

**KINGDOM OF CAMBODIA  
NATION KING RELIGION**

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**THE ARBITRATION COUNCIL**

**Case number and name: 38/06- Best Tan**

**Date of Award: 7 June 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: Best Tan Garment Factory Ltd.

Address: Building 233, Norodom Blvd., Sangkat Tonle Bassac, Khann Chamkarmorn, Phnom Penh

Telephone: 023 721 723/ 011 733 477 Fax: 023 721 724

Representative:

1. Ms. Sok Thida Company's Administration Officer
2. Mr. Meas Samart Accountant

**Worker party:**

Name: Cambodian Labourers Union Federation and Local union at Best Tan Factory

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

Telephone: 023 721 981/ 012 866 682/ 012 915 417 Fax: N/A

Representative:

1. Nhem Phalla Assistant to the Cambodian Labourers Union Federation
2. Mr. Sreang Narith Officer of the Cambodian Labourers Union Federation
3. Mr. Tuy Sokun President of the local Union at Best Tan Factory
4. Ms. Chea Sophany Vice- President of the local Union at Best Tan Factory
5. Mr. Mak Chenda Member of local Union at Best Tan Factory
6. Mr. Yok Nak Member of local Union at Best Tan Factory
7. Mr. To Dineth Member of local Union at Best Tan Factory
8. Mr. Chon Nary Member of local Union at Best Tan Factory
9. Mr. Sim Hol Member of local Union at Best Tan Factory

**ISSUES IN DISPUTE**

*(In Non-conciliation Report)*

1. The workers demand the company cancel the fixed duration contracts because in making the contracts, the company put the starting date but left the ending date blank.
2. The workers demand the company make it easier for workers to take leave for important personal commitments.
3. The workers demand the company to pay back their medical check fee of 10,100 riel.
4. The workers demand the company build a day-care and breast-feeding room.
5. The workers demand the company accept floating-workers who work for more than one month as regular workers.
6. The workers demand the company pay 2,000 riel as an overtime meal allowance for working from 4:00 to 8:00.
7. The workers demand the company not to transfer workers from one section to another.
8. The workers demand the company re-instate nine workers whom the company had terminated.
9. The workers demand the company not to cut wages from them when they lose their I.D. card.
10. The workers demand that the company arrange a proper cafeteria for workers to eat.

**JURISDICTION OF THE ARBITRATION COUNCIL**

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B (Article 309 to 317) of the Labour Law (1997); the Prakas on the Arbitration Council 099/04; the Arbitration Council Procedural Rules which form an Annex to the same Prakas; and the Prakas on the Appointment of Arbitrators 099/06 (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. When the conciliation hearing was unsuccessful the non-conciliation report No. 654 dated 11 May 2006 was submitted to the Secretariat of the Arbitration Council on the same date.

**HEARING AND SUMMARY OF PROCEDURE**

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

**Date of hearing:**

- 22 May 2006 (From 2:00 to 6:00 p.m.)
- 25 May 2006 (From 2:00 to 5:00 p.m.)

**Procedural issues:**

Best Tan Company is located in Building 233, Norodom Blvd., Sangkat Tonle Bassac, Khann Chamkarmorn, Phnom Penh. It employs approximately 400 workers. On 4 April 2006, the Department of Labour Disputes received a complaint by telephone from workers about a strike in which the workers were demanding the company to improve working conditions in accordance with the Labour Law. Following the receipt of the case, the Department designated expert officer(s) to solve the problem. The last conciliation date was 9 May 2006. Seven issues out of seventeen were conciliated. The ten non-conciliated issues as mentioned above were submitted to the Arbitration Council on 11 May 2006 with non-conciliated case report No. 645 by the Ministry of Labour and Vocational Training.

After receiving this case, the parties in dispute were summoned by the Arbitration Council to attend a first hearing on 22 May 2006 at 2:00 p.m. and a second hearing on 25 May 2006 at 2:00 p.m.

On the hearing day, both parties agreed to have the Arbitration Council attempt further conciliation. As a result, six issues were conciliated; these were issues 2, 4, 5, 6, 8 and 10. The Arbitration Council will not consider the six conciliated issues in this award. Therefore, the remaining issues: issues 1, 3, 7 and 9 will be considered by the Arbitration Council based on 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 No. 1213 dated 24 November 2005 from the Chief of the Department of Labour Inspections to the Director of the Best Tan Company about the changing of working hours.
2. Letter dated 21 November 2005 from the Director of Best Tan Company to the Chief of the Department of Labour Inspections to request a change in working hours.
3. Statute of Best Tan Company.

4. Internal Work Rules of Best Tan Company, registration number 094, dated 22 December 2004.
5. Certificate of registration in the commercial list of Best Tan Company, dated 4 June 2004.
6. Labour Contract (for two months) of a labourer named Sao Dy, dated 22 September 2005.
7. Labour Contract (for three months) of a labourer named Sao Dy, dated 22 September 2005.
8. Labour Contract (for three months) of a labourer named Sao Dy, dated 22 June 2006.
9. Labour Contract (for four months) of a labourer named Sao Dy, dated 22 May 2005.
10. Labour Contract (for two months) of a labourer named Phorn Navy, dated 09 February 2006.
11. Labour Contract (for three months) of a labourer named Thorn Sithoun, dated 23 November 2005.
12. Labour Contract (for three months) of a labourer named Tuy Sokunthea, dated 18 February 2006.
13. Labour Contract (for four months) of a labourer named Sim Hou, dated 21 March 2006.
14. Thumb prints of workers requesting the Company to terminate contract of 312 people in 2006.
15. List of some workers who received severance pay upon termination of their contract.
16. Signatures of workers with respect to overtime
17. Notification from the Cambodian Labourers Union Federation to inform the [employer] of the establishment of the federation dated 14 March 2006.
18. Letter in reply from Best Tan Company about a request to change the leader of the federation dated 28 March 2006.
19. Copies of citizen I.D. cards and family registration books of Tuy Sokunthea, Chea Sothany, Morn Sivorn, and Lorch Silin.

Provided by the worker party:

1. Letter No. 1503 dated 14 March 2006 from the Cambodian Labourers Union Federation to the Director of Best Tan Garment Factory informing the employer about the election to establish a local Cambodian Labourers Union Federation at Best Tan factory.

Provided by the Ministry of Labour and Vocational Training:

1. Report on collective dispute resolution at Best Tan Company, No. 654, by Mr. Koy Tepdaravuth, Chief of Labour Dispute Department, dated 11 May 2006

2. Minute of collective dispute conciliation, dated 9 May 2006.

Provided by the Secretariat of the Arbitration Council:

1. Letter of invitation to the worker party to attend the hearing, No. 190, dated 19 May 2006.
2. Letter of invitation to the employer party to attend the hearing, No. 191, dated 19 May 2006.

**FACTS**

Best Tan Garment Company is located at 233, Norodom Blvd, Sangkat Tonle Bassac, Khann Chamkarmorn, Phnom Penh. The company employs 400 workers.

- Having examined the report of the collective labour dispute.
- Having listened to statements from the worker and the employer parties.
- Having reviewed additional documents.

**The Arbitration Council finds that:**

**Issue 1:**

- The workers demand the company convert the fixed duration contracts into undetermined duration contracts.
- In ending the [fixed duration] contracts, the workers do not demand to retain their work seniority because they have already received five percent compensation for termination and compensation for annual leave.
- The workers have signed contracts for short periods of two, three and four months.
- The workers claim that the contracts they made earlier did not mention the expiry date of the contracts. Therefore, the contracts were undetermined duration contracts. When they signed the contract, the space for day, month and year of the expiry were left blank and the company filled in those spaces at a later time. However, the worker party did not provide evidence to support this claim. The company provided contracts which mentioned the day, month and year of the expiration of the contract to the Arbitration Council. The workers however, claim that they do not have the contracts with the blank spaces of the expiry date because the Company arranged the contract then called each worker to imprint their thumbprint and sign the contract without providing a copy to the worker.
- The employer stated during the hearing that it agreed to convert the fixed duration contracts to undetermined duration contracts but with respect to those workers whose contracts had ended and they had received severance pay and compensation for annual

leave, these workers have to pay back this money to the Company. With respect to annual leave, the Company [agreed to] arrange it.

- The workers stated that they cannot collect the money in order to pay back the Company because they had spent all the money and were unable to return it because they have only a small wage. In conclusion, the workers agreed to accept the five percent termination compensation and monies for annual leave and withdraw their demand that the employer change from fixed duration contracts to undetermined duration contracts when the Company makes a new contract.

**Issue 3:**

- The workers demand that the company pay back their medical check fee of 10,100 riel to 400 workers.
- The employer party refuses to pay for the cost of the workers' medical checks. The employer does acknowledge that the workers went to have a medical check and that they paid 10,100 riel themselves.
- There are two types of medical checks. Some employees are required to have a medical check before they are offered a job while some employees start working for a while and are then sent to have a medical check. Type 1: The Company requires that workers have a photo for the job application form, birth certificate, citizen I.D. card, family registration book, letter to confirm their address, and a letter certifying the medical check up. Type 2: Some workers were allowed to work for a period of time before the Company told them to go for a medical check up because the Company understood that some workers who had just started work did not have enough money for a medical check. However, with respect to both types of medical check, the Company had never paid so the workers had to use their own money.

**Issue 7:**

- The workers demand that the company not transfer workers from one section to another section. This demand relates to actions from now on and therefore does not relate to any specific case which has happened to date.
- The company stated that they have the right to transfer the workers from one section to another section. At the hearing both parties agreed that the transfer of workers is the employer's right but that any transfers shall be done:
  1. without discrimination;
  2. for a temporary period of time; and
  3. because it is required by a production line.
- The parties do not agree that the transfer should not affect the workers' interest.

- The Company stated that it temporarily transfers workers from one section to another in order to assist in the necessary work of the production line. In transferring, sometimes there is a bonus at the old place of work, so workers lose a benefit. Sometimes the opposite is true, that there is no bonus at the old place of work but there is at the new place, so workers obtain a benefit. Therefore, sometimes workers receive more benefits and sometimes less.
- The Company stated that it transfers workers from section to section for temporary periods when in the old section there is no work for the workers to do. It is necessary then that the workers are transferred to sections where there is work, otherwise the workers would be suspended because of a lack of work. By doing this the company can ensure both continuity of the production line and continuity of work for workers. The workers say that they do not want the Company to transfer them. Rather, if the Company has no product for them to work on they wish that 100 percent wages be paid to workers.

**Issue 9:**

- The workers demand that the company don't cut wages from them when they lose their I.D. card. This demand relates for any future losses.
- The Company mentioned that, for reasons of security, safety, and labour order, it is the right of the Company to distribute an I.D. card to each worker and that the Company checks the workers' times in and out on every shift.
- The Company informed the workers that when someone loses their card, the worker has to pay to have the card replaced. The net price of each card is US\$5.00. To date, the Company has required workers to pay US\$5.00 if they lose their card.
- At the hearing, the workers requested that they pay the Company US\$3.00 if they lose their card because workers receive only a small wage. US\$5.00 is a very high price for workers. The Company agreed to a contribution of US\$4.00 because the net cost of the card is US\$5.00.
- Both the employer and worker parties agree that to date not many cards have been lost. This happens only once in a while. The company said that as it happens once in a while, the US\$4.00 fee is set in order to make the workers careful and responsible. The workers said, as it only happens once in a while, the Company should compromise and set the price of the card to US\$3.00.
- Finally, the Company agreed that for those workers who lose their card during working hours, the company will compromise and allow those workers to pay US\$3.00 for the card. But for those workers who lose their card outside of working hours and outside the

company, the price of the replacement card will be US\$4.00. The worker party insisted that the Company lower the price to US\$3.00 but the Company would not agree.

## **REASONS FOR DECISION**

### **Issue 1: Workers demand that new contracts be undetermined duration contract.**

Article 65(1) of the Labour Law provides: “A labour contract establishes working relations between the worker and the employer...”

The Arbitration Council has previously determined that Article 65 means that the employment contract is made only between the employer and the employee to the contract. Only parties to the labour contract can terminate the contract. But the hiring or dismissal of any worker in the company is the exclusive right of the employer party to the contract (see 04/03 – Lida; 02/05 – Bou Min).

In this case, the Arbitration Council finds that Article 65 means that the Arbitration Council has no right to force any party to sign a contract, either a fixed duration contract or an undetermined duration contract. Agreeing to the terms of the contract is the exclusive right of the parties to the contract. In addition, Article 67(1) of the Labour Law states: “A labour contract signed with one consent for a specific duration must contain a precise finishing date.” In this case, the workers asserted that the employer did not write the expiration date of the contract but they did not show any evidence to support their assertion. Indeed, the sample contract provided at the hearing has a clear date written. Therefore, the Arbitration Council declines to consider the demand of the workers seeking to have the employer use only undetermined duration contracts.

### **Issue 3:**

Based on the award in 23/06 - Max Pearl, where the Arbitration Council stated, “*Article 247(c) of the Labour Law of 1997 provides that the employer must pay for the medical expense of his or her workers, and the Article also stipulates that the [“]Ministry in charge of Labour shall issue a Prakas to determine:*

- a) *the condition under which pre-employment, re-employment, periodical, and special physical exams are given....*
- c) *the conditions under which employers are required to provide at their expense, inter alia, the medical exams of workers as stipulated in point a) of this article.[“]*

*Although a new Prakas has not been devised by the Ministry in charge of Labour, the Arbitration Council finds that Article 247 of the Labour Law of 1997 provides sufficient basis to conclude that the employer is under an obligation to cover the expense of the medical check for*

*the workers, including the medical expenses upon recruiting new staff. The meaning of Article 247(c) makes clear that when the new Prakas is devised, it will require the employer to cover the expense of medical check for the workers (see 60/04-United Art).*

*In its previous awards, the Arbitration Council referred to the Joint Prakas 09/94 which was promulgated under the Labour Law of 1992 which was later replaced by the Labour Law of 1997 (see 02/03-Chou Hsing; 21/03-Le Royal; 19/04-Kbal Koh and 53/04-Kong Hong). Clause 7 of the Prakas states that an enterprise or a company must cover the expense of medical checks for the workers. However, the Arbitration Council has expressed different opinions regarding Prakas 09/94 with respect to whether the Prakas is still in effect (see 60/04-United Art and dissenting opinion attached thereto). Nevertheless, in this case the Arbitration Council determines that Article 247 of the Labour Law of 1997 provides sufficient legal basis to require the employer to pay the expenses related to the medical examinations of the workers undertaken prior to recruiting them (see also 64/04-Mercury Garment; 98/04-Great Union; 106/04-Suit Way; 05/05-G.H.G; 05/06-W&D).*

*On the basis of the foregoing interpretation, the employer is obligated to pay the expense of the workers' medical exams."*

Therefore, the Arbitration Council decides that the employer must reimburse the medical check fee amount of 10,100 riel to each worker who went to have the medical check and paid this fee themselves and must also pay the fee for medical checks for workers who have not yet had their medical check.

**Issue 7:** The workers demand that the company stop transferring them from one place to another.

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, within the meaning 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 auspice 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 awards, the Arbitration Council has determined that Article 2 means that the employer party has the right to supervise and manage the company (see 17/03 & 18/13-Ho Hing; 28-04-Rafle Grand D'Angkor; 20-06-New Star).

In the arbitral award of 17/03 & 18/03-Ho Hing, the Arbitration Council considered that the rights of the employer to supervise and manage the company include the transfer of workers

from place to place provided the employer follows some conditions: 1. there is no reduction in the workers' wage, 2. the transfer of the worker is not to a place far from the original place of work, 3. the transfer is not a change from day shift to night shift or vice versa, 4. there is not a significant change the worker's professional skill.

In this case, the Company sometimes transfers workers from one section to another section for the sake of maintaining the flow of the production assembly line. The transfers are temporary and the workers affected receive the same wage and maintain the same position. Therefore, the Arbitration Council finds that there is no evidence or reason to show that the transfers were illegitimate.

Moreover, in previous cases, the Arbitration Council has found that it cannot make decisions relating to rights disputes which may happen in the future because the Arbitration Council cannot know in advance what may happen, including which parties may be involved in the dispute or which provisions of the contract, law or the collective bargaining agreement will be involved in the dispute (see 42/05-Yong Wa).

In this case, the worker party makes demands in relation to a rights dispute which may or may not happen in the future. Based on the above mentioned reason, the Arbitration Council declines to consider this disputed issue.

**Issue 9: The workers demand that the company don't deduct wages from workers when they lose their [I.D.] cards.**

As stated in Article 2 of the Labour Law mentioned above, in previous cases the Arbitration Council found that Article 2 means that the employer party has the right to supervise and manage the operations of the Company (see 17/03 & 18/13-Ho Hing; 28-04-Rafle Grand D'Angkor; 20-06-New Star).

In this case, the Arbitration Council found that the right of the employer to manage the company includes the right to require workers to wear an I.D. card in the factory. Wearing an I.D. card is reasonable because it helps maintain order and security in the factory. Therefore the workers have to wear and maintain the card and not lose it and the employer has the right to find a reasonable way to ensure that the workers pay attention to protecting the card from being lost because of carelessness by the workers.

Based on the above mentioned facts, if a worker loses the card the company demands that they pay for the lost card. In the hearing the employer claimed that the net price of the card is US\$5.00 but then the employer agreed that the worker could pay only US\$4.00 when they lose the card. The worker party requested that the price should be US\$3.00.

According to Article 27 of the Labour Law, "Any disciplinary sanction must be proportional to the seriousness of the misconduct ...". In this case, the Arbitration Council finds

that the employer has the right to require the worker to wear an I.D. card, that the worker is then responsible for the loss of the card and that if lost the worker is required to pay US\$4.00 for the lost card. The requirement that the worker pay US\$4.00 for the lost card does not violate Article 27.

Further, the employer party and the worker party accepted and agreed that so far cases of lost I.D. cards are not many, that is, that this has only happened once in a while. Therefore, the Company agreed that for those workers who lose their card during working hours, the Company will compromise the replacement cost to US\$3.00 and for those who lose the card outside working hours and outside the company, those workers will be required to pay US\$4.00. Therefore, the Arbitration Council considers that, in order to be appropriately proportionate to the seriousness of the misconduct of workers who lose their card, the workers must pay US\$3.50 for the lost card.

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

**DECISION**

**Issue 1:** Decline to consider the workers’ demand that the employer use undetermined duration contracts.

**Issue 3:** The employer must pay back the medical check fee in the amount of 10,000 riel to workers who paid for their medical check themselves.

**Issue 7:** Decline to consider the workers’ demand that the employer should not transfer workers.

**Issue 9:** The workers must pay back US\$3.50 to the employer if they lose the I.D. card provided by the company.

**Type of Award: Non binding award**

This Award will become binding after 8 days of the date of its notification unless one of the parties lodges a written opposition 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: .....