

**KINGDOM OF CAMBODIA  
NATION KING RELIGION**

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**THE ARBITRATION COUNCIL**

**Case number and name: 44/06-Gold Fame**

**Date of Award: 22 June 2006**

**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. Tuon Siphann**

Chair Arbitrator (chosen by the two Arbitrators): **Mr. Ang Eng Tong**

**DISPUTING PARTIES**

**Employer party:**

Name: **Gold Fame Garment Factory**

Address: Kampong Pring Village, Setbo Commune, Saang District, Kandal Province

Telephone: 012 914 189/ 012 522 266 Fax: N/A

Representative:

The employer party did not attend the hearing claiming that it had made an agreement with the worker party on all issues in dispute.

**Worker party:**

1. Name: C.CAWDU

Address: # 6 C, Street 476, Sangkat Tuol Tompoung 1, Khann Chamkamorn, Phnom Penh

Telephone: 023 210 481/ 012 998 906 Fax: N/A

Representative:

- |                       |                            |
|-----------------------|----------------------------|
| 1. Mr. Ek Sopheakdey  | Vice-President of C.CAWDU  |
| 2. Mr. Kong Atith     | First Secretary of C.CAWDU |
| 3. Mr. Keo Pheap      | Union secretary            |
| 4. Ms. Chea Thida     | President of union         |
| 5. Mr. Keo Boeun      | Vice-President of union    |
| 6. Ms. Iem Sopheaktra | Finance Officer of union   |
| 7. Ms. Rin Soreth     | Union board member of [??? |

- |                       |                            |
|-----------------------|----------------------------|
| 8. Ms. Bun Sokly      | Union board member of [??? |
| 9. Ms. Vol Sivorn     | Union board member of [??? |
| 10. Mr. Srun Chanda   | Union board member of [??? |
| 11. Mr. Sok Sos       | Union advisor              |
| 12. Mr. Thy Bunthorng | Union advisor              |
2. Name: Cambodian Union Labour Federation [**Cambodian Labour Union Federation?**]
- |                        |   |
|------------------------|---|
| 1. Mr. Thorng Sovannak | President of local union and worker delegate      |
| 2. Mr. Kong Savuth     | Vice-President of local union and worker delegate |
| 3. Mr. Khun Saykim     | First Secretary of union                          |
| 4. Mr. Khin Sokhorn    | Officer of CULF[ <b>CLUF?</b> ]                   |
| 5. Mr. Thon Sithorn    | Union activist                                    |
| 6. Mr. Srey Srey Sor   | Union Activist                                    |

### ISSUES IN DISPUTE

(In Non-Conciliation Report)

1. Workers demand the company to increase the piece rate **in dozen in all sections.**
2. Workers demand the company to increase the piece rate **in dozen of ironing section;** the easiest to iron shirt, US\$0.45.
3. Workers demand that workers in stitching and checking section become piece rate workers **(in dozen).**
4. Workers demand the company to reimburse medical check fees of 10,100 riel and to pay it immediately.
5. Workers request the company not to deduct their **money[wage?]** when they lose their **cards [ID cards]** or ask for new cards.
6. Workers demand the company to stop using floating workers and include workers who have worked more than one month as regular workers.
7. Workers demand the company to provide wages and regular attendance bonus to workers who conducted the strike.
8. Workers demand the company to provide 50% of total wages for three months when they request maternity leave.

### JURISDICTION OF THE ARBITRATION COUNCIL

*The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B of the Labor Law (1997); the Prakas on the Arbitration Council No. 099 dated 21 April 2004; the Arbitration Council Procedural Rules which form an Annex to the same Prakas; and the Prakas on the Appointment of Arbitrators No. 099 dated 11 May 2006 (Fourth Term).*

*An attempt was made to conciliate the collective dispute that is the subject of this Award, as required by Chapter XII, Section 2A of the Labour Law. The conciliation conciliated 09 issues and 08 issues remain, and the non-conciliation report No. 084 កបវ/កណ dated 30 May 2006 was submitted to the Secretariat of the Arbitration Council on 30 May 2006.*

#### **HEARING AND SUMMARY OF PROCEDURE**

**Place of hearing:** The Arbitration Council, Phnom Penh Center, Building 'A', Sothearos Street, Sangkat Tonle Basac, Khann Chamkamorn, Phnom Penh

**Date of hearing:**

- 9 June 2006 (from 2:00 p.m. to 6:00 p.m.)

#### **Consecutive Procedural issues:**

On 26 May 2006, Department of Labour and Vocational Training of Kandal Province started conciliation on 54[34?] labour dispute issues raised by 4 union federations. After the compromise on the 54[34?] issues, the meeting agreed to take on 17 issues for negotiation, 9 of which were conciliated while 08 issues were not.

On 30 May 2006, the Arbitration Council received the case and the non-conciliation report No. 084 កបវ/កណ dated 30 May 2006 by Mr. Thol Neang, head of the Department of Labour and Vocational Training in Kandal Province. Upon receipt of the case, the Arbitration Council summoned the employer party and the worker party to conciliate and attend a hearing on the 8 non-conciliated issues on 9 June 2006 at 2:00 p.m. The employer party did not attend the hearing. From the worker party, representatives from two federations – C.CAWDU and CULF[CLUF?] – attended the hearing. The other two federations in the non-conciliation report did not attend. Upon starting the hearing, the Arbitration Council asked the parties about the issues in dispute again; CULF withdrew itself based on the reason that the federation signed an agreement with the employer party on 5 June 2006 and it accepted the agreement.

#### **EVIDENCE**

**Witnesses and experts:** N/A

#### **Documents, Exhibits and other evidence considered by the Arbitration Council**

Provided by the employer party:

1. Letter dated 7 June 2006 by Gold Fame company to the Arbitration Council to request to close case No. 44/06 without hearing.

2. Letter dated 5 June 2006 by the company and representatives of the four unions in Gold Fame company to withdraw the complaint and close case No. 44/06 based on their agreement dated 5 June 2006.

Provided by the worker party:

1. Sample(s) of shirt(s) and piece rate price in dozen in ironing section.
2. Letter dated 24 April 2006 by 124 workers to request the C.CAWDU help resolve 2 of their problems: 1) Increase lot price from 4.5 cents to 6 cents and 2) Issue lot price before ironing.
3. Letter dated 9 June 2006 by C.CAWDU to the head of the Secretariat of the Arbitration Council to request for permission for representatives of the union federation and worker union to attend hearing on 09 June 2006.
4. Letter dated 5 June 2006 by C.CAWDU to the Secretariat of the Arbitration Council to complain about Gold Fame company that the company persuaded its activists to accept money to solve the dispute and a request continuation of the hearing.
5. Motion dated June 2006 by 2,300 workers to reject the agreement between the employer and representatives of the four unions on 5 June 2006.

Provided by other unions:

1. Certificate of registration of worker union of Gold Fame Factory No. 551 សកបយុ.អក. dated 18 February 2004.
2. Letter by the Ministry to confirm that: a professional organization was registered at the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation, registration No. 067 សកបយុ.អក. dated 18 February 2004.
3. ដីកាអម sent to the director of Gold Fame factory about the confirmation letter of labour union registration in Gold Fame company No. 067 សកបយុ.អក. dated 18 February 2004.
4. Certificate of registration of Union of Solidarity of Gold Fame Factory No. 310 សកបយុ.អក. dated 23 August 2004.
5. Letter No. 310 សកបយុ.អក. dated 23 August 2002 by the Ministry to confirm that: a professional organization was registered at the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation, registration.

6. Certificate of registration of Khmer Youth Worker Union in Gold Fame Factory, No. 257 សកបយ.អក. dated 18 February 2002.
7. Letter by the Ministry to confirm that: a professional organization was registered at the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation, registration No. 247 សកបយ.អក. dated 18 February 2002
8. Letter No. 936 សកបយ/អក. dated 03 June 2004 by the head of the Department of Labour Inspectorate to the head of Khmer Youth Worker Union in Gold Fame Factory about recognition of union leaders, 2<sup>nd</sup> term.

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

1. Report on the resolution of the collective dispute at Gold Fame Company No. 084 កបវ/កណ. dated 30 May 2006 by Mr. Thol Neang, head of the Department of Labour and Vocational Training in Kandal Province.
2. Minute on the resolution of the collective dispute dated 29 May 2006.

Provided by the Secretariat of the Arbitration Council:

- 1- Letter of invitation to the worker party to attend the hearing No. 217 ស.ក.អ. dated 01 June 2006.
- 2- Letter of invitation to the employer party to attend the hearing No. 216 ស.ក.អ. dated 01 June 2006.

**FACTS**

- Having examined documents submitted to the Arbitration Council
- Having examined report of the conciliation of the collective dispute
- Having listened to statement by the representative of the worker party
- The Arbitration Council finds that:

**Gold Fame Enterprises "INT'L" Knitters Ltd.** is located in Kampong Pring Village, Setbo Commune, Saang District, Kandal Province and, based on the non-conciliation report, this company employs approximately 6,000 workers.

### **Primary Dispute Issue:**

The worker party claims that on 22 May 2006, workers requested to have a negotiation with the employer about some issues in dispute but the employer requested a delay of the negotiation. On 26 May 2006, the negotiation took place with the participation of four unions: Khmer Union Federation, Khmer Youth Federation Trade Union, Federal Union of Solidarity and C.CAWDU. On 29 May 2006, conciliation was conducted by the Ministry of Labour and Vocational Training. The conciliation was not successful. The Arbitration Council accepts the workers' claim regarding the negotiation.

On 31 May 2006, Mr. Att Thon, president of C.CAWDU, sent a letter to the director of Gold Fame company to *inform about the union election at Gold Fame factory and a list of names of 31 candidates.*

On 05 May 2006, people who claimed that they were representatives of Khmer Union Federation, Khmer Youth Federation Trade Union, Federal Union of Solidarity and C.CAWDU signed an agreement with the employer to resolve the non-conciliated demands.

In addition, on 05 May 2006, Mr. Kong Atith, representative of C.CAWDU, sent a letter to the Secretariat of Arbitration Council to continue the arbitration process for case No. 44/06. The letter provides that:

1. On 31 May 2006, C.CAWDU submitted a letter to inform the company about the union election.
2. Between 2<sup>nd</sup> and 4<sup>th</sup> June 2006, the company persuaded about 18 workers to accept money to resolve the labour dispute and continued to persuade and threaten union activists and candidates to resign from work.
3. [The union] requests the Arbitration Council to continue its legal process.

On 6 June 2006, Mr. Att Thon, sent a letter to the director of Gold Fame company, subject of which was *To additionally inform about the union election in Gold Fame factory and a list of names of 20 candidates for union leaders.*

Moreover, on 06 June 2006, the Secretariat of the Arbitration Council received a letter dated 05 June 2006 from the employer party to withdraw the **claim[case?]** and end the case of Gold Fame company stating that both parties had negotiated and agreed on all issues. There was list of names and thumbprints of 17 representatives and candidates of C.CAWDU.

On 07 June 2006, the Secretariat of the Arbitration Council received a letter dated 07 June 2006 from the employer party to request the closing of case No. 44/06 without hearing.

In the hearing on 09 June 2006, the worker party mentioned that on 28 April 2006, C.CAWDU received a petition from 124 workers requesting for help to solve their labour dispute.

After receiving that petition, C.CAWDU cooperated with workers to choose activists in the factory to participate in resolving workers' disputes with C.CAWDU and the employer. Then they chose 18 activist workers to be messengers for workers during the process of resolving problems with C.CAWDU which include Mr. Pong Poeun, a full-rights worker delegate; Mr. Ann Sam Oun, a full-rights worker delegate; Mr. Ol Sam Oeun, a full-rights worker delegate; and Mr. Ev Pheakdey, an assistant worker delegate. The Arbitration Council notices that the four names were recorded in the agreement with the employer. Therefore, the Arbitration Council considers the claim by workers as reasonable and accepts this claim as a fact.

Workers add that the messengers chosen received money from the employer and resigned from work after making the agreement with the employer on 05 June 2006 and C.CAWDU and other workers who requested help from [C.CAWDU] did not know about the agreement. Workers claim that they made a request to C.CAWDU for help, not the 17 workers. Workers testified that no local union election had taken place and at the moment the union is not yet registered at the Ministry in charge of Labour. The Arbitration Council accepts the testimony from the workers which shows that local C.CAWDU at Gold Fame Factory was not yet registered when there was this agreement with the employer.

The worker party further testified that after the agreement on 05 June 2006, about 2,300 workers including the initial complainants (except those individuals who put thumbprints on the agreement) put thumbprints to request them to continue to help solving the dispute.

The Federal Union of Solidarity, Khmer Youth Federation Trade Union and Cambodian Worker Union agreed to withdraw their demand because of the agreement made by local union on 05 June 2006 was acceptable and able to solve their demand. The employer party submitted a letter to the Secretariat of the Arbitration Council to abstain from attending the hearing as the company considers that the agreement is in effect and binding.

#### **Issue 1:**

In this issue, the workers demand the company to increase piece rate price **in dozen** in all sections.

Workers testify that they currently work eight hours per day and another four hours overtime but they can receive only US\$50 per month and sometimes workers receive less than US\$45. Further, workers claim that if they work only eight hours per day or 48 hours per week, they do not receive the basic wage. Workers also testify that if they work and receive less than US\$45 per month, they are scolded by the company. Workers adds that the determination of piece rate so far is not in conformity with the law because it is determined unilaterally by the employer party without letting the workers know it in advance. Workers provided no written evidence to support their claim.

Workers demand for 30% increase in piece rate price in all sections.

**Issue 2:**

Workers demand the employer to increase piece rate price **in dozen** in the ironing section, **easiest to iron shirt**, US\$0.45.

Workers claim that they started working in 1999 and have never made any demand. Workers add that there were previously over 200 workers in the ironing section, but only 30 **full-workers** and about 20 to 30 **not-full-workers** now remain. Workers did not provide any other concrete evidence to support their claim.

**Issue 3:**

Workers demand that workers in the stitching and checking section become piece rate workers (**in dozen**).

Workers claim that workers in other sections receive [payment by] piece rate so workers in stitching and checking should also have the same right, i.e., they should be piece rate workers. Workers state that the employer makes workers in the checking and stitching sections (approximately 1,000 workers) to complete 30 shirts per hour.

Workers continue that those workers who cannot achieve this will be blamed and receive written reprimands by the group leader and **be forced to make a contract three times**. If workers still cannot do it, they will be fired from work (in Building 1, two workers were terminated, termination dates are not clear) or forced to resign from work.

**Issue 4:**

Workers request the employer to reimburse the medical check fee of 10,100 riel and the company should pay this amount immediately; but the company does not agree to pay it immediately but will give it when labour contracts are terminated by a party.

**Issue 5:**

Workers request the company not to deduct their money when they lose their **cards**[ID **cards**] or ask for new cards.

Workers mentioned that they demand the company to deduct money based on the actual price in case a card is lost, but if it is changed the employer should not deduct money because workers have not made any mistake.

Workers demand that the employer provide cards for them to use in the factory.

**Issue 6:**

Workers demand the company to stop using floating workers and add workers who have worked more than one month to be regular workers.

Workers claim that currently almost half of the workers are floating workers. They add that the employer does not allow these workers to take annual leave. Workers also say that some workers work for more than two years (for example Ms. Va Sivorn) but remain floating workers; these workers work 8 hours per day and generally the company requires them to work 4 hours overtime each day including holidays and Sundays. Workers add that the employer used to require workers to change cards once every three months and charge 500 riel for the card. But since the strike in May 2006, the employer requires thumbprints from workers once every month and changes cards once every three months.

### **Issues 7 and 8:**

In the hearing the employer party requests to withdraw issue 7 and issue 8 and request the Arbitration Council not to consider the two issues. Therefore, the Arbitration Council will not consider on the two issues.

### **REASONS FOR DECISION**

#### **Primary Dispute Issue:**

#### **Does the Arbitration Council continue the settlement of this collective labour dispute when the employer party does not come to the hearing?**

In this case, the Secretariat of the Arbitration Council issued invitation letter to invite both the employer party and the employee party to attend the hearing of the Arbitration Council. But the employer party does not come as invited.

Article 21 of Prakas 099 in 2000 states: *In the case one of the parties, although duly invited, fails to appear before the Arbitration Panel without showing good cause, the Arbitration Panel may proceed in the absence of that party or may terminate the arbitral proceedings by means of an Award.*

In this case, the employer party contended that the agreement it signed with unions in Gold Fame Factory is effective and has resolved the labour dispute in this factory and this is the reason why it does not come to the hearing. The Arbitration Council considers that the reasons raised by the employer are related to a legal question which requires an answer; in this case, the answer should be by the Arbitration Council. The Arbitration Council notices that the unilateral decision by the employer party to not come to the hearing based on the effectiveness of the agreement is not a proper reason for the absence of the employer party before the Arbitration Council. Therefore, the Arbitration Council decides to continue its procedure though there the employer party is not present before the Arbitration Panel.

**Is the agreement signed by the three unions binding on the workers represented by C.CAWDU?**

In the fact finding, the Arbitration Council found that C.CAWDU informed the director of the company about the union elections two times. The first time was on 31 May 2006 and there were 31 candidates; the second time was on 06 June 2006, there were 20 candidates. However, the actual election day was on 08 June 2006. In the agreement on 05 June 2006, the 17 people who made themselves representative of workers supported by C.CAWDU were only candidates of the local C.CAWDU election which had not taken place yet.

The Arbitration Council considers that these candidates did not have a clear authorization letter from the workers. The Arbitration Council notes that Article 274 of the Labour Law states that a professional organization has the legal capacity to enter into contract. In addition, Article 268 also states, *In order for their professional organization to enjoy the rights and benefits recognised by this law, the founders of those professional organisations must file their statutes and list of names of those responsible for management and administration, with the Ministry in charge of Labour for registration.*

Therefore, union must perform this registration procedure before receiving such legal capacity. In addition, the Arbitration Council notes that Arbitral Award 31/03-Hong Wah mentions that a union which has not registered does not have the right to represent workers. The Arbitration Council concludes that when the agreement was made, no election of the local C.CAWDU had taken place yet and there was no local C.CAWDU which had legal capacity to sign an agreement with the employer. Therefore, the Arbitration Council considers that the agreement dated 05 June 2006 does not bind obligations on the other 107 workers represented by the 17 workers. However, the agreement binds obligations on each worker who signed the agreement.

**Who are the employer party in this case?**

Based on the fact finding, the initial complainants were the 124 workers who requested C.CAWDU to help resolve their labour dispute. However, because 17 among the 124 workers signed the agreement with the employer resolving the labour dispute, among the initial complainants only 107 workers remain.

After the agreement on 05 June 2006, 2,300 workers, including the 107 initial complainants, ask the C.CAWDU to continue helping them in solving their dispute at the Arbitration Council.

The Arbitration Council notices that Articles 302 to 314 of the Labour Law mean that conciliation and arbitration procedures are the obligations of the parties.

The Arbitration Council understands that among 2,300 workers, only the 107 initial complainants were represented by C.CAWDU in the stages of dispute resolution at the factory level and at the Ministry of Labour and Vocational Training before this collective labour dispute was submitted to the Arbitration Council for settlement. The Arbitration Council notes that the remaining workers did not proceed through legal procedures for dispute resolution properly. Therefore, the Arbitration Council determines that the worker party in this case is the 107 initial complainants.

**Issue 1:**

In this case, workers demand the company to increase piece rate **in dozen** in all sections.

Regarding this point, the Arbitration Council considers that the demand is under Article 108 of the Labour Law which states: *The wage must be calculated in a manner that permits the worker of average ability working normally to earn minimum wage.*

Article 137 provides that the number of hours worked cannot exceed eight hours per day, or 48 hours a week. Notification No. 017/00 states that the minimum wage for garment textile workers and shoe workers are set at US\$45.00 per month.

According to previous decisions of the Arbitration Council on cases similar to this one (case 03/05-Flying Dragon), the employer has the right to determine or change piece rate price but the Arbitration Council decided that the determination of piece rate price must allow workers of average ability working normally to earn the minimum wage.

Based on the above fact finding, the worker party claims that the piece rate price determined by the employer does not allow workers to earn the minimum wage of US\$45 per month. However, the workers do not show enough explicit evidence to clarify who are the workers who work 8 hours a day but do not earn the minimum wage of US\$45 per month. Based on this, the Arbitration Council declines to consider the workers' demand that the employer should increase the piece rate price (see case No. 03/05-Flying Dragon).

If there is explicit evidence such as identification of workers who cannot receive the minimum wage, their wage payment documents, and statistics of workers at Gold Fame Factory who cannot receive the minimum wage, the consideration on this case can be continued.

**Issue 2:**

In this issue, workers demand the company to increase the piece rate **in dozen** of ironing section; **the easiest to iron shirt**, 0.45 USD.

For the reason as stated in the above issue 1, the Arbitration Council cannot settle this problem as workers do not provide enough evidence for the Arbitration Council to make

consideration. Therefore, the Arbitration Council declines to consider the workers' demand on this issue. (See the reason provided in Issue 1 above.)

### **Issue 3:**

Workers demand that workers in stitching and checking section become piece rate workers (**in dozen**).

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

In previous Awards, the Arbitration Council interpreted this Article 2 that the employer has rights to supervise and direct the enterprise. (See Arbitral Awards 25/05-CHP, 41/05-Violet, 81/05-Supreme). The Arbitration Council notes that the right to supervise the enterprise of the employer includes right in determining that workers in which section should be piece rate workers and which workers of which section should be monthly-wage-based workers. Therefore, the demand raised by workers is a demand for rights greater than provided by the law. Thus, this is an interests dispute.

In principle, the Arbitration Council considers only interests disputes submitted by a union which has the most representative status (see Arbitral Awards 96/04-Sportex and 109/04-Fortune). In this case, the worker party does not include a union which has the most representative status. Hence, in this case, the Arbitration Council declines to consider the workers' demand that workers in stitching and checking section become piece rate workers (**in dozen**).

### **Issue 4**

Workers demand the company to reimburse medical check fees of 10,100 riel and pay it immediately. The employer party does not agree to immediate reimbursement but agrees to give 10,100 riel at the end of the contract by a party. Article 247 of the Labour Law provides sufficient legal ground to reach the conclusion that an employer has the obligation to pay for medical check fees before accepting workers to work. (See cases 02/03-Chou Sing, 21/03-Loyal, 19/04-Kbal Koh, 63/04-Shine Well, 64/04-Mercury, 78/04-AIA, 98/04-Great Union, 106/04-Suit Way, 107/04-Jaquisintex, 05/05-GHG, 41/05-Violet, 59/05-Tack Fat, 81/05-Supreme, 05/06-W&D, 19/06-Xing Hong, and 23/06-Max Pearl). The Arbitration Council previously concluded that the reimbursement of medical check fees for workers is a subject of the statute of limitation of period of, at most, 3 years as stated in Article 120 of the Labour Law (see award No. 05/06-W&D). Moreover, allowing the employer to pay for medical check fees for workers at the end of the

contract can affect the benefits of workers because they may lose their legal right to make a demand.

The Arbitration Council previously issued Awards to order the employer to reimburse the medical check fee for workers once the Award is in effect or a specific duration, for example one month after the Award is in effect, etc. (see Arbitral Award 19/06-Xing Hong).

Therefore, the employer party has to reimburse to 107 workers (124 workers – 17 workers) during an appropriate time, three weeks after this Award is in effect.

#### **Issue 5:**

Workers request the company not to deduct their money when they lose their cards or ask for new cards. Here, the workers think it is their right because the employer requires them to use this card; the workers demand the company to deduct money based on actual price in case the card is lost, but when the card must be changed then workers demand that the employer do not deduct [any] money because they have not made any mistake. The Arbitration Council finds that the employer's requirement for workers to wear cards in the factory is so it will be easy to supervise and identify workers. Article 2 of the Labour Law provides that the employer has the right to supervise the company (see reason provided in Issue 3 above and Arbitral Awards 25/05-CHP, 41/05-Violet, and 81/05-Supreme). The Arbitration Council considers that the right to supervise includes the practice of requiring workers to wear ID cards in the factory. Thus, regarding the loss of cards, the Arbitration Council considers that the employer has right to require workers to obtain replacement cards and pay money as a fine for the carelessness of workers who lost their cards. However, according to Article 27 of the Labour Law, any disciplinary sanction must be proportional to the seriousness of the misconduct (see case No. 38/06-Fortune). Thus, the Arbitration Council considers that the employer should require the workers to pay only for cards they lost and according to actual market price.

Regarding the changing of cards, the Arbitration Council considers that it is the workers' obligation to take good care of their cards. Workers can change the cards only when it is necessary and reasonable. If these conditions are fulfilled, based on principles of equity, the Arbitration Council considers that workers should not have the obligation to pay.

#### **Issue 6**

Workers demand the company to stop using floating workers and add workers who have worked more than one month to be regular workers.

Article 9 of the Labour Law provides that the employer can hire regular workers or floating workers. In addition, Article 2 of the Labour Law provides the employer rights to supervise and direct the enterprise (see reason provided above in issue 3 and issue 5). The

Arbitration Council notices that employer's rights to supervise and direct includes right to employ floating workers. Therefore, the Arbitration Council considers that the workers' demand that the company should stop using floating workers is not an appropriate demand.

In Article 9 of the Labour Law, workers are recognized as regular workers or casual workers. This Article also explains that regular workers are those who regularly perform a job on permanent basis. Casual workers are those who are contracted to perform a specific work that shall normally be completed within a short period of time; perform a work temporarily, intermittently and seasonally. Based on the findings fact by the Arbitration Council, workers whom the company considers as floating workers which refer to casual workers, are not in the definition stated in the Article about casual workers. On the other hand, the nature and duration of their work is classified in the definition of regular workers. In addition, Article 146 of the Labour Law prohibits using of the same worker for more than six days per week. But in the Gold Fame company, the Arbitration Council found that the employer requires those whom it considers floating workers or casual workers to work up to 7 days per week.

According to Article 10 of the Labour Law, causal workers are subject to enjoy the same rights as regular workers (see Arbitral Awards 55/04-You Chheng, 23/05-Max Pearl). The Arbitration Council considers that the same rights include minimum working conditions.

Furthermore, Article 166, paragraph 3, states that *for job that are not performed throughout the year, a worker is considered to have met the condition of continuous service if he works an average of 21 days per month*. In the fact finding, the Arbitration Council found that the workers work continuously up to more than two years and they work in a factory where there is always work to do to the extent that there is no time off during the week. Workers who work at least 21 days per month for at least two months are recognized as regular workers or permanent workers (see case No. 55/04-You Chheng, 69/04-Common Way, and 85/04-Kang Ning).

Therefore, the Arbitration Council considers that legally these workers should be considered regular workers whom the company should provide the same rights as other workers.

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

## **DECISION**

The Arbitration Council has jurisdiction to settle the demand of 107 workers who made a petition to C.CAWDU on 28 April 2006.

1. Decline to consider the workers' demand that the employer should increase the piece rate price.
2. Decline to consider the workers' demand that the company should increase piece rate **in dozen** of ironing section; **the easiest to iron shirt**, US\$0.45.

3. Decline to consider the workers' demand that the company should provide piece rate prices for workers in the stitching and checking section.
4. Order the employer to reimburse medical check fees of 10,100 riel each to the 107 workers, whose thumbprints are attached, who have not been paid yet by the company. The employer has to pay this amount to workers within 3 weeks, at the latest, after this award comes into force.
5. The employer can deduct money for cards[**ID cards**] lost from workers who lost their cards according to actual market price. Regarding cards that are changed for a reasonable cause, the employer should not deduct money from workers.
6. a. Reject the workers' demand for the employer to stop using floating workers.  
b. The employer must accept workers who have been working for the company for more than two months to be regular workers if they work on average of at least 21 days per month for two months consecutively, and provide them the same rights as other regular workers from the day this Award comes into force.

**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: **Mr. Hem H. Naryth**

Signature: .....

Arbitrator chosen by the worker party:

Name: **Mr. Tuon Siphann**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Mr. Ang Eng Tong**

Signature: .....