

KINGDOM OF CAMBODIA
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THE ARBITRATION COUNCIL

Case number and name: 41/05 - Violet Apparel

Date of Award: 27 July 2005

ARBITRAL AWARD

Issued under Article 313 of the Labour Law

ARBITRATION PANEL

Arbitrator chosen by the employer party: **Mr. Hem H. Naryth**

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

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

DISPUTING PARTIES

Employer party:

Name: Violet Apparel (Cambodia) Co., Ltd

Address: Trapeang Chhook village, Sangkat (commune) Toek Thla, Khan (district)
Russey Keo, Phnom Penh

Telephone: 855-23-995168; 855-12-379293; 855-12-577883 **Fax:** 855-23-
995268

Representatives:

1. Mr. Bat Bol, Company representative;
2. Ms. Low Suaw Lian, Administration Manager;
3. Mr. So Sok Ang, Assistant;
4. Mr. Sot Keo, Assistant;
5. Mr. Cheat Khemera, Conciliation Officer from the Garment Manufacturers Association in Cambodia (GMAC).

Worker party:

Name: Khmer Youth Federation Trade Union (KYFTU)

Address: #58E, [Street] 265, Sangkat (commune) Toek La'ak III, Khan (district) Toul
Kok, Phnom Penh.

Telephone: 855-11-975670; 855-11-754317; 855-11-622963 **Fax:** N/A

Representatives:

1. Mr. Hang Sorya, KYFTU official;
2. Mr. Mai Vathana, KYFTU official;
3. Mr. Neou Titha, KYFTU official;
4. Ms. Po Rany, KYFTU official;
5. Ms. Chann Mach, Vice President of Khmer Youth Union (KYU);
6. Ms. Khoem Sam Ann, KYU secretary;
7. Ms. Keo Samnieng, KYU committee member;
8. Ms. Pich Chantha, worker.

ISSUES IN DISPUTE

- (1) The worker party demands that the company consult the company-based union or worker representative(s) when dismissing workers. The company party does not agree to the workers' demand but agrees to circulate more so that workers will learn of problems arising.
- (2) The worker party demands that the company allow the pregnant workers to leave for lunch 15 minutes earlier. The company does not agree to the demand; the company currently has an exit in place for pregnant women.
- (3) The worker party requests that the company arrange for men to be available in the cutting section in order to carry heavy items. The company party does not agree to the demand but [says] that the company will monitor [this matter].
- (4) The worker party requests that the company open two gates at the lunch break. The company party claims that two gates are already opened, one of which is for motorbikes and bicycles and the other for walking out to lunch.
- (5) The worker party asks that the company deduct wages for union dues from workers who are union members. The company party agrees to make deductions for union dues but asks that the Khmer Youth Union correct the names [of its members] in advance.
- (6) The worker party asks that [workers] retain their five-dollar [attendance] bonus while sick or [have a system where] a one-day absence [shall result in] the deduction of 5,000 riel, two-day absence a deduction of 10,000 riel, three-day absence a deduction of 15,000 riel and four-day absence a deduction of all [the entitled attendance bonus]. The company party would

rather comply with Notification 017 issued by the Ministry [of Labour and Vocational Training] and does not agree to the workers' demand.

- (7) The worker party asks that the company reimburse medical check fees of 10,100 riel per person to workers [who have had a medical check performed] and that workers who have not yet gone for a medical check be sent and that this check is paid for at the company's expense. The company party does not agree to the demand of the workers; however, if it is necessary [for workers] to do another health check, the company will pay the fee.
- (8) The worker party demands that the company maintain the same piece rate for the same shirt style. The company party does not agree to this demand.
- (9) The worker party demands that the company reinstate two cutting section workers. The company party does not agree to the above demand because it [argues that it] has already been resolved.
- (10) The worker party demands that the company reimburse seniority bonus of US\$13.78 per person to the workers because the company has deducted the seniority bonus, to which workers were entitled. The company party argues that this problem has already been resolved with the group leaders and workers.
- (11) The worker party asks that the company dismiss Mr. So Sok Ang of the company's Administration Department as he has appropriated workers' wages, detained workers in the office and interfered with union affairs. The company party does not agree to the demand because [it argues,] Mr. So Sok Ang did not commit such misconduct.

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B of the 1997 Labour Law; the Prakas on the Arbitration Council No. 99 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. 513 dated 19 April 2005 (Third Term).

An attempt was made to conciliate the collective dispute that is the subject of this Award, as required by Chapter XII, Section 2A of the Labour Law. But the conciliation hearing was unsuccessful, and the non-conciliation report number 929 dated 6 July 2005 was submitted to the Secretariat of the Arbitration Council on 7 July 2005.

HEARING AND SUMMARY OF PROCEDURE BEFORE THE ARBITRATION COUNCIL

Place of hearing: The Arbitration Council, Phnom Penh Center Building "A", Sothearos Blvd, Sangkat Tonlebasak, Phnom Penh.

Date of hearings:

- First hearing on 13 July 2005 (2:00-5:00 p.m.)
- Second hearing on 19 July 2005 (8:00-11:30 a.m.)
- Third hearing on 25 July 2005 (8:00-11:30 a.m.)

Procedural issues:

Violet Apparel (Cambodia) Co., Ltd (Single Member Private Limited Company) is located in Trapeang Chhook village, Sangkat Toek Thla, Khan Russey Keo, Phnom Penh and employs 2,300 workers. On 14 June 2005, the Khan Russey Keo-based Labour Inspection Office received a complaint from workers, demanding that the company apply working conditions in accordance with the Labour Law. After receiving the complaint, the Khan Russey Keo-based Labour Inspection Office arrived at the site on 16 July 2005, to resolve and conciliate the issues; the last conciliation took place on 29 June 2005, with five of 16 issues being successfully conciliated. 11 issues were forwarded to the Arbitration Council on 7 July 2005. After receiving this case, all the parties were called by the Secretariat of the Arbitration Council to attend the first hearing on 13 July 2005 at 2:00 p.m., the second hearing on 19 July 2005 at 8:00 a.m. and the third hearing on 25 July 2005 at 8:00 a.m.

On the above days of hearing, after the Arbitration Council had tried to obtain further information regarding the disputes and attempted further conciliation, both parties reached agreement on issues 1, 5 and 9 and the worker party requested the withdrawal of issue 3. Then on 27 July 2005, the Arbitration Council went to the factory to examine the actual situation, both parties reached agreement on issue 4: the company agreed to open the gates at the lunch break so that the workers can leave in five rows and the worker party agreed to withdraw their demand specified in issue 2. Therefore, the Arbitration Council will consider the remaining issues, numbers 6, 7, 8, 10 and 11, in accordance with the procedures set out in the Labour Law.

EVIDENCE

Witnesses and experts: N/A

DOCUMENTS, EXHIBITS AND OTHER EVIDENCE CONSIDERED BY THE ARBITRATION COUNCIL

A. Provided by the employer party:

1. Letter of authority for Mr. Bat Bol, company's staff member, to represent the company, dated 18 July 2005;

2. Company's certificate of commercial registration, dated 6 August 2004;
3. Company's bylaw, dated 22 June 2004;
4. Company's Internal Work Rules, dated 8 November 2004;
5. Certificate of registration of Khmer Youth Union of Violet Apparel Company, dated 8 February 2005;
6. Biography of worker Lim Siv Hour;
7. Letter of resignation of worker Put Bunda's;
8. Contract that no complaint shall be lodged about seniority bonuses and anything under the old contracts, 10 workers' recognizing the termination of their old contracts and accepting three-dollar indemnity for dismissal;
9. Brief memorandum on 11 non-conciliated issues;
10. Letter of invitation to the Director of Violet Apparel (Cambodia) Co., Ltd to attend the hearing (No. 241), dated 8 July 2005;
11. Report on the Medical Labour Department's examination of hygiene, work security and medical service in the enterprise, dated 2 June 2005;
12. Biographies, three-month contracts and contracts for nine workers to receive three dollars;
13. Letter on the change of name from June Textiles Co., Ltd to Violet [Apparel] and on the request for the use of the registered [trade name], permission form in respect of enterprises No. 3051 dated 29 December 2004 from the Director of the Labour Inspection Department to the Director of the Violet Apparel company.

B. Provided by the worker party:

1. Certificate of registration of the Khmer Youth Union, dated 8 February 2005;
2. Worker Chann March's payroll for May;
3. Worker Sieng Savan's employment contract;
4. Disciplinary and work rules of the company;
5. Letter certifying the specialty of worker Tom Srey Roath;
6. Letter (No. 230-KYFTU dated 19 April 2005) from KYFTU to the Minister of Labour and Vocational Training regarding the union's request for intervention in order to get Violet Apparel Company to deduct 1,000 riel from the workers' wages in order to pay union dues;
7. Letter (No. 341-KYFTU of 13 June 2005) from KYFTU to the Director of the Labour Inspection Department regarding the union's request to help resolve the dispute at Violet Apparel;
8. Letter from the workers at the Violet Apparel Company to the KYFTU President requesting intervention in order to resolve certain working conditions issues;

9. Letter (No. 396-KYFTU of 10 July 2005) from KYFTU to the Director of the company requesting that seven workers be allowed to attend the hearings at the Arbitration Council;
10. List of names of 295 workers at the Violet Apparel Company demanding that the company reimburse seniority and annual bonuses, and medical check fees of 10,100 riel.

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

1. Letter of request to resolve a collective dispute taking place at the enterprise under the name "Violet Apparel" (No. 907 of 14 July 2005) from H.E Nhep Bunchin, Minister of Labour and Vocational Training;
2. Report on the collective labour dispute resolution at Violet (No. 929 of 6 July 2005);
3. Collective [labour] dispute conciliation minute, dated 29 June 2005.

D. Provided by the Secretariat of the Arbitration Council:

1. The Secretariat of Arbitration Council's letter of invitation to the worker party to attend the hearing (No. 242 of 8 July 2005);
2. The Secretariat of Arbitration Council's letter of invitation to the employer party to attend the hearing (No. 241 of 8 July 2005);

FACTS

- Having examined the minute of the collective labour dispute conciliation;
- Having listened to the employer and the employee parties as described above and reviewing the minute of the hearing;
- Having reviewed other relevant documents.

The Arbitration Council finds that

Issue #6:

- The worker party demanded that the Company retain the attendance bonus of US\$5 for sick workers [subject to the following:] when they are absent for one day this absence should result in a deduction of 5,000 riel; [an absence of] two days [should result in a deduction of] 10,000 riel; [an absence of] three days [should result in a deduction of] 15,000 riel; and [an absence of] four days [should] result in the deduction of all [the attendance bonus]. The worker party did not however, specify the

reason for the permitted sick [leave] or the absence from work. The demand for sick leave which shall result, for one day, in the deduction of 5,000 riel; for two days, in 10,000 riel; for three days, in 15,000 riel; and, for four days, in the deduction of all [of the entitled attendance bonus] is not proper.

- The company argued that although workers took sick leave and had a medical certificate, the company could not retain the attendance bonus, but [could retain] the wages.
- The employer also argued that coming to work regularly, 26 days per month means that workers have to respect work-time as stipulated in the company's Internal Work Rules. The working hours of the workers are eight hours per day or 48 hours per week [and are divided into] different shifts.

Issue #7:

- The Company requires that workers must receive a medical check-up and have a medical certificate issued by the Labour Medical Department in order to apply for a job at the company. This is one of the requirements of the company.
- The company has never paid the medical check fee for workers recruited to work for the company, thinking that this was not the burden of the company.
- At the hearing, the company argued that if the Labour Law required that the company pay medical check fees to all the workers the company employed, it would indeed comply with the Law.
- The worker party did not provide the number of workers who claimed for reimbursement of the medical check fee.

Issue #8:

- As a rule of thumb in the factory regarding lot prices, the employer sets the price and the workers accept the work. [To date] this practice has not caused any problems.
- The company offered wages to workers depending on the amount of pieces they completed. The company has adopted this principle over a long period of time, and there has been no problem over the lot prices.
- The worker party claimed that the company keeps the same price for the same shirt in order that the workers can get more than their minimum wages of US\$45 and that workers are motivated to perform their duties and can be sure that they can get to the [minimum wage] when they are paid at the piece rate.

- The worker party said that in each day, they do not know of the prices of the lots they are sewing and the lot prices increase and drop every day. The workers claimed that sometimes, while they are sewing one piece, the company will make them sew another piece; when they finish up the new piece, the company may make them resume sewing the old piece at a lower price. Sometimes, while they are sewing a lot already, the company will provide more of the same shirt style but at a lower price.
- The employer party argued that the change in lot prices is because they are the same shirts, but, of different colours, sizes or labels and “PO”; that is the reason why the lot prices are different. Especially, as the prices of lot numbers are complicated, this results in difficulty in determining lot prices. Furthermore, when workers cannot get to the target and make a claim [about this], the Production Department will meet to modify the lot prices at once, without delay.
- The employer party also argued that the change in lot prices is for the reason that if we do not have work, we have to lower the prices in order to compete on the market. In addition, the company cannot set a fixed price for the same shirt style because the same shirt style does not mean the same price; there are always changes depending on the market and purchase orders; therefore, the company sets the lot prices based on context.
- The employer party claimed that for the sake of all the workers’ interests, the company could not set a fixed price and [that] for those workers who receive less than the minimum wage, the company would provide an additional amount according to law.
- The employer claimed that those workers who complete less than 50 percent of the basic wage of US\$45 would be called by the company for questioning and given a warning which they are required to sign.

Issue #10

- At the conclusion of 2004, Violet Apparel terminated the workers' undetermined duration contracts, providing them with dismissal indemnities of US\$3 each.
- Each of the workers promised to recognise the termination of their old contracts and no longer demand seniority bonuses and other benefits pursuant to the old contracts.
- Following the termination of the old contracts, the company still had the employees working with the company.
- The union party demanded that the company pay each worker US\$13.78 for seniority bonuses, arguing that the workers accepted the US\$3 because they were misled by

the employer. The employer argued that each worker accepted the US\$3 payment voluntarily and without coercion and they made a proper and valid contract.

- The Arbitration Council found that the termination of the undetermined duration contracts by Violet Apparel Company was intended to end the workers' seniority because following the termination, the employer still had the workers working with the company.

Issue #11

- Mr. So Sok Ang worked at Violet Apparel as an Administrative Assistant. The union party asked the company to dismiss Mr. So Sok Ang, arguing that Mr. So Sok Ang cashed in on the workers' wages, confined workers and interfered with union affairs. The union did not have sufficient evidence to support this argument.
- The employer party counter-argued that the company could not dismiss Mr. So Sok Ang without misconduct.

REASONS FOR DECISION

Issue #6:

The workers' claim was rejected by the employer who argued that the company followed Notification 017/00. Except for Article 103 of the 1997 Labour Law, which stipulates the characteristics of the wage workers are entitled to, no other law discusses this issue. Therefore, as Arbitrators, [we] will interpret Notification 017/00 by the Ministry of Labour, the company's Internal Work Rules, and certain awards in effect in relation to the current factual context as follows:

Point 3 of Notification 017/00 by the Ministry of Labour states, "*Workers who work regularly on working days of the month shall be entitled to bonus of at least US\$5 per month*".

Article 5(3) of the Internal Work Rules of Violet Apparel regarding attendance bonus stipulates, "*All workers shall be entitled to allowances of US\$5 per month for coming to work regularly such as: no absence, no special or sick leave taking, never being even three minutes late, etc.*" The Internal Work Rules were legally registered on 8 November 2004.

Based on this context, the Ministry's Notification above does not provide any definition for "[...] *work regularly on working days of the month shall be entitled to bonus of at least five US*

dollars per month". As a rule of thumb, such a bonus is to be given to those working regularly and attentively in addition to their monthly actual wage.

The Internal Work Rules of Violet Apparel, which were legally registered on 8 November 2004, state that: 1) the principle for the provision of the attendance bonus of US\$5 is that only those who come to work regularly, and never come [to work] even three minutes late, etc [are entitled to payment]. Based on this internal rule, the Arbitration Council finds that workers cannot receive the US\$5 per month of attendance bonus unless they come to work regularly and never come even three minutes late, which means that they must work 24 or 25 or 26 or 27 days per month excluding national and international holidays, as set out by the Ministry of Labour and Vocational Training, and weekends (Article 5(3) of Violet Apparel's Internal Work Rules).

The Internal Work Rules [of Violet] were copied from the Internal Work Rules of June Textiles Co., Ltd, dated 7 September 2004. The Rules were recognized by the Director of the Labour Inspection Department in a letter numbered 082 and dated 11 November 2004. [The Rules were accompanied by] the letter of agreement on the change in name from June Textiles Co., Ltd to Violet Apparel and the request for use of the form in the enterprise which was registered and for which the visa was provided by the Department of Labour Inspection in its letter numbered 3051 dated 29 December 2004. The shop stewards even approved [the Rules].

In the award 15/05-Wing Tai dated 6 April 2005, [the Arbitration Council] decided to accept the workers' claim for the company to provide regular attendance bonus if they take sick leave with a proper medical certificate. Eventually, the Arbitration Council awarded, based on equity, that the "*attendance bonus must be retained in proportion to the number of days workers are on permitted sick leave within each month.*" In the award, the Arbitration Council based its decision on: 1) the fact that the Ministry's Notification is unclear; 2) The Internal Work Rules of the company did not specify the attendance bonus; 3) the Arbitration Council found that the attendance bonus means a bonus to motivate and reward those who work regularly throughout the whole month without unauthorized absences; 4) the Labour Law and Notification 017/00 of the Ministry of Labour [and Vocational Training] is not meant to impose disciplinary actions on workers on permitted sick leave; and 5) in addition, the workers' going on leave was not wrong because they had a proper medical certificate. In short, in the award 15/05-Wing Tai, the Arbitration Council decided, on the basis of equity, that the company provides attendance bonus for workers who take properly permitted sick leave in proportion to the number of days of the month for which they have worked. The equity basis was made

possible by three conditions: 1) the Labour Law does not make provision for an attendance bonus; 2) Notification 017/00 was unclear in respect of sick leave; and 3) the Internal Work Rules of the company did not provide for an attendance bonus.

In comparison, the Internal Work Rules of the Violet Apparel Company in this case (in Article 5(3)) provide for an attendance bonus (as described above); therefore, equity principle cannot be considered in this case. In addition, the law does not say that if a worker is absent for one day, the attendance bonus shall be deducted by 5,000 riel, for a two day absence by 10,000 riel, for a three day absence by 15,000 riel and for a four day absence, all [the bonus] shall be deducted. The Arbitration Council finds that in order to make an equity-based decision as was made in the previous case, the issue must not be provided for in the law, regulations and/or rules including the Internal Work Rules of the company. Therefore, the Arbitration Council decides to reject the workers' demand in respect of the attendance bonus.

Issue #7:

Article 247 of the 1997 Labour Law provides sufficient basis to conclude that the employer is obliged to pay medical check fees for workers. According to Article 247(c) and Joint Prakas 09/94 on medical check for Cambodians and foreigners who work in Cambodia, the employer is required to pay the workers' medical check fees. Article 7 of Joint Prakas 09/94 also states that the owner of the factory or enterprise must pay their workers' medical check fees, as is set out in Article 5 above in each case. Therefore, in considering the legal basis, the employer is obliged under law to pay their workers' medical check fees. In this case, all the workers who the company has employed have paid their own medical check fee and have never been reimbursed this money. The company's requirement for the workers to pay medical check fees in advance does not exempt the employer from their legal obligation under Article 7 of the above Joint Prakas 09/94 and Article 247(c) of the 1997 Labour Law.

In addition, Article 25 of Sub Decree 38/88 on Contract and Non-Contractual Responsibilities, states that the term of the contract [may] last for five years. Therefore, the Arbitration Council notes that Joint Prakas 09/94 on medical check fees for Cambodians and foreigners who work in Cambodia is still in effect as the Prakas 09/94 is not in violation of any of the provisions of the 1997 Labour Law. Therefore, the Prakas shall not be abrogated by Article 395 of the Labour Law.

Therefore, the Arbitration Council finds that the employer must reimburse the medical check fees of 10,100 riel to each of the workers who have undertaken a medical check at their own expense (whose names are listed in Annex 1 to this award).

Issue #8:

Pursuant to Article 2 of the Labour Law, each enterprise may have a group of workers under the supervision and direction of the employer. But does the employer have the right to modify or keep lot prices at the same rate? Does modifying or keeping lot prices at the same rate lead to workers receiving less benefits than [they are entitled to] under the law? In this case, the company cannot set a fixed price for any [purchase order], as demanded by the workers because lot prices change depending on the market and purchase orders; therefore, the company sets lot prices based on the context. Under the above-mentioned Article 2 with regard to the right to supervision and the management of a business, the Arbitration Council finds that the employer has the legal right to modify and maintain lot prices at the same rate.

Article 108 of the Labour Law states, *"For task-work or piece work ... the wage must be calculated in a manner that permits the workers of mediocre ability working normally to earn, for the same amount of time worked, a wage at least equal to the guaranteed minimum wage as determined for a worker."*

Article 137 of the Labour Law states, *"... the number of hours worked by workers of either sex cannot exceed eight hours per day, or 48 hours per week."*

Notification 017/00 of the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation provides for minimum wage of US\$45 for workers in the garment industry.

Therefore, the Arbitration Council finds that Article 108 [of the Labour Law], which provides a basis for the calculation of lot prices, provides that lot prices must allow workers with average skill to work the normal working hours of eight hours per day (48 hours per week) and receive at least US\$45 per month (as the base wage for textile workers). Therefore, the employer [can] set and modify the lot rate, but must do everything possible to ensure that lot prices are compatible with Article 108 above.

In addition, at the hearing, the employer said that those who earn less than 50 percent of the base wage of US\$45 [by completion of piece work] would be called by the company for questioning and warning. [The company's action of] summoning the workers for questioning

and the issuance of a warning with both signature and fingerprint makes the workers fear and worry over possible dismissal. Therefore, the Arbitration Council finds that the employer cannot impose disciplinary measures on workers who cannot make the minimum wage unless there is clear evidence that they are lazy and slacking off during working hours. [This is a clear violation of] the Internal Work Rules of the company.

Thus, the Arbitration Council decides that the company can, by all means, set or keep the lot prices in order that workers work their normal working hours (eight hours excluding overtime on public holiday or on weekends) and receive at least the minimum wage guaranteed by law.

Issue #10:

The Arbitration Council notes that the termination of each worker's old contract with a severance payment of US\$3 is actually less than the benefits set out under the law (Notification 017/00 issued by the Ministry in charge of Labour, clause 5.1 states, "*Employees who have worked from one year onwards are entitled to seniority bonuses of two US dollars per month as money in compensation for the annual leave they have not used.*") The termination of the old employment contracts was intended to get rid of the workers' seniority, resulting in workers' losing their seniority bonus which they are entitled to under Notification 017/00. The longer [a worker works, the greater] the seniority the worker has and the more seniority bonus he or she will be entitled to (the first year equals US\$2 per month, the second year increases to US\$3 per month, the third year to US\$4 per month and the fourth year to US\$5 per month). Therefore, the contracts in 2004 entitle the workers to less benefit than that conferred by law.

In addition, the worker [party]'s demand is for seniority bonus which they were supposed to be paid upon termination (in late 2004). According to Article 103 of the Labour Law, the seniority bonus is included as part of the wage. According to Article 120 of the Labour Law, the right to make a complaint in respect of the payment of wages expires [three years after the payment]. Therefore, the Arbitration Council finds that the workers' demand for payment of the seniority bonus remains within the legal limitation, that is to say, the limitation within which the Arbitration Council can consider [the workers' demand] is yet to pass.

Article 13 of the Labour Law "*considers null and void any provision of contract that provides workers with less benefits than the law and regulations in relation to labour industry.*"

Based on Article 13, the Arbitration Council finds that the workers' contracts concerning the termination of their old contracts with the severance pay of US\$3 must be null and void and the employer must compensate the seniority bonus for each worker in addition to the US\$3 the workers have already received.

Issue #11:

The Arbitration Council notes that Mr. So Sok Ang is an employee on contract with the employer. Article 65 of the Labour Law stipulates, "*A labour contract establishes working relations between the worker and the employer.*" Because this contract falls under the general provision, Sub-Decree 38 on contracts also covers labour contracts. Article 22 of Sub-Decree 38 states,

"The contract is considered the law of the parties. The contract cannot be changed unless there is consent between the parties to the contract. The contract can bind only the parties to the contract."

Therefore, only either of the parties has the right to cancel the labour contract. The Arbitration Council does not have jurisdiction over the termination of Mr. So Sok Ang's employment contract (34/04-Full Value "Cambodia" Textiles). In a case where Mr. So Sok Ang commits misconduct which causes damage to workers, they may file a complaint for damages under law.

The Arbitration Council finds that the Khmer Youth Union of Violet Apparel does not possess most representative status within the enterprise. Thus, in accordance with Article 6 of Prakas 305/01, the Khmer Youth Union of Violet Apparel can only represent such members as those on the list sent to the Arbitration Council.

Therefore, this award can apply only to the workers whose names are listed in Annex 1 to this award.

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

DECISION

Issue 6:

Reject the demand for regular attendance bonus made by the workers and [allow the company] to keep the US\$5 per month bonus under the Internal Work Rules of Violet Apparel.

Issue 7:

Order the employer to reimburse the medical check fee of 10,100 riel to all workers who had medical checks performed at their own expense. The reimbursement must be implemented within seven days from the date this award comes into effect.

Issue 8:

Order the company to set or keep the lot prices in order that workers who work their normal working hours (eight hours, excluding overtime, public holidays or weekends) can receive at least the minimum wage guaranteed under the Labour Law. The employer is prohibited from imposing disciplinary actions on workers who receive less than the minimum wage unless there is clear evidence that the workers are really lazy [and] intentionally misuse their working hours, which is against the Internal Work Rules of the company.

Issue 10:

Order Violet Apparel to reimburse, in addition to the US\$3 [workers] have already received, the seniority bonus in compliance with the Labour Law to the workers whose contracts were terminated in 2004 and whose names are attached as Annex 1 to this award no later than one month after this award comes into effect.

Issue 11:

Reject the union's claim for Mr. So Sok Ang's dismissal from Violet Apparel.

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: **Hem H. Naryth**

Signature:

Arbitrator chosen by the worker party:

Name: **Liv Sovanna**

Signature:

Chair of arbitration panel:

Name: **Pen Bunchhea**

Signature: