declines to consider the workers' demand for an additional 500 riel meal allowance to those workers who work overtime. (See the reasons related to the interests dispute in the reasons for decision in issue 1).

Issue 3 and 9: The workers demand that the Company provide 6 cans of milk formula for 24 months and US\$ 40 for baby sitting to women workers who have a baby

Article 186 of the Labour Law states, *“Managers of enterprises employing a minimum of one hundred women or girls shall set up, within their establishments or nearby, a nursing room and a daycare center.*

If the company is not able to set up a daycare center on its premises for children over eighteen months of age, female workers can place their children in any daycare center and the charges shall be paid by the employer.”

Article 187 of the Labour Law states, *“A Prakas of the Ministry in charge of Labour shall determine the conditions for setting up hygienic environment and supervising these nursing rooms and daycare centers.”*

According to the contents of this Article, the Arbitration Council considers that the employer has an obligation to arrange a nursing room under the supervision of the Ministry in charge of Labour.

However, the Arbitration Council considers that the Labour Law does not requires the employer to provide milk formula or payment in lieu of a nursing room (See Arbitral Awards 63/04-Shine Well, issue 2 and 68/04-City New, issue 1).

Moreover, the government’s public policy encourages mothers to breastfeed rather than using milk formula; previous Arbitral Awards also encouraged breastfeeding. (See Arbitral Awards 83/04-June Textile, issue 1 and 24/06-Fortune, issue 3).

Thus, the Arbitration Council considers that the demand for the employer to provide milk formula is not in accordance with the government’s policy and previous Arbitral Awards.

Therefore, the Arbitration Council decides to reject the workers’ demand for the Company to provide 6 cans of milk formula for 24 months.

Furthermore, based on the reasons above, the Arbitration Council considers that if the employer is not able to build a daycare center for children whose age is over 18 months, the employer should pay the expenses for the workers take their children for baby sitting outside and the payment should be based on the actual receipts.

Therefore, the Arbitration Council decides to reject the demand for the employer to pay US\$ 40 for outside baby sitting. However, the Arbitration Council orders the employer to build a daycare center or pay the expenses based on actual receipts for the workers to take their children for baby sitting outside.

Issue 4: The workers demand that the Company allow women workers to take 100 days and pay three months of their wage before the leave

A. The demand for the employer to provide 100 days maternity leave

Article 182 of the Labour Law states, “In all enterprises covered by Article 1 of this law, women shall be entitled to a maternity leave of ninety days.”

The Arbitration Council considers that Article 182 states clearly about the number of days (90) provided by the Labour Law to women workers for maternity leave for the purpose of providing sufficient time for the women workers to take care of both their health and the health of the new-born baby and this is an appropriate duration to come back to work for the Company in order to avoid interruption to production activities and to avoid being a burden for the Company. Moreover, 90 days is the minimum legal entitlement of women workers for the purposes mentioned above during which the employer cannot use any reason to ask the women who are on the 90 days maternity leave to come to work without agreement from the workers even though it is the period when the Company has unusual business which requires workers to work outside normal working hours.

Therefore, the demand for the Company to provide 100 days maternity leave is not a rights dispute but it is an interests dispute because the workers are demanding for more than the 90 days provided by the Law as stated in Article 182 of the Labour Law.

In this case, the union does not have the most representative status. Therefore, the Arbitration Council declines to consider the workers' demand for the Company to provide 100 days maternity leave. (See the reasons related to interests dispute in the reasons for decision in issue 1 above).

B. The demand for the Company to pay three months of maternity payment to the women workers before the leave

In the findings of facts, the Arbitration Council found that the Company provides half of the wage for the whole three months maternity leave in the month following the month the workers apply for leave and the employer pays their wage one or two days after it pays the normal wage of general workers. The worker party, on the other hand, demands that the Company pay women workers who take maternity leave on the same day they receive their last wage.

Article 115, paragraph 3, of the Labour Law states, *"Payment shall not be made on a day-off. If payday falls on such a day-off, the payment of wage shall be made a day earlier."*

According to Article 115 above, when the payment of maternity payment falls on day-off, the payment should be made before the day-off. (See Arbitral Awards 57/06-Evergreen, issue 6; 09/07-Kingland, issue 7). Moreover, according to the wording in paragraph 3 of Article 115 above, payment of maternity payment shall be made one day before day-off. Thus, the employer's practice of paying maternity payment during the days-off is not in accordance with Article 115. However, in this case the worker party demand that the employer pays the three months of wage on the same day when they are paid their last wage before their leave, which is not one day before their maternity leave. According to Article 115 above, the workers are entitled to the wage one day before the day-off but it does not mean that it must be on the payday of other workers which is before the maternity leave.

Therefore, the Arbitration Council orders the Company to pay the three months maternity payment to women workers at least one day before the women workers take maternity leave.

Issue 6: The workers demand for one hour lunch break

In the hearing, the worker party adjusted their demand to the demand for the Company to allow one hour lunch break from 11:00 a.m. to 12:00 p.m.

Clause 4 of the Company's Internal Work Rules registered at the Ministry of Labour on 29 May 2006 states, *"If work is arranged in shifts, the Company will arrange the shift in rotating shifts according to the Company's schedule which will allow 1 (one) hour meal break at the middle of each shift..."*

In this case, the Company arranges two working shifts in which workers in the morning shift have their break at 11:00 a.m. and have to start work again at 11:45 a.m. This means that workers in the Company have only 45 minutes of time in between of each shift for their lunch break. According to Clause 4 of the Company's Internal Work Rules above, the workers are entitled to one hour break. Therefore, the Arbitration Council considers that the employer does not implement this properly according to the Internal Work Rules as it allows only 45 minutes for the break.

Therefore, the Arbitration Council decides to order the Company to allow one hour lunch break to workers.

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

DECISION AND ORDERS

Issue 1:

- Decline to consider the workers' demand for the Company to provide US\$ 20 per month attendance bonus.

Issue 2:

- Decline to consider the workers' demand for 2,000 riel meal allowance to those workers who work overtime.

Issues 3 and 9:

- a. Order the employer to build a daycare center or pay the expenses based on actual receipt for the workers to take their children for baby sitting outside.
- b. Reject the demand for the employer to provide 6 cans of formula milk per month for women workers for 24 months and pay US\$ 40 in lieu of daycare center.

Issue 4:

- a. Decline to consider the workers' demand for the Company to provide 100 days maternity leave.
- b. Order the Company to pay the three months maternity payment to women workers at least one day before the women workers take maternity leave from the day this Arbitral Award enters into effect.

Issue 6:

- Order the Company to allow one-hour lunch break to workers from the day this Arbitral Award enters into effect.

Type of Award: Non binding award

This Award will become binding after 8 days of the date of its notification unless one of the parties lodges a written opposition to the Minister of Labour through the Secretariat of the Arbitration Council within this time period.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Mar Samboranan**

Signature:

Arbitrator chosen by the worker party:

Name: **Tuon Siphann**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: