



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 43/07- P&E Cambodia

Date of Award: 30 May 2007

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): **KONG PHALLACK**

DISPUTING PARTIES

Employer party:

Name: **P&E (Cambodia) PTE., Ltd Company**

Address: Sleng Rorling Village, Toeuk Thal Commune , Khan Reussy Keo, Phnom Penh

Telephone: **023 881 193**

Representative:

- | | |
|------------------|-------------------------|
| 1- Mr Ng Mey Lee | Director of the company |
| 2- Mr Jim Rithy | Administrative Manager |
| 3- Ms. Heng Mary | Translator |

Worker party:

Name: **Phak PE Factory Workers Union**

Address: Sleng Rorling Village, Toeuk Thal Commune , Khan Reussy Keo, Phnom Penh

Telephone: **016 354 982**

Representative:

- | | |
|---------------------|------------------------|
| - Ms. Srey Chanda | Chief of Workers Union |
| - Mr. Ma TeasVuthdy | Worker Delegate |

ISSUES IN DISPUTE

(In the non-conciliation report)

1. The workers demand the company to differentiate between the incentive bonus and seniority bonus because in the past the company takes the incentive bonus in lieu of the seniority bonus. The company mentions the company already gives the seniority bonus to the workers.
2. The workers demand the company to pay US\$ 5 more to all section workers who receive wages of US\$ 50. The company states that the company follows Notification 806 KKBV of the Ministry of Labour dated 15 December 2006.

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. 099 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 was unsuccessful, and the non-conciliation report No. 390 K.K.B.V/AK/VK, dated 2 May 2007 was submitted to the Secretariat of the Arbitration Council on 2 May 2007.

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: 17 May 2007 (From 2:00 p.m. to 5:00 p.m.)

Procedural issues:

On 11 April 2007, the department of Labor and vocational training had received the complaint by phone about the strike to demand the company to improve working conditions. After receiving the complaint, the Department of Labor Disputes appointed specialized officers to resolve the disputes in the factory and as a result 2 of 4 issues were conciliated. The remaining 2 issues were forwarded to the Secretariat of the Arbitration Council.

After receiving the case file the Secretariat of the Arbitration Council invited the employer and employee parties to attend the hearing for further conciliation on these two issues on 17 May 2007 at 2:00 p.m.

Both parties were present at the arbitral hearing. The Arbitration Council provided opportunity to both parties to further the conciliation and tried to coordinate and provide various options for the conciliation but did not reach a conciliated result. Therefore, the Arbitration Council will consider these non-conciliated issues based on the evidence and findings of fact as follows:

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party:

- Payment list in 2003, 2004, 2005, 2006, 2007 of P&E Company
- Notification 806 KKBV of the Ministry of Labor and Vocational Training dated 15 December 2006
- Internal Work Rules of P&E Company Cambodia Ltd dated 05 June 2006
- Notification 745 KKBV of the Ministry of Labor and Vocation Training dated 23 October 2006
- Commercial registration certificate of P&E Company dated 22 November 1995

Provided by the worker party:

- Registration Certificate dated 24 October 2002
- Letter 618 SKBY stated about registration dated 24 October 2002
- Union statue recognized by the Labor Inspection Department dated 24 October 2002
- Complaint dated 11 April 2007
- Name list of 12 workers who lost incentive bonus
- Name list of 29 workers who demand the company to increase US\$ 5 payment

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

- Report No. 360 KKBV/GK /VK regarding the collective labour dispute conciliation at P&E company, dated 02 May 2007
- Minute of the collective labour dispute conciliation of P&E Company, dated 11 April 2007

Provided by the Secretariat of the Arbitration Council:

- Invitation letter No. 181 K.K.B.V/AK/VK/LKA dated 08 May 2007 to invite the employer party to attend the hearing.
- Invitation letter No. 180K.K.B.V/AK/VK/LKA dated 08 May 2007 to invite the worker party to attend the hearing.

FACTS

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

The Arbitration Council finds that:

- P&E Company is located in Sleng Rorling Villlage, Toeuk Thal Commune , Khan Reussy Keo, Phnom Penh, hired 80workers. P&E Company is clothes printing factory.
- In P&E Company has only one union is Cambodian Union Federation. This union has 50 members but doesn't the most representative status.

Issue 1: The workers demand the company to differentiate between the incentive bonus and seniority bonus paid by the company since May 2007

- Workers mentioned that there are 12 workers who are involved in the demand for this issue. But upon examination of the ID numbers in the list which workers submitted to Arbitration Council, the Arbitration Council found that there were only 11 workers in the payment list (ID number 288 was not in the list). In the hearing the workers stated that they demand seniority bonus in addition to the payment they receive every month which they believe is the incentive bonus.
- Workers and the employer recognize P&E Company has changed 3 managers. The present manager has a policy to provide incentive bonuses to team leaders and good workers, and now the company also agrees to a separate agreement with 9 workers for incentive bonuses.
- The employer raises that in the past the company paid US\$ 5 per month as the seniority bonus to workers whom the company considered to be good workers even if these workers only worked for 2 or 3 months. According to the payroll, this money is stated as "seniority bonus."
- Workers argued that from 1998 to 2005 the company gave incentive bonuses to workers who specialized in printing clothes, not seniority bonuses. There is no agreement on this point between the employer and workers.
- From 2005, the company pays incentive bonuses as seniority bonuses and maintains the same total amount payments. So some workers can receive seniority bonuses of US\$ 5 to US\$ 13 per month. For example, Ms. Srey Chanda who is the President of the union and was present in the hearing receives a seniority bonus of US\$ 10 per month.

- Workers argue that they believe the payment is still the incentive bonus only, not seniority bonus because the employer changed it to seniority bonus. Workers did not provide any evidences to show that the company took the incentive bonus in lieu of the seniority bonus.
- The company mention that the company pays seniority bonuses not incentive bonuses. The company states that in 2000 the company provided incentive bonuses and position bonuses to qualified team leaders, but later when Notification 017 was issued in 2000 the company changed the incentive bonus to a seniority bonus. Since 2000, for those who used to receive incentive bonus such as team leaders the company still maintains the same amount of money and in payroll the company also includes the seniority bonus; and some workers receive a seniority bonus of up to US\$ 13. For example, Ms. Srey Chanda continues to receive a seniority bonus US\$ 10 as in 2000.
- The company did not provide notice to workers when there was a change from the incentive bonus to the seniority bonus.
- The Arbitration Council ordered the company to provide payrolls for each month since 1999. But the company only provided the payrolls from 2003 to 2007. The Arbitration Council finds that the bonus has been paid to workers is not an incentive bonus but is a seniority bonus.
- Ms. Srey Chanda recognizes that she has received US\$ 10 per month but argues that this bonus is an incentive bonus for her role as a team leader, not a bonus for seniority.
- The company states that the company pays the seniority bonus base on the Labor Law and there is no workers who receives a seniority bonus below the law. Union agrees with this point but argues that the 12 workers who make this demand do not receive a seniority bonus and only receive an incentive bonus. However, based on monthly payroll, the Arbitration Council finds that the bonus which workers receive is not an incentive bonus, it is a seniority bonus.
- Based on arguments by workers in the arbitral hearing, there are 12 workers who are involved in this dispute. But based on the ID number of workers provided to the Arbitration Council, the Arbitration Council finds that there are only 11 workers (ID number 288 is not in the payroll). Those workers are as follows:
 1. Sao Samnang (ID No. 003) received US\$ 5 seniority bonus in 2003, US\$ 5 in 2004, US\$ 7 in 2005, US\$ 7 in 2006, US\$ 7 in 2007.
 2. Srey Chanda (ID No. 140) received US\$ 10 seniority bonus in 2003,US\$ 10 in 2004, US\$ 10 in 2005, US\$ 10 in 2006, US\$ 10 in 2007

3. Dum Sothea (ID No. 035) received US\$ 5 seniority bonus in 2003, US\$ 10 in 2004, US\$ 10 in 2005, US\$ 10 in 2006, US\$ 10 in 2007
4. Say Saram (ID No. 315) received US\$ 4 seniority bonus in 2003, US\$ 5 in 2004, US\$ 7 in 2005, US\$ 7 in 2006, US\$ 7 in 2007
5. Eart Shinat (ID No. 287) received US\$ 5 seniority bonus in 2003, US\$ 7 in 2004, US\$ 7 in 2005, US\$ 7 in 2006, US\$ 7 in 2007
6. Deung Samphors (ID No. 295) received US\$ 5 seniority bonus in 2003, US\$ 7 in 2004, US\$ 7 in 2005, US\$ 7 in 2006, US\$ 7 in 2007
7. Meang Sokhea (ID No. 434) received US\$ 2 seniority bonus in 2003, US\$ 5 in 2004, US\$ 5 in 2005, US\$ 5 in 2006, US\$ 5 in 2007
8. Kang Lina (ID No. 139) received US\$ 10 seniority bonus in 2003, US\$ 13 in 2004, US\$ 13 in 2005, US\$ 13 in 2006, US\$ 13 in 2007
9. Mateas Vuthdy (ID No. 392) received US\$ 3 seniority bonus in 2003, US\$ 4 in 2004, US\$ 5 in 2005, US\$ 5 in 2006, US\$ 5 in 2007
10. Bo Nea (ID No. 217) received US\$ 5 seniority bonus in 2003, US\$ 6 in 2004, US\$ 6 in 2005, US\$ 6 in 2006, US\$ 6 in 2007
11. Chough Saophea (ID No. 090) received US\$ 10 seniority bonus in 2003, US\$ 11 in 2004, US\$ 11 in 2005, US\$ 11 in 2006, US\$ 11 in 2007

Issue 2: Workers demand the company to provide US\$ 5 [additional] wages per month to all section workers who have wages of US\$ 50 up.

- Workers demand the company to provide US\$ 5 [of additional] wages per month to workers in all sections who have wages of US\$ 50 and up because they are not entitled to the salary increase received by workers whose wages were below US\$ 50.
- Workers in this dispute receive at least US\$ 50 per month in wages. They received this wage before the issuance of Notification 745 KKBV dated 23 October 2006 that increased the minimum wage for garment and shoe sewing workers from US\$ 45 to US\$ 50 per month.
- Workers argue that the reason they make this demand is because they did not receive the increase of US\$ 5 per month as workers did whose wages were US\$ 45. The reason they receive US\$ 50 per month is because in the past they were the workers who had multiple skills. Because this Notification increases the minimum wage by US\$ 5 for workers received US\$ 45, so they too want the increase although they already received US\$ 50 wages per month.
- The company does not agree because the company already follows Notification 806 KKBV of Labor Ministry dated 15 December 2006. The company adds that the

company does not have much work for this period so the company does not obtain any profit.

- Workers agree that the company really does not have much work.
- There is no agreement about the increase of minimum wages.

REASONS FOR DECISION

Issue 1: The workers demand the company to differentiate between incentive bonus and seniority bonus which the company pays since May 2007

Clause 5 of Notification 017 SKBY dated 18 July 2000 states “*Workers who work long time in companies, enterprise shall receive the seniority bonus as follows:*

- 5.1. Working for 1 year up, the worker shall receive 2 US dollars per month in reward for the work seniority.*
- 5.2. Working for 2 years up, the worker shall receive 3 US dollars per month in reward for the work seniority, i.e., 2 dollars for the first year plus 1 dollar for the second year.*
- 5.3. Working for 3 years up, the worker shall receive 4 US dollars per month in reward for the work seniority, i.e. 2 dollars in first year plus 1 dollar in 2nd year plus 1 dollar in 3rd year.*
- 5.4. Working for 4 years up, the worker shall receive 5 US dollars per month in reward for the work seniority, i.e. 2 dollars in 1st year plus 1 dollar in 2nd year plus 1 dollar in 3rd year plus 1 dollar in fourth year.”*

In this case workers and employer have different interpretations of the bonus which workers receive on top of their wages. Workers consider that this bonus is an incentive bonus, while the employer argues that from the year 2000 this bonus has not been an incentive bonus. The company added a seniority bonus onto the incentive bonus and changed the payment to the seniority bonus. The employer provided payrolls from 2003 to 2007 for the Arbitration Council to consider. So based on the evidence which the Arbitration Council received the Arbitration Council considers that P&E company provides seniority bonuses not incentive bonuses. So workers have lost their incentive bonus which they previously received.

When did the employer change the incentive bonus to the seniority bonus?

In the hearing, workers mention that before 2005 they had received incentive bonuses but since 2005 the company changed the incentive bonuses to seniority bonuses. This can be interpreted to mean that workers lost their incentive bonus in 2005. The employer mentions that the company changed the incentive bonus to the seniority bonus in 2000 after the issuance of Notification 017.

Article 103 of Labor Law states “*Remuneration includes, in particular: the actual salary or remuneration, overtime, commissions, bonuses and rewards, profit sharing, gratuities, the value of benefits in kind...*”

Based on Article 103 of Labor Law (1997) the Arbitration Council considers that incentive bonuses (gratuities) are part of remuneration.

Article 112 of Labor Law (1997) states “*The employer must take measures to inform the workers in a precise and easily comprehensible fashion of: (a) The terms regarding wage that apply to the workers before they are assigned to a job or at any time that these terms change; (b) The items that make up their wage for every pay period when there is a change to the items.*”

Based on Article 112, although the employer argued that there was a change from incentive bonuses to seniority bonuses in 2000, the employer did not provide clear notice to workers. The Arbitration Council considers that workers learned about this change in 2005 as the workers argued in the hearing.

The Arbitration Council notices that workers still demand seniority bonuses even though they have known that the incentive bonus was changed to the seniority bonus.

The Arbitration Council considers that workers do already receive the seniority bonus but have lost their incentive bonus. So the Arbitration Council rejects the demand.

Issue 2: The workers demand the company to pay US\$ 5 more to all section workers who get wages US\$ 50.

Clause 1 of Notification 745 KKBV dated 23 October 2006 states “*The minimum wage for garment, textile workers and shoe sewing workers is set at US\$45.00 per month for probationary period of 01 month to 03 months. At the end of probationary period, a regular worker receives the minimum wage of US\$ 50 per month.*”

Paragraph 2 of Clause 2 of above Notification stated “Notification on implement about new minimum wages shall enforce from 01 January 2007.”

In connection with Notification 745, the Ministry of Labour and Vocational Training has issued Notification 806 KKBV dated 15 December 2006 on the enforcement of minimum wage for garment and shoe sewing workers.

The workers in this demand have received wages of at least US\$ 50 per month. The workers received such wages prior to Notification 745 KKBV dated 23 October 2006 which increased the minimum wage of garment and shoe sewing workers from US\$ 45 to US\$ 50.

In previous arbitral awards, the Arbitration Council determined that Clause 1 of Notification 745 KKBV dated 23 October 2006 provides that regular workers shall receive a minimum wage US\$ 50 per month. The Arbitration Council finds that this Notification only guarantees a minimum wage of US\$ 50 per month, it does not provide an increase of US\$ 5

per month to all workers. So workers who have already received wages above the minimum wage of US\$ 50 per month are not entitled to an increase of minimum wages per the Notification. (See Reasons for Decision of Arbitral Award 33/07-Gold Fame, issue 6)

In this case, the Arbitration Council also follows the arbitration panels of previous awards. As the Arbitration Council finds that there are no workers receive less than the US\$ 50 minimum wage, and there is not any agreement between the employer and workers regarding an increase of minimum wages, the Arbitration Council determines that there is no legal foundation for this demand. The Arbitration Council determines that the demand of workers is the demand for interests because this demand is above the requirements of the law.

Consistent with the reasons for the decision in issue 1 above, the Arbitration Council declines to consider the demand.

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

DECISION AND ORDER

Issue 1:

- Reject the demand for the company to differentiate between incentive bonuses and seniority bonuses because in the past the company took the incentive bonus in lieu of seniority bonus.

Issue 2:

- Decline to consider the demand to the company to pay US\$ 5 more to all section workers who receive wages of US\$ 50.

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 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: **ING SOTHY**

Signature:

Arbitrator chosen by the worker party:

Name: **LIV SOVANNA**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **KONG PHALLACK**

Signature: