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THE ARBITRATION COUNCIL

KINGDOM OF CAMBODIA

NATION RELIGION KING

Case number and name: 42/10 – Tack Fat

Date of Award: 11 June 2010

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **Mr. Ly Tayseng**

Arbitrator chosen by the worker party: **Ms. Ann Vireak**

Chair Arbitrator (chosen by the two Arbitrators): **Mr. Kong Phallack**

DISPUTING PARTIES

Employer party:

Name: Tack Fat Garment (Cambodia) Ltd.

Address: Phum Prek Tanou, Sangkat Chak Angre Leu, Khan Meanchey, Phnom Penh.

Telephone: 012 827 755 Fax: N/A

Representative:

1. Mr. Sri Kim Yu — Company's Lawyer
2. Mr. Chum Tong — Company's Administrator
3. Mr. Chhim Yoeun — Company's Administrator

Worker party:

Name: - **The Free Trade Union of Workers of the Kingdom of Cambodia**

- **The Free Trade Union of Workers in Tack Fat Garment (Cambodia) Ltd.**

Address: No. 16 B, street 360, Sangkat Boeung Keng Kang 3, Khan Chamkarmon, Phnom Penh.

Telephone: 012 839 515 Fax: N/A

Representative:

1. Ms. Soth Chanthou — FTUWKC Officer
2. Ms. Yong Leap — FTU President in Tack Fat Garment Ltd.

3. Ms. Chheang Thida	FTU Vice president in Tack Fat Garment Ltd.
4. Mr. Roth La	Secretary of FTU in Tack Fat Garment Ltd.
5. Mrs. Chea Bona	FTU member
6. Ms. Yi Sophon Roth	FTU member
7. Ms. Kim Veasna	FTU member
8. Ms. So Saroeun	FTU member
9. Ms. Sor Poeun	FTU member
10. Ms. Ngov Channouen	FTU member
11. Ms. In Sanoeun	FTU member
12. Mr. Deth Sida	FTU member
13. Ms. Ngon Ny	FTU member
14. Ms. Leang Kim Leng	FTU member
15. Mr. Ieang Kieng	FTU member
16. Mr. Hok Mao	FTU member
17. Ms. Yim Sitha	FTU member
18. Ms. Heak Chanthon	FTU member
19. Mrs. Sor Seak Leng	FTU member
20. Ms. Marek Kim Hoeun	FTU member
21. Ms. Pen Ron	FTU member
22. Ms. Chhum Sorphea	FTU member

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

1. The workers demand that the company reinstate Ms. Yong Leap, a union leader of the Free Trade Union of Workers in the factory because on 22 March 2010 from 9:00 to 11:00 a.m., His Excellency **Ker Soksithiny** inspected the factory for questioning the issue that the company had transported the products out of the premises. On 23 May 2010, Ms. Yong Leap brought a pay slip to a Chinese supervisor, Lor Yi *alias Machine Cow* who rushed to strangle Ms. Yong Leap; then, one of Mr. Lor Yi's Chinese acquaintances, Aleng, held her down forcefully so that Mr. Lor Yi could bite her. The company stated that it could not reinstate Ms. Yong Leap because she had an altercation with the Chinese supervisor and inflicted assault and battery (a serious misconduct under Article 83 of the Labour Law), and both disputing parties were dismissed by the company at the same time. The company allowed Ms. Yong Leap to perform her duty as a union leader according to her mandate in case that the workers seek help from her (including her entry into the factory).

2. The workers demand that the company not induce and persuade the workers to resign by paying US$ 150 to regular workers and US$ 500 to a team leader in which case it is against the Labour Law. The company stated that it had not induced the workers to resign, and had not posted any declaration or distributed letters about the resignation of the workers. However, if the workers voluntarily resign, they can apply for their resignations to the company.

3. The workers demand that the company provide maternity payments to four pregnant women workers, Chhuon Sina, Oul Sal, Mom Bophea, and Kim Veasna, who took maternity leave. The company stated that it would not offer the maternity payments to those workers because they had handed in their resignation letters before asking for maternity leave.

4. The workers demand that the company pay various remuneration, under the Labour Law in case the company does not function properly. The workers demand that the company stop inducing and prevailing on the workers to resign on their own without providing them with various payments in accordance with the Labour Law. The company stated that it will abide by the Labour Law regardless of whether the company operates or not.

5. The workers demand that the company pay full wages to the workers in the Finishing Section because in July 2009, the company paid only US$ 30 or US$ 32 to each worker and because the company forced them to take unpaid annual leave for 17 days. The company stated that with regard to the 17 days, the company had suspended their work by providing 50 percent of wages, but the workers did not accept the payments and still came in to punch the cards without performing the work. The company decided not to pay them whatsoever.

6. The workers demand that the company reinstate the sacked workers without altering their positions and provide pay slips to them (the 87 workers in the Finishing Section) that came to work on 4 May 2010 at 7:00 a.m. However, the company closed the factory's doors, denying them entry into the factory. The company maintained that it had the right to disallow the 87 workers to enter the factory.

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 No. 099 dated 21 April 2004; the Arbitration Council Procedural Rules which form an

Annex to the same Prakas 099 dated 21 April 2004; and the Prakas on the Appointment of Arbitrators No. 076 dated 20 September 2009 (Seventh 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 was unsuccessful, and the non-conciliation report No. 358 dated 6 May 2010 was submitted to the Secretariat of the Arbitration Council on 6 May 2010.

HEARING AND SUMMARY OF PROCEDURE

Place of hearing: The Arbitration Council, No. 72, Street 592 Corner of Street 327 (Opposite Indra Devi High School), Boeung Kak 2 Quarter, Tuol Kok District, Phnom Penh.

Date of hearing: 21 May 2010 at 2:00 p.m.

Procedural issues:

On 29 March 2010, the Department of Labour Disputes received a complaint from the Free Trade Union of Workers of the Kingdom of Cambodia about the demand for the company to improve working conditions.

Having received the complaint, the Department of Labour Disputes assigned expert officials to deal subsequently with collective labour disputes and conducted a final conciliation on 4 May 2010 with the four out of 10 non-conciliation points settled successfully. The six non-conciliation points were submitted to the Secretariat of the Arbitration Council on 6 May 2010.

Having received the case, the Secretariat of the Arbitration Council extended the invitations to both employer and worker parties to attend a hearing, and conciliate the six non-conciliation points on 21 June 2010 at 2:00 p.m. Both parties appeared before the hearing.

During the hearing, the Arbitration Council tried to conciliate the six non-conciliation points with the worker party offering to combine issue 2 and 4 as a collective issue. Therefore, the Arbitration Council will consider issues 1, 2, 3, 4, 5 and 6 based on the evidence and fact-finding as follows:

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party:

1. A letter from the Minister of Commerce verifying that Tack Fat Garment (Cambodia) Ltd is licenced as a business and recognised as a natural person, No. 2073 dated 5 October 1995.
2. A certificate of business registration for Tack Fat Garment (Cambodia) No. 3119 dated 23 June 1995.
3. A letter of the Council for the Development of Cambodia on the establishment of an investment company: Tack Fat Garment (Cambodia) Ltd, No. 162/94 dated 19 July 1994.
4. A certificate of business registration for Tack Fat Garment (Cambodia) No. 2073 dated 23 June 1995.
5. An employment contract with Mareth Kim Hoeun dated 21 April 2001.
6. An employment contract with Yi Channeth dated 7 September 2000.
7. An employment contract with Ngoun Phalla dated 2 December 1998.
8. An employment contract with Ngon Ny dated 25 February 2001.
9. An employment contract with Pich Chantha dated 13 October 2000.
10. An employment contract with Chhoet Chheng Mony dated 2 April 1997.
11. An employment contract with Theng Siroth dated 6 August 2000.
12. An employment contract with Yin Savath dated 8 January 1998.
13. An employment contract with Chea Bona dated 24 February 1997.
14. An employment contract with Chhim Sora dated 18 April 1999.
15. An employment contract with Krek Chanthea dated 8 January 2000.
16. An employment contract with Ny Sophea dated 5 June 2000.
17. An employment contract with Oun Yoeun dated 3 June 2001.
18. An employment contract with Chea Kloeung dated 14 February 2000.
19. An employment contract with Hem Phally dated 15 May 1999.
20. An employment contract with Him Heang dated 16 May 1999.
21. An employment contract with Keat Sreyneth dated 17 August 2000.
22. An employment contract with Tieng Sao dated 9 March 2001.
23. An employment contract with Chea Somros dated 2 May 1999.
24. A minute on the allocation of certain workers in the Finishing Section to a newly-established team dated 16 January 2010.
25. A report on the production situation dated in 2010.
26. A report on the collective labour dispute resolution dated 25 January 2010.
27. A list of workers in the Sewing Section dated 1 April 2010.
28. A notification sent to the workers assigned to the Sewing Section dated 5 April 2010.
29. A notification dated 24 April 2010.

30. A notification dated 27 April 2010.
31. A list of 87 workers who were not allowed to enter Tack Fat Garment Ltd dated 27 April 2010.
32. A resignation letter, leave form, and a certificate for maternity leave of Ms. Mom Bopha.
33. A resignation letter, leave form, and a certificate for maternity leave of Ms. Chhoun Sina.
34. A resignation letter, leave form, and a certificate for maternity leave of Ms. Kim Veasna.
35. A resignation letter, leave form, and a certificate for maternity leave of Ms. Oul Sol.
36. A termination letter of Ms. Yong leap dated 23 March 2010.
37. A letter from Tack Fat Garment Ltd to the Director of the Department of Labour Disputes on the notification of the suspension of Ms. Yong Leap dated 23 March 2010.
38. A letter from Tack Fat Garment Ltd to the Director of the Department of Labour Disputes on the request to dismiss Ms. Yong Leap as the President of the Free Trade Union of Workers of the company No. 005/03/10 dated 23 March 2010.
39. A letter from the Minister of Labour and Vocational Training to the Free Trade Union of Workers in Tack Fat Garment Ltd on its registration at the Ministry of Labour and Vocational Training No. 129 dated 14 September 2009.
40. A termination letter (to undisclosed recipients) dated 23 March 2010.
41. An employment contract with Ms. Yong Leap dated 22 June 2005.
42. A monthly report dated June 2005.
43. An employment contract with Ms. Yong Leap dated 8 July 2002.
44. An invitation letter from the Administrative Office of Sangkat Chak Ang Re to Mr. Lor Yi No. 000901 dated 29 March 2010.
45. Image file.
46. A minute on the collective labour dispute resolution in Tack Fat Garment dated 4 May 2010.
47. An authorisation letter from the President of Tack Fat Garment (Cambodia) Ltd to Mr. Chum Tong and Mr. Chhim Yoeun, No. 014/05/10 dated 21 May 2010.
48. The Internal Work Rules of Tack Fat Garment Ltd dated 20 January 1999.
49. The statute of Tack Fat Garment (Cambodia) Ltd dated 16 July 1995.
50. Notification dated 14 July 2009.
51. Modified salary rates for July 2009, Stitching Section 0F3, Ironing Section F3, Monitoring Section 0F3, Super Linking Section.

52. Salary rates for July 2009, Stitching Section, Trouser Modification Section, Packing Section F3, Monitoring Section 0F3.
53. Salary rates for June 2009, Sewing Section DF2, Laundry Section, Packing Section F3, Super Linking Section F2, Cutting Section F3, Ironing Section F3.
54. Modified salary rates for June 2009, Packing Section F3, Trouser Modification F3, Super Linking Section F2.
55. Litigation notes of lawyer Hom Phea on the legal challenge against the Arbitral Award No. 006 dated 18 August 2009.
56. A letter from the Secretariat of the Arbitration Council to the President of the Khmer Youth Union in Tack Fat Garment on the legal challenge against the Arbitration Council No. 554 dated 21 August 2009.
57. A brief statement on the collective labour disputes from lawyer Hom Phea regarding Arbitral Award 94/09 dated 28 July 2009.
58. The Arbitral Award No. 94/09 – Tack Fat dated 14 August 2009.
59. Litigation notes of Lawyer Hom Phea on the legal challenge against the Arbitral Award No. 011 dated 25 August 2009.
60. A brief statement on the collective labour disputes from lawyer Hom Phea regarding Arbitral Award 95/09 dated 29 July 2009.
61. Agreement between employer and workers' union in dealing with the collective labour disputes in Tack Fat Garment in the hearing of the case 95/09 dated 24 July 2009.
62. The Arbitral Award No. 95/09 – Tack Fat dated 21 August 2009.
63. Documents in foreign languages

Provided by the worker party:

1. A registration certificate of the Free Trade Union of Workers in Tack Fat Garment dated 14 September 2009.
2. A brief minute on the issues of Tack Fat Garment Ltd dated 17 May 2010.
3. A brief minute on the activities of Tack Fat Garment Ltd dated 22 May 2010.
4. The authorisation letter of Kim Veasna to Deth Sitha dated 11 February 2010.
5. The authorisation letter of Mom Bopha to Prum Sophos dated 24 February 2010.
6. Thumbprints affixed by workers in the Finishing Section Team A.
7. Thumbprints affixed by workers in the Finishing Section Team B.
8. Thumbprints affixed by workers in the Sewing Section. Wages for July 2009 were not received.

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

1. A report on the collective labour dispute resolutions in Tack Fat Garment Ltd No. 258 dated 6 May 2010.
2. A minute on the collective labour dispute resolutions in Tack Fat Garment Ltd dated 4 May 2010.

Provided by the Secretariat of the Arbitration Council:

1. An invitation letter for the employer party to attend the hearing No. 224 dated 7 May 2010.
2. An invitation letter for the worker party to attend the hearing No. 224 dated 7 May 2010.

FACTS

- Having examined a report on the collective labour dispute resolutions
- Having listened to the argument of representatives of workers and employer, and
- Having reviewed additional documents

The Arbitration Council finds that:

- According to a minute of the collective labour dispute resolution dated 4 May 2010, Tack Fat employs approximately 1,300 workers.
- The worker party is the plaintiff in the case – The Free Trade Union of Workers of the Kingdom of Cambodia in Tack Fat Ltd.

Issue 1: The workers demand the company reinstate Ms. Yong Leap, the President of FTUW in the company and reimburse her pay.

- The worker party argued that Ms. Yong Leap had an undetermined duration contract, commencing her work on 6 February 2002 and receiving US$ 50 of basic wages per month. The company party did not object to this argument.
- The Arbitration Council finds that Ms. Yong Leap was the President of FTUW in Tack Fat Garment for whom the Ministry of Labour and Vocational Training issued a recognition letter No. 129 dated 14 September 2009.
- The company and worker parties agreed that the company dismissed Ms. Yong Leap on 23 March 2010.
- The company party argued that the reason why it terminated Ms. Yong Leap was because she had committed serious misconduct by being involved in a physical altercation with a supervisor, Mr. Lor Yi. The employer party added that it had notified the suspension of Ms. Yong Leap for an unspecified period, and applied for her dismissal to the Labour Inspector on the same day, 23 March 2010. Until now (by the

hearing day), the company claimed that it has not yet received any responses from the Labour Inspector.

- The worker party objected that Ms. Yong Leap was not a troublemaker on that day (23 March 2010) concerning the altercation. Ms. Yong Leap maintained that the supervisor, Mr. Lor Yi, was the one who instigated the dispute when he declined to sign her attendance slip and proceeded to bite her with his men trying to grasp her, but she bit the supervisor in self-defence. The company party was not opposed to the argument of the worker, saying it had dismissed both workers at the same time.
- The worker party added that Ms. Yong Leap had not been paid for March yet because upon her payment, the company required her to affix her signature and thumbprint for payment and suspension from work, yet she refused to follow the procedure, leaving her unpaid for March.
- The worker party still demanded the company reinstate Ms. Yong Leap, the President of the FTUW in the company and reimburse her pay from the date of dismissal to the date of her reinstatement.

Issues 2 and 4: The workers demand the company not induce and persuade workers to resign by providing US$ 150 for regular workers and US$ 500 for team leaders.

- The workers argued that in the past the company induced and persuaded the workers to resign by not providing decent payment in compliance with the Labour Law; this meant to the company provided US$ 150 for regular workers and US$ 500 for team leaders. The company party rejected the claim by the workers, saying it did not lure the workers to resign. On the contrary, the company asserts that they voluntarily resigned.
- The worker party argued that there were other unions in Tack Fat Ltd persuading workers to accept the money (US$ 150 for regular workers and US$ 500 for team leaders) and resign. The employer party did not respond to this argument of the workers.
- The workers claimed that the workers who already resigned did not make any demand in the case. The claim by the worker party in this case is made by those still working in the factory since they are worried that the company will induce them to resign in the future.

Issue 3: The worker party demands the company provide maternity leave payments to four workers: Chhoun Sina, Oul Sol, Mom Bopha and Kim Veasna.

- **(1) Case of Chhoun Sina:** worker, **Chhoun Sina** commenced her work on 1 September 2003 and handed in her resignation on 8 February 2010 being provided with US$ 150. The worker applied for maternity leave on 13 February 2010.
- **(2) Case of Oul Sol:** worker, **Oul Sol** commenced her work on 25 October 2000 and handed in her resignation on 8 February 2010 being provided with US$ 150. The worker applied for maternity leave on 10 February 2010.
- **(3) Case of Mom Bopha:** worker, **Mom Bopha** commenced her work on 7 May 2004 and handed in her resignation on 8 February 2010 being provided with US$ 150. The worker applied for maternity leave on 9 February 2010.
- **(4) Case of Kim Veasna:** worker, **Kim Veasna** commenced her work on 21 December 1999 and handed in her resignation on 9 February 2010 being provided with US$ 150. The worker applied for maternity leave on 11 February 2010.
- The company party maintained that the four workers were due to give birth in March and April 2010. The worker party did not object to this argument.
- The four women workers demanded the company provide them with maternity payment, claiming that they had consulted with another union that even if they resigned, the company is still obliged to pay them for maternity leave.
- The company maintained that it could not pay the pregnant workers for maternity leave because they were no longer workers of the company, which means their contracts were terminated as soon as they resigned. The employer party added that the workers were not entitled to payment for their maternity leave any longer.

Issue 5: The worker party demands the company provide full payment to workers in the Finishing Section for the July 2009 suspension, and annual leave payments deducted by the company when there was no work, and the workers in the Sewing Section demanded the company reimburse them for wages in July 2009.

A. The worker party demands the company provide full payments to workers in the Finishing Section for the July 2009 suspension, and annual leave payments deducted by the company when there was no work.

- The worker party argued that in July 2009, 488 workers in the Finishing Section, who work on two different shifts, were given two-week suspensions. Group B was suspended from 3 – 7 July 2009, and Group A was suspended from 14 July 2009 to 3 August 2009. The company party did not respond to these arguments.
- The worker claimed that the company suspended their contracts by providing 50 percent of wages, but the employer deducted their annual leave for 17 days.

Furthermore, the company suspended the contracts without permission from the Ministry of Labour.

- The company party maintained that it suspended the contracts by providing 50 percent of wages for the 17 days not including the deduction of their annual leave. However, at that time the workers punched in at the factory, they did not work and this prompted the company to opt out of paying them. On this point, the worker party conceded that they punched in and did not work in June 2009 and in July 2009, during which they were suspended, they did not come in to punch in for work. The employer did not provide them with any payment in July.
- The company maintained that the reason that the suspension was given without permission from the Labour Inspector was because the company merely complied with its past practice for suspension by providing 50 percent of wages.
- According to the documents submitted by the workers to the Arbitration Council on 25 May 2010, 115 workers in the Finishing Section affixed their thumbprints to a demand that the company pay them full wages during the suspension which was not authorised by the Labour Inspector: Group B from 3 – 7 July 2009 and Group A from 14 July 2009 to 3 August 2009 and that the company compensate them for annual leave deducted by the employer. The company did not object to the content of the documents. During the hearing, the company acknowledged that it had deducted the annual leave of the workers according to its past practice in light of their workload.

B. The workers demand the company reimburse wages for July 2009

- According to the minute of the collective labour dispute resolution dated 4 May 2010, Non-conciliation point, Issue 5 "*…The Sewing Section workers demand the company provide full wages for July 2009 because in this month the workers worked for a whole month, but they got paid only for 15 days. However, the company maintained that it provided payment for only 15 days and as for the other 15 days, it assigned to the fifth floor, but the workers did not follow the instruction of the company.*"
- According to the documents submitted by the workers to the Arbitration Council on 25 May 2010, 72 workers in the Sewing Section appended their thumbprints demanding the company reimburse them for July 2009. The company party did not object to the documents.
- The worker party claimed that in July 2009, the company did not suspend the workers but the company transferred them from the second floor to the fifth floor. Not until 15 days later did the worker agree to move to the fifth floor.

Issue 6: The workers demand the company reinstate the Sewing Section workers and reimburse them for April and May 2010.

- The worker and employer parties agreed that the company move their work from the Finishing Section to the Sewing Section with the conditions that the company provides training on sewing skills, there is non-restriction of work and the company maintains other benefits the workers used to receive. Initially, the transfer was made at the same Finishing Section premises, but later the company moved the workers from the Finishing Section building to the five-storey Sewing Section building on 2 April 2010 and at that time the workers agreed to be moved on the condition that the company has to make an agreement regarding certain conditions with the workers, especially that they will not be moved to other places in the future. The company agreed to the suggestion, but stated that the agreement will be formalised at a later date.
- On the contrary, the company reneged on its promise to make an agreement and the workers refused to work at the five-storey Sewing Section building from 6 April 2010 on the ground that the company did not make an agreement according to its promise.
- The workers argued that the company has a cynical purpose of persuading the workers to accept petty cash and resign from their work; [ ] the workers assert the employer keeps on moving the workers who refuse to receive the payments and resign. [ ] They argue that the intention of the employer was to make the workers be physically incapable of pursuing their work and [ ] to bring about resignations of their own free will. The company objected that it had no bad purpose as asserted by the workers.
- The company party argued that the fact that it refused to make an agreement as promised with the workers regarding the movement of the workers was because it was of the view that the assignment is likely to be changed, so the company could not formalise an agreement with the workers.
- The company party added that the reason why it decided to move the workers in the Finishing Section to the Sewing Section was because there was not much work to do in the Finishing Section; [ ] therefore, the workers in this section are superfluous. The worker party disputed this point and said that there are still much work to do at the Finishing Section because the company hired workers from other factories to work in this section. Moreover, a number of office workers were also called in since there was much work to be finalised in this section.
- Moreover, the workers added that the employer brought mature-age workers with poor vision or shivering hands who are unable to work in the Sewing Section to work in the Sewing Section. During the hearing, the workers brought in a mature-age

worker from the Finishing Section whom the company transferred to the Sewing Section.

- The worker party argued that the company would not allow them to work in the Finishing Section. The workers demanded the employer reinstate them to their previous work stations in the Finishing Section, and to reimburse them for April and May 2010.
- The company party argued that it would not reinstate the workers in neither of the Finishing or Sewing Sections since they have refused to work; according to Clause 6 of the Internal Work Rules, the absence of workers for over six days is deemed to be the abandonment of work. The worker party opposed the arguments of the company, saying they opted not to work in the five-storey building since the company broke its promise regarding the move from the Finishing to the Sewing Sections.
- The Internal Work Rules of Tack Fat Ltd dated 23 December 1998, Clause 6, Point 2 regarding the absence of the workers states, "*B – Absence without permission shall be considered to be a violation of discipline, and wages will not be paid for the absent day/s and a written warning will be issued:*
    - *One day absence: Level One warning.*
    - *Two day absence: Level Two warning.*
    - *Three day absence: Level Three warning and finally in case of defiance following the three warnings or a seven day consecutive absence, the workers will be dismissed without notice.*"
- The notification of Tack Fat Ltd dated 5 April 2010 states, "*The company would like to inform workers whose names are assigned to work in the five-storey building that from 1 April 2010 onwards, all workers will be trained in sewing skills for two months with the benefits maintained as usual…*"
- The notification of Tack Fat Ltd dated 24 April states, "*Tack Fat Ltd would like to inform workers in the Finishing Section that due to the workers' refusal to fulfill the work assigned by the company who required the workers to work in the Sewing Section by maintaining the same benefits, the company regards such act as the violation of the Internal Work Rules and labour agreements, and the company will take legal action; moreover, the workers will not be provided with any benefits from 5 April 2010.*
- The notification of Tack Fat Ltd dated 27 April 2010 makes it clear to the 87 workers that from 27 April 2010 onwards, the company will not allow any of the 87 to enter the company premises.

REASONS FOR DECISION

Issue 1: The workers demand the company reinstate Ms. Yong Leap, the President of FTUW in the company and reimburse her pay.

Based on the facts, the Arbitration Council finds that Ms. Yong Leap was the President of the Free Trade Union of Workers in Tack Fat Ltd. Therefore, the Arbitration Council will consider the demand for her reinstatement and reimbursement as follows:

Article 293 of the Labour Law stipulates, "*The dismissal of a worker delegate or a candidate for worker delegate can take place only after authorisation from the Labour Inspector… The Labour Inspector, who has been referred a request to authorise the dismissal of a worker covered by the present article, shall give his decision to the employer and to the worker in question… within one month at the latest upon receipt of the case… If there is no notification of the Labour Inspector's decisions within the allotted time… the case is considered to be rejected.*"

Article 293 of the Labour Law shall also apply to union leaders as stated in Article 4 of *Prakas* 305 dated 22 November 2001 of the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation which provides, "*…The protections are given to three union leaders in the condition stated in Article 282 and 293 of the Labour Law.*"

According to Article 293 of the Labour Law and Clause 4 of *Prakas* 305 dated 22 November 2001 above, the Arbitration Council finds that Ms. Yong Leap shall receive special protection from the dismissal. The employer shall seek permission from the Labour Inspector in dismissing a union leader, and in case of no notification from the Labour Inspector within one month, the request for dismissal will be considered to be rejected.

In previous cases, the Arbitration Council found that for the dismissal of workers who are entitled to special protection, the employer shall have permission from the Labour Inspector and the Minister in charge of Labour. (*See the Arbitral Award 79/06 – Woo Su, Reason for decision, issue 1; AA 74/08 – Generation, Reason for decision, issue 1; AA 107/08 – Seratex, Reason for decision, issue 2; and AA 03/09 – Xing Tai, Reason for decision, issue 1.*)

Therefore, the Arbitration Council finds that any dismissal of a union leader shall have permission from the Labour Inspector, and in case of no notification from the Labour Inspector within one month, the request for dismissal will be considered to be rejected.

Based on the facts, the company dismissed Ms. Yong Leap on 23 March 2010. The company party argued that the reason why it laid off Ms. Yong Leap was because the worker committed serious misconduct by being involved in a physical altercation with the supervisor, Mr. Lor Yi. The company notified the suspension of Ms. Yong Leap for an undetermined period, and applied for her dismissal to the Labour Inspector on the same day – 23 March 2010. By the hearing date on 21 May 2010, there had been no response from the Labour

Inspector. The period the company applied for the dismissal of Ms. Yong Leap to the Labour Inspector exceeded one month by the hearing date on 21 May 2010. Therefore, the Arbitration Council finds that the request for dismissal of Ms. Yong Leap shall be overturned because the Labour Inspector had not responded to the request for more than one month.

In summary, the Arbitration Council orders the employer to reinstate Ms. Yong Leap and reimburse her from the date of dismissal to the date of her reinstatement.

Issues 2 and 4: The workers demand the company not induce and persuade workers to resign by providing US$ 150 for regular workers and US$ 500 for the team leaders.

The workers demand the company not induce and persuade workers to resign by providing US$ 150 for regular workers and US$ 500 for the team leader. The company denied that it induced and persuaded workers to resign, but that they offered to resign on their own. The Arbitration Council considers whether or not this demand by the workers is groundless.

Based on the facts, the workers who make the demand are those currently working in the company. The worker party maintained that they make a demand because of a concern that the company would induce them to resign in the future. The Arbitration Council finds that there is no dispute concerning the inducement since the workers only made a demand due to the strain [ ] of past alleged inducement and such a claim is intends to prevent further inducement in the future. The worker party did not make it clear that the employer induced the ongoing workers to resign from their work. Furthermore, the workers who bring this demand have not suffered from any damage. Therefore, the demand of workers is that for the future.

Regarding future demands, in the previous cases, the Arbitration Council interpreted, "*The Arbitration Council is designed to conciliate labour disputes, not to deal with issues that have not happened yet.*" (*See Arbitral Award 10/03 – Jaqsintex, Reason for decision, issue 2; AA 14/06 – Zheng Yong, Reason for decision, issue 2, AA 141/08 Bloom Time, Reason for decision, issue 3, AA 70/09 – G.W, Reason for decision, issue 3; and AA 123/09 – Suit Way, Reason for decision, issue 1.*)

In this case, the Arbitration Council also agree with the above interpretation because the Arbitration Council is designed to settle labour disputes, not [ ] anticipate and resolve issues that have not occurred yet. Therefore, the Arbitration Council decides to reject the workers' demand that company not induce and persuade workers to resign in the future by providing US$ 150 for regular workers and US$ 500 for team leaders.

Issue 3: The worker party demands the company provide maternity leave payment to four workers: Chhoun Sina, Oul Sol, Mom Bopha, Kim Veasna.

The workers demanded the company pay wages for maternity leave, claiming they had consulted with another union that even if they resigned, the company was obliged to pay them for maternity leave. The company refused to offer wages for the workers because they had resigned before they applied for maternity leave. The Arbitration Council will consider whether or not the workers who resigned should be provided with wages for maternity leave.

Article 182, Paragraph 1 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.*"

Article 183 of the Labour Law also states, "*During the maternity leave as stipulated in the preceding article, women are entitled to half of their wage, including their perquisites, paid by the employer...*

However, the wage benefits specified in the first paragraph of this article shall be granted only to women having a minimum of one year of uninterrupted service in the enterprise."

According to the Labour Law above, the Arbitration Council finds that women workers who serve any enterprise or establishment as stipulated in Article 1 of the Labour Law, and have worked for at least one year are entitled to receive 50 percent of wages and perquisites while on 90-days of maternity leave.

Based on the facts, the Arbitration Council finds that the four women workers had worked in Tack Fat Ltd for more than one year and applied for maternity leave from 9 February 2010. Therefore, the Arbitration Council finds that the four workers are entitled to receive wages as stated in Article 183 above. However, according to the facts, the four women workers handed in their resignations on 8 and 9 February 2010. Therefore, the Arbitration Council will consider whether the women workers have the rights to get 50 percent of wages and perquisites while on 90-day maternity leave or not.

Article 65 of the Labour Law states, "*A labour contract establishes working relations between the worker and the employer...*"

Based on the contents of Article 65 above, the Arbitration Council finds that the worker and the employer have a working relationship as long as their employment contracts still exist. Therefore, if the employment contract is terminated or expires legally, the workers and employer will no longer have a working relationship.

In this case, based on the facts, the Arbitration Council finds that the four women workers had undetermined duration contracts, but they had tendered their resignations in Tack Fat Ltd on 8 and 9 February 2010 before they took maternity leave from March to April 2010. It means that the four workers had cut off the relationship with the employer, which stemmed from their employment contracts with Tack Fat Ltd before they took maternity

leave. The Arbitration Council finds that the four women workers are no longer workers of Tack Fat Ltd based on the Labour Law by the time they had maternity leave from March and April 2010.

Therefore, the Arbitration Council finds that the four women workers are not entitled to wages for maternity leave according to the Labour Law. In conclusion, the Arbitration Council decides to reject the demand by workers for the company to pay remuneration to the four women workers: Chhoun Sina, Oul Sol, Mom Bopha, and Kim Veasna.

Issue 5: The worker party demands the company provide full payment to workers in the Finishing Section for the July 2009 suspension, and payment for annual leave deducted by the company when there was no work, and the workers in the Sewing Section demand the company reimburse them for July 2009.

A. The worker party demands the company provide full payment to workers in the Finishing Section for the July 2009 suspension, and payment for annual leave deducted by the company when there was no work.

The worker party demanded the company pay full wages to workers in the Finishing Section for the July 2009 suspension, which means 100 percent of wages shall be paid when the employer had no work for Group B from 3 – 7 July 2009 and for Group A from 14 July 2009 to 3 August 2009. The company refused to satisfy the workers' demand. The Arbitration Council will consider whether or not the company should provide 100 percent of wages in case of no work as stated above.

Article 71, Point 11 of the Labour Law stipulates that the labour contract will be suspended, "[*w]hen the enterprise faces a serious economic or material difficulty or any particularly unusual difficulty, which leads to a suspension of the enterprise operation. This suspension shall not exceed two months and be under the control of the Labour Inspector.*"

In previous cases, the Arbitration Council interpreted that in the event the enterprise faces economic or material difficulties, the suspension of the employment contract shall be notified to the Labour Inspector, and should be examined and confirmed by the Labour Inspector. It means that the Labour Inspector is the one who [ ] determines the suspension [ ] is justified because the economic hardship really exists. *(See Arbitral Award 51/09 – Yung Wah 1 and 2; AA 95/09 – Tack Fat, Reason for decision, issue 10; and AA 123/09 – Suit Way, Reason for decision, issue 2.)*

In this case, the Arbitration Council concurs with the above interpretation in that the suspension of the employment contract due to the economic difficulty shall be notified to and be permitted by the Labour Inspector prior to the suspension.

Based on the above facts, the worker party maintained that they were not provided with proper payment for July 2009, which means they were only paid between US$ 30 and US$ 32, and 50 percent of wages were given for the suspension of the Group B contracts from 3 – 17 July 2009 and Group A contracts from 14 July 2009 to 3 August 2009. Furthermore, the suspension was not permitted by the Labour Inspector. During the hearing, the employer party confirmed that the suspension did not receive permission from the Labour Inspector, and stated that it abided by its past practice where if the short-term contract is suspended, then the company will offer US$ 50 of wages and it does not seek permission from the Labour Inspector.

According to above facts, the Arbitration Council finds that Tack Fat Ltd suspended the workers in the Finishing Section Group B from 3 – 17 July 2009 without wages and without notification and permission from the Labour Inspector.

Article 72, Paragraph 1 of the Labour Law states, "*The suspension of a labour contract affects only the main obligations of the contract, that are, those under which the worker has to work for the employer, and the employer has to pay the worker, unless there are provisions to the contrary that require the employer to pay the worker…*"

Based on the contents of Article 72, Paragraph 1 of the Labour Law above and previous Arbitral Awards, the Arbitration Council decides that if the company issues the suspension in accordance with the Labour Law under the scrutiny of the Labour Inspector, then the company is not obliged to pay wages to the workers (See Article 72 (1) of the Labour Law). However, if the company does not abide by the Labour Law regarding the suspension as mentioned above, then the company is obliged to provide 100 percent of wages to the workers despite the fact that it has no work for workers to do. *(See Arbitral Award 60/06 – New Max, Reason for decision, issue 2; AA 74/07 – Global Apparel, Reason for decision, issue 1; AA 28/08 – Fine Gis, Reason for decision, issue 1 and 2; AA 53/08 Yung Wah 1, Reason for decision, issue 1; and AA 71/09 – Hytex, Reason for decision, issue 3).*

Based on the above facts and legal principles, the Arbitration Council finds that Tack Fat Ltd did not file an application for suspension in an appropriate way that is in conformity with the Labour Law. Therefore, the employer is obliged to pay 100 percent of wages to workers within the 17-day employment contract.

The workers demanded the company compensate the 115 workers in the Finishing Section who affixed their thumbprints to agree to have their annual leave deducted when there was no work to do for them to do. The Arbitration Council will consider whether or not the employer should make up for the annual leave it had deducted from the workers.

Article 170 of the Labour Law (1997) stipulates, "*In principle, annual leave is normally given for the Khmer New Year unless there is a different agreement between the employer*

and the worker. In this case, the employer must inform the Labour Inspector of this arrangement..."

In previous cases, the Arbitration Council finds that "*Article 170 of the Labour Law above means regarding the use of the workers' annual leave, the employer should give the leave on Khmer New Year, and it can use the workers' annual leave at any time besides the Khmer New Year unless there is agreement between the employer and workers with the employer obliged to notify in advance the Labour Inspector of the agreement.*" (See *Arbitral Award 21/05 – Sinomax, Reason for decision, issue 2; AA 81/07 – Supreme, Reason for decision, issue 1; and AA 123/09 – Suit Way, Reason for decision, issue* 2.)

In this case, the Arbitration Council also agrees with the previous interpretation of the Arbitration Council in that the use of the workers' annual leave besides Khmer New Year shall have agreement between the employer and workers, and the employer is obliged to notify the Labour Inspector of the agreement in advance.

Based on the facts, and documents submitted by the workers to the Arbitration Council on 25 May 2010, the 115 workers in the Finishing Section affixed their thumbprints to a demand that the company reimburse their annual leave. The company party did not object to the document. During the hearing, the company acknowledged that it had deducted the workers' annual leave according to the past practice of the company when there was no work to do. Hence, the Arbitration Council finds that the company, in fact, had cut the workers' annual leave, and the deduction was agreed upon between the employer and workers. Furthermore, the company had not notified the Labour Inspector in advance. Therefore, the employer shall compensate the annual leave of the 115 workers who the company had deducted wages from and who later had affixed their thumbprints against this issue.

In conclusion, the Arbitration Council orders the employer to pay 100 percent of wages when it suspended Group B from 3 – 17 July 2009 and Group A from 14 July 2009 to 3 August 2009 to the 115 workers in the Finishing Section, who affixed their thumbprints regarding this issue to demand the compensation of their annual leave.

B. The workers demand the company reimburse wages for July 2009

Based on the facts, the employer did not pay the workers because they refused to work on the fifth floor of the building as assigned by the employer. The Arbitration Council will consider whether or not the employer should pay the workers who refused to work on the fifth floor as assigned by the company.

Article 318 of the Labour Law states, *"A strike is a concerted work stoppage by a group of workers that takes place within an enterprise or establishment for the purpose of obtaining the satisfaction for their demand from the employer as a condition of their return to work...*"

Article 332 of the Labour Law states, "*A strike suspends the labour contract. During a strike, the allowance for work is not provided and the salary is not paid.*"

According to Articles 318 and 332 of the Labour Law above, a strike is a concerted work stoppage by a group of workers that takes place within an enterprise or establishment for the purpose of obtaining the satisfaction for their demand from the employer as a condition of their return to work. During the strike, the employment contracts were suspended, and the employer was not obliged to pay the workers.

Based on the facts, the worker party claimed that in July 2009, the company did not suspend them, but moved the workers from the second floor to the fifth floor. At first, the workers refused to move, but 15 days later they agreed to move to the fifth floor. The company did not pay them for the 15 days during which they were not willing to work (on the fifth floor). The Arbitration Council finds that the workers' refusal to work in the new place during the 15 days was tantamount to the act of a strike because according to the Labour Law, a strike is considered to be a concerted work stoppage for a demand from the employer. Therefore, the workers are not entitled to receive payment because they did not work for the employer. Hence, the employer also has no obligation to pay the workers.

In summary, the Arbitration Council dismisses the demand by the 72 workers in the Sewing Section, who affixed their thumbprints to demand the company reimburse their wages for 15 days in July 2009.

Issue 6: The workers demand the company reinstate 87 Finishing Section workers and reimburse them for April and May 2010.

The worker party demands the company reinstate 87 workers in the Finishing Section and reimburse them for April and May 2010. The 87 workers had undetermined duration contracts. The company refused to reinstate them, neither in the Sewing Section nor the Finishing Section.

The Arbitration Council will consider whether or not the employer should reinstate the 87 workers in the Finishing Section and reimburse them for April and May 2010.

Article 74, Paragraph 1 of the Labour Law states, "*The labour contract of unspecified duration can be terminated at will by one of the contracting parties. This termination shall be subject to the prior notice made in writing by the party who intends to terminate the contract to the other party.*"

Based on the contents of Article 74, Paragraph 1 above, the Arbitration Council finds that the parties to the undetermined duration contract may terminate the employment contract of their own free will, but the termination shall abide by the (Labour) law. *(See Arbitral Award 101/07 – Planet Textile, Reason for decision, issue 1)*.

In this case, the Arbitration Council agrees with the previous interpretation of the Arbitration Council, which means the termination of the employment contract shall take place in accordance with the (Labour) Law.

The Internal Work Rules of Tack Fat Ltd dated 23 December 1998, Clause 6, Point "B" regarding the attendance of workers states, "*B. Absence without permission shall be considered to be against the discipline, and the absentee will not get paid according to the number of days of absence and will be warned in writing as follows:*

- *One-day absence: Level One warning;*
- *Two-day absence: Level Two warning;*
- *Three-day absence: Level Three warning; and finally,*

  In case of defiance after three warnings, or absence for seven consecutive days, the workers will be terminated without prior notice."

According to the Internal Work Rules of the company, Clause 6, Point "B" above, it means that if any worker is absent without permission from the employer for seven consecutive days, then that worker will be terminated without prior notice.

Based on the facts, the employer terminated the employment contracts of the 87 workers in the Finishing Section since they refused to work in the Sewing Section for more than six days according to the Internal Work Rules, Clause 6. However, the workers were not willing to work because the employer reneged on the promise to make an agreement with the workers regarding the condition that the workers will not be moved to other places. The Arbitration Council finds that the fact that the workers refused to work in the Sewing Section after they knew the employer did not sign an agreement when they were moved to the Sewing Section shall not be considered as an act of absence without permission from the employer because the reason why they refused to work was that the employer broke its promise. Furthermore, the employer thought that the workers were absent from work without permission, and it coincided with the period that the workers and employer were having disputes regarding the transfer of workers to other places, and this issue has not been settled yet.

Therefore, the Arbitration Council is of the view that the termination of the 87 workers' contracts is improper and unlawful. The Arbitration Council orders the employer to reinstate the 87 workers.

The Arbitration Council will further consider whether the employer should reinstate the workers into either the Finishing or Sewing Sections.

Article 2 of the Labour Law states, "*…employers who constitute an enterprise, in the sense of this law, [are those who] employ one or more workers, even discontinuously. A given establishment…and so on … under the auspices of an enterprise…*"

In previous cases, the Arbitration Council found that Article 2, Paragraph 2 of the Labour Law above means the employer has the rights to oversee and manage the company regarding the movement of workers from one place to another as long as the transfer takes place according to the law and in an appropriate way. *(See Arbitral Award 08/09 – Global Apparel; AA 61/09 – Cintri; and AA 169/09 – PCCS, Reason for decision, issue 1.)*

In this case, the Arbitration Council agrees with the interpretation of the previous cases that the employer has the rights to oversee the transfer of workers from one place to another as long as such a move takes place in accordance with the law and is reasonable.

Based on the facts, regarding the transfer of workers from the Finishing Section to the Sewing Section in the five-storey building, the employer assured them that it would train the workers and not restrict their work. The employer argued that it moved the workers to the Sewing Section because there was not much work to do in the Finishing Section, and the workers became superfluous. The worker party objected that the Finishing Section had much work to do because the employer hired outsourced workers to work in this section, and office staff were also called in due to the workload in the section. The workers added that the employer hired mature-age workers who were unfit to work in the Sewing Section to work in this section. During the hearing, the workers brought in as a witness a mature-age worker who the company moved to the Sewing Section. The worker party argued that initially, they offered to work in the Sewing Section because the company promised them that it would not move the workers to other places such as other companies or to acquire other skills. However, since the employer broke its promise and refused to make an agreement regarding the transfer, the workers refused to work in the Sewing Section. The workers argued that the company had unscrupulous intentions of persuading the workers to accept petty payment and then to resign, and transferring those who refused to accept the payment to work in other places. Such acts were intended to remove the workers who are physically incapable of working to resign of their own free will. The company denied it had cynical purpose as mentioned by the workers.

Based on the above interpretation, the Arbitration Council finds that the transfer of workers from the Finishing Section to the Sewing Section with the company providing training and other benefits the workers once received is an appropriate part of supervision and direction by the employer. However, the employer should not use the discretion to transfer workers from one place to another and/or frequently to present difficulties for the workers. Furthermore, the transfer of mature-age workers with poor vision or arthritis to work in a skilled area such as the Sewing Section is improper because it is considerably difficult for mature-age workers perform the sewing work.

As for the demand for reimbursement for April and May 2010, the Arbitration Council finds that the workers who refused to follow the assignment of the employer to work in a new

place are not entitled to receive wages because the assignment by the employer is considered tp be proper and appropriate, and moreover, the worker did not work for the employer when they decided not to work in a new place. *(See the interpretation in Reason for decision; issue 5 at "B" above.)*

In conclusion, the Arbitration Council orders the employer to reinstate the 87 workers to the Sewing Section (except for the mature-age workers with poor vision who were unable to work, the employer shall assign them to the Finishing Section or terminate their contracts by providing all benefits according to the Labour Law in case there was no work for them to do). However, the Arbitration Council dismisses the demand by the workers for the company to reimburse them for April and May 2010.

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

DECISION AND ORDER

Issue 1: Order the employer to reinstate Ms. Yong Leap and reimburse her for wages from the date of her dismissal to the date of reinstatement.

Issues 2 and 4: Decline to consider the demand by the workers for the company not to induce and persuade workers to resign in future by providing US$ 150 for regular workers and US$ 500 for team leaders.

Issue 3: Reject the demand by the workers for the company to pay remuneration for maternity leave to four women workers – Chhoun Sina, Oul Sol, Mom Bopha, and Kim Veasna.

Issue 5:

- Order the company to pay 100 percent of wages for July 2009 to 115 workers in the Finishing Section, who affixed their thumbprints to the demand.
- Order the company to compensate the 115 workers whose annual leave was deducted and who affixed their thumbprints to the demand in this case.
- Reject the demand by 72 workers in the Sewing Section who affixed their thumbprints to the demand that the company pay their wages for 15 days in July 2009.

Issue 6:

- Order the employer to reinstate 87 workers to the Sewing Section (except for mature-aged workers with poor vision who are unable to work in the Sewing Section, who the employer shall let work in the Finishing Section or terminate their contracts by providing them with all benefits according to the Labour Law if the company does not have much work for them to do).
- Reject the demand by the workers for the company to reimburse them for wages in April and May 2010.

Type of Award: Non binding or binding awards

1- Non binding award

This Award will become binding after eight 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: **Ly Tayseng**

Signature: ....

Arbitrator chosen by the worker party:

Name: **Ann Vireak**

Signature: ....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: ....