



**KINGDOM OF CAMBODIA**

**NATION RELIGION KING**

**ក្រុមប្រឹក្សាសវនកម្មជាតិ**

**THE ARBITRATION COUNCIL**

**Case number and name: 40/08-Supreme**

**Date of Award: 21 April 2008**

### **ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

#### **ARBITRATION PANEL**

Arbitrator chosen by the employer party: **Ing Sothy**

Arbitrator chosen by the worker party: **Liv Sovanna**

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

#### **DISPUTING PARTIES**

##### **Employer party:**

Name: **Supreme Garment Pte. Ltd.**

Address: Deum Mean Village, Deum Mean Commune, Ta Khmao District, Kandal Province

Telephone: 012 241 631

Fax: 023 425 270

Representative:

- |                     |                          |
|---------------------|--------------------------|
| 1. Mr. Kong Kim Chi | Chief of Human Resources |
| 2. Mr. Sou Narith   | Administration Officer   |

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

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

Address: Deum Mean Village, Deum Mean Commune, Ta Khmao District, Kandal Province

Telephone: 092 902 569

Fax: N/A

Representative:

- |                      |   |
|----------------------|---|
| 1. Mr. Huy Sopharith | Coordination Officer of KYFTU             |
| 2. Mr. Ses Sophy     | Coordination Officer of KYFTU             |
| 3. Mrs. Sok Dany     | President of KYTU at Supreme Company      |
| 4. Mrs. Hak Sa Im    | Vice-president of KYTU at Supreme Company |

**ISSUES IN DISPUTE**

(In the Non-Conciliation Report)

- 1- The workers demand that the Company make it easier for them to request for leave with a proper certification letter. The Company does not agree to the demand because this claim is not clear.
- 2- The workers demand that the Company make them new identification cards without specifying the expiration date on the cards but in case the company specifies the expiration date, it should provide them with full seniority. The employer does not agree to the demand because this is requirement of the Company and buyer. For the workers' seniority, the company assures that workers will not lose it.
- 3- The workers demand that the Company convert workers who have been working for over two months to be full-right workers and provide them with the same benefits as full-right workers. The employer does not agree to the demand because casual workers are provided with the same wages and bonus as full-right workers and the Company's need for them is for a short period of time during busy period.
- 4- The workers demand that the Company reimburse their medical check fee. The company does not agree to the demand, asserting that this case was already decided by an Arbitral Award.
- 5- The workers demand that the Company provide them with full wages when it does not have work for them to do and that the Company should not deduct their annual leave for this period. The company does not agree asserting that when it does not have work it provides them with 50 percent of their wage and it does not deduct their annual leave.

**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.149/08 KB/KN, dated 18 March 2008, was submitted to the Secretariat of the Arbitration Council on 19 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:** 27 March 2008 (From 8:00 a.m. to 12:00 p.m.)

### **Procedural issues:**

On 13 March 2008 the Department of Labour and Vocational Training of Kandal Province assigned its official to conciliate a nine-issue collective labour dispute with a result that four issues were conciliated. The five non-conciliation issues were referred to the Secretary of the Arbitration Council on 19 March 2008.

Having received the case, the Secretariat of the Arbitration Council summoned both the employer party and the employee party to the hearing and conciliation on the [five] non-conciliation issues on 27 March 2007 at 8:00am.

Both parties were present as invited by the Arbitration Council. The Arbitration Council tried to obtain more information relevant to this dispute and attempted to further the conciliation on the five non-conciliation issues with a result that two issues - Issue 1 and Issue 5 - were conciliated. Therefore, in this case the Arbitration Council considers only Issues 2, 3 and 4 based on the evidence and statements of 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 Supreme Garment Pte Ltd. Company No. 4179 PN.NTK, dated 04 December 2000;
2. Internal Work Rules of Supreme Garment Pte Ltd. Company No. 050 SKBY, dated 24 July 2002;
3. Summary statement of the collective labour dispute, dated 25 March 2008;
4. Minutes of collective labour dispute conciliation of Supreme Garment Pte Ltd. Company, dated 13 March 2008;
5. Power of attorney by the Director of Supreme Garment Pte Ltd. Company, dated 27 March 2008.

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

1. Certificate of union registration of local KYTU at Supreme Garment Company No. 1284 KB/VK, dated 30 November 2007;

2. Statute of local KYTU at Supreme Garment Company No. 1284 KB/VK, dated 30 November 2007.

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

1. Report No. 149/08 dated 18 March 2008 on the collective labour dispute settlement at Supreme Garment Pte Ltd. Company;
2. Minutes of the collective labour dispute conciliation at the Company, dated 13 March 2008.

Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 213 KB/AK/VK/LKA dated 21 March 2008 to invite the Company party to attend the hearing;
2. Invitation No. 214 KB/AK/VK/LKA dated 21 March 2008 to invite the worker party to attend the hearing;

**FACTS**

- Having reviewed documents submitted to the Arbitration Council
- Having reviewed the report on the collective labour dispute conciliation
- Having listened to the testimonies from both the employer party and the worker party
- Having reviewed other supplementary documents

**The Arbitration Council finds that:**

- Supreme Garment Company employs a total number of 840 workers.
- The local KYTU is the claimant in this case. The local KYTU has 120 members in Supreme Company. This union has a registration certificate but does not have the most representative status.

**Issue 2: The workers demand that the Company make them new ID cards without specifying the expiration date on the cards**

- In the past, the Company made identification [(ID)] card for workers to use in order to come in and out of the Company without specifying an expiration date. However, from 2005 the Company put the date on the card based on the Company's needs and requirements from buyers.
- The Company changes workers' ID cards once every six months.
- In the hearing the Company stated that the format of the old card is different from the new format only as to the expiration date and the Company assured that the workers would not lose their seniority because the Company maintains workers' name, date they commenced their employment with the Company, ID number and the section in

which they are working. The workers do not object to the statements made by the Company party.

- The worker party claims in the hearing that some workers are afraid of losing their seniority because [they think] if their ID is changed it means their employment is terminated; however, the worker party does not provide any evidence to prove that there are workers who lost their seniority.

**Issue 3: The workers demand that the Company convert workers who have been working for over two months to be full-rights workers and provide them with the same benefits as full-right workers**

- The Company makes short, intermittent contracts for seven or 10 or 15 days with workers according to the Company's management and the title of the employment contract is "short duration employment contract."
- In making short duration employment contracts, the Company provides the same wages and other benefits to the workers as to full-right workers, i.e., US\$ 50 main wage per month, attendance bonus, 5% of severance pay and annual leave calculated based on the number of days worked for the Company. The worker party does not object to the Company's claim.
- In the hearing, the Company party stated that at the end of each short duration employment contract the Company asks the workers to stop for a while and when the it has work to do, based on the needs of the buyers, the Company will call the workers to come to work and make the same short duration employment contract.
- In the hearing, the workers state that they do not know what type of short contract the Company makes with the workers. However, if the Company makes casual employment contracts with the workers and the workers worked for more than two months, the Company should convert them to full-right workers.

**Issue 4: The workers demand that the Company reimburse their medical check fee it has not paid to all workers**

- In the past when the Company recruits workers, it requires them to have medical certificates but the Company did not pay for the fee; however, from 2007 the Company reimburse the medical check fee to all workers.
- In case 81/05-Supreme Garment (issue 3), the Arbitration Council issued a decision which involved three unions who were **claimants including CUF, FUS and CLUF**.
- In this case 40/08-Supreme, the workers demand that the Company reimburse 10,100 riel for medical check fee to all workers the same as in case 81/05 above and **KYTU is the claimant** in this case.

- KYTU claims in the hearing that the union demands that the Company reimburses medical check fee for all workers from 1997, since KYTU was not formed yet.
- In the hearing, KYTU claims that it has 120 members based on a hand-written name list of union contribution fee deductions.

### **REASONS FOR DECISION**

The Arbitration Council considers that the local KYTU at Supreme Factory does not have the most representative status. Thus, the union can represent only the members of local KYTU at Supreme Factory.

### **Issue 2: The workers demand that the Company make them new ID cards without specifying the expiration date on the cards**

In relation to this demand, the Company changed to new ID cards by specifying the expiration date of the card in the card and the Company assures that workers would not lose their seniority because all the workers' names, dates of commencing employment, ID numbers and sections of work are all maintained. The workers, on the other hand, state that they are worried that they would lose their seniority when the Company changed to the new card which has the expiration date in it.

Therefore, the Arbitration Council will consider whether the Company has a right to put an expiration date in the card.

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

In previous cases, the Arbitration Council considers that Article 2 of the Labour Law means that the employer party has the right to supervise and direct the Company (see Arbitral Awards 17/03 and 18/03-Ho Hing, issue 5; 28/04-Raffle Grand D'Angkor Hotel, issue 2; 20/06-New Star, issue 5; 17/07-Charm Textile, issue 3; 116/07-Grace Sun, issue 2).

In previous Arbitral Awards, the Arbitration Council found that the right to supervise and direct of the Company includes:

1. Transferring of workers from one place to another which does not affect to wage or employment position or working hours of the workers. (See Arbitral Awards 17/03 and 18/03-Ho Hing, issue 5; 108/06-Trinunggal Komara, issue 1; and 33/07-Goldfame, issue 3).

2. Determining which workers should work on piece rate and which should be monthly-based workers as long as the right is in accordance with the law and reasonable (See Arbitral Award 39/07-San San, issue 2).
3. Supervision and directing human resources in the Company as long as the supervision is in accordance with the law. (See Arbitral Award 28/04-Raffle Grand D'Angkor, issue 2).
4. Setting workers' working schedule (See Arbitral Award 62/06-Quick Sew, issue 5).
5. Arranging and managing production process and managing resources in the factory including the management of workers, determining leave permission procedure for workers as long as the leave permission [procedure] is in accordance with the law and reasonable. (See Arbitral Award 54/07-Yung Wah 1, issue 9).

In this case, the Arbitration Council considers that the specifying of using expiration date in the card while the Company assures that the workers will not lose their seniority bonus as described in the finding of facts above is reasonable and accordance with its rights to supervise and direct the company provided in Article 2 of the Labour Law.

Furthermore, the Arbitration Council does not find that the specifying of the expiration date in the card can cause the workers to lose their seniority; in addition, in the hearing the worker party does not provide a reason or evidence to prove that by mentioning the expiration date in the ID card a workers would lose their seniority. Therefore, the Arbitration Council considers that the demand for the Company to change to new ID cards which do not mention the expiration date in the card does not have sufficient legal grounds.

Therefore, the Arbitration Council decides to reject the workers' demand for the Company to change to new a ID card which does not mention an expiration date in the card.

**Issue 3: The workers demand that the Company convert workers who have been working for over two months to be full-rights worker and provide them with the same benefits as full-right workers**

Based on the findings of fact as described above, the Company does not have casual employment contracts with the workers because it makes short duration contract with the workers according to the arrangement and management of the employer in which the title to the employment contract is short duration contract, not casual employment contract; the Company provide US\$ 50 main wage, attendance bonus, 5% severance pay and annual leave calculated based on the number of days worked for the Company. The Arbitration Council considers that the workers' demand for the Company to convert casual workers who have been working for more than two months to full-right workers is not valid because the

Company does not make casual contract with the workers but it has only short duration contract in which the title of the contract is short duration contract.

Paragraph 2 of Article 67 states, *“The labour contract signed with one consent for a specific duration cannot be for a period longer than two years...”* In addition, paragraph 7 of the same Article states that *“A contract of a fixed duration must be in writing...”*

The Arbitration Council considers that the short duration contract made between the Company and the workers has specific duration not exceeding two years and it is in writing. Thus, the Arbitration Council considers that the short duration contract is fixed duration contract, not casual employment contract.

Moreover, the Arbitration Council considers that in making short duration contract with the workers the Company provide US\$ 50 main wage, attendance bonus, 5% severance pay and annual leave calculated based on the number of days worked for the Company. The Arbitration Council notices that the workers receive wages and benefits according to the Labour Law which is the same as the longer duration contracts. Hence, the Arbitration Council considers that this is the demand for something which does not yet exist.

Therefore, the Arbitration Council decides to reject the workers’ demand for the Company to convert workers who have been working for over two months to be full-rights workers and provide them with the same benefits as full-rights workers.

#### **Issue 4: The workers demand that the Company reimburse their medical check fee it has not paid to all workers**

Local KYTU, the claimant in this case, demand that the Company reimburse 10,100 riel to all workers from 1997 since the union was not formed yet. However, they do not demand from 2007 on because since that time the Company has paid for the medical check fee for all workers. The Arbitration Council considers that the Arbitration Council already made a decision on the demand in this issue in case 81/05-Supreme.

Article 247(c) of the Labour Law 1997 states that *employer should pay medical check fee for their workers and Article 247 of the Labour Law also states that the ministry in charge of labour should issue a Prakas to determine: (a) the conditions under which pre-employment, re-employment, periodical, and special physical exams are given; (c) the conditions under which employers are required to install and provide at their expense: the medical exams of workers and laborers stipulated in point (a) of the present Article.*

Though there has not been a new Prakas by the Ministry in charge of Labour, the Arbitration Council considers that Article 247 of the Labour Law 1997 provide sufficient legal ground to conclude that the employer has an obligation to pay medical check fee for workers including pre-employment medical checks. The meaning of Article 247 (c) clearly implies that

when the new Prakas is made, it will require the employer to pay medical check fee for the workers.

In relation to the demand for the Company to reimburse medical check fee to workers, the Arbitration Council consistently determines that employer has an obligation to pay or reimburse medical check fees to workers who paid the fee by themselves.

In case 40/08-Supreme **KYTU**, the claimant, demands that the employer reimburse 10,100 riel medical check fee to all workers from 1997 since KYTU was not formed yet. The Arbitration Council found that in case 81/05-Supreme Garment (issue 3), the Arbitration Council already made a decision dated 19 January 2006 in which three unions were claimants including **CUF, FUS and CLUF** which covered all workers in the factory because KYTU was not formed yet by then.

Thus, in this case, the Arbitration Council declines to consider the demand of KYTU for the employer reimburse 10,100 riel medical check fee to all workers in the factory but the Arbitration Council will consider only for those who are members of KYTU regarding the union's demand for the employer to reimburse 10,100 riel medical check fee.

In the hearing, the workers state that after the Arbitration Council issued an Arbitral Award to order the employer to reimburse medical check fees for those workers who had medical checks and paid the fees by themselves in case 81/07-Supreme Garment as described above; some workers were reimbursed their 10,100 riel medical check fee but some were not and the Company has not reimbursed the fee to workers who are members of KYTU (the union claim that it has 120 members). However, the union does not provide relevant documents and evidence to support the demand. Thus, the Arbitration Council orders the KYTU to provide documents and evidence relevant to the demand such as the name list of workers who are members of the union and list of names of workers to whom the Company has not paid the medical check fee. The union agreed to provide these lists to the Arbitration Council by 31 March 2008. However, up to the deadline, the KYTU had not provided these name lists to the Arbitration Council to be a basis for consideration and decision. Moreover, though the deadline had passed, the SAC's officer contacted the union by phone and allowed more time for it to provide the list of names of workers who are making the demand to the Arbitration Council but the union still could not provide the workers' name list to the Arbitration Council. The Arbitration Council considers that KYTU would be able to make the name list of its members who make the demand for the Company to reimburse 10,100 riel medical check fee to the Arbitration Council if it truly intended the Council to consider and find a solution to the workers' demand.

In previous Arbitral Awards, the Arbitration Council has decided to reject the demand if the claimant party does not provide sufficient specific evidence to the Arbitration Council to

be a basis of the decision. (See Arbitral Awards 63/04-Shine Well, issue 4; 99/06-South Bay, issue 5; 74/07-Global Apparel, issue 2; and 11/08-Tai Yang, issue 2).

In this case, the Arbitration Council agrees with the interpretation of the Arbitration Council in the above cases because the worker union does not provide name list of workers who are union members and the name list of workers to whom the Company has not reimbursed their medical check fee to the Arbitration Council which leads the Arbitration Council to be unable to determine whether the 120 workers who are members of KYTU are those workers whom the Arbitration Council already made a decision in case 81/05-[Supreme Garment], dated 19 January 2006 or they are new workers whom the Company had recruited after the Arbitration Council issued that decision.

Therefore, the Arbitration Council decides to decline to consider the workers' demand for the Company to reimburse medical check fee to workers to whom it has not provided reimbursements yet.

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

#### **DECISION**

##### **Issue 2:**

- Reject the workers' demand for the Company to change to a new identification card which does not mention expiration date in the card

##### **Issue 3:**

- Reject the workers' demand for the Company to convert workers who have been working for over two months to be full-rights workers and provide them with the same benefits as full-rights workers.

##### **Issue 4:**

- Decline to consider the workers' demand for the Company to reimburse medical check fees to all workers have not been reimbursed.

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

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: **Ing Sothy**

Signature: .....

Arbitrator chosen by the worker party:

Name: **Liv Sovanna**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: .....