



**KINGDOM OF CAMBODIA**  
**NATION RELIGION KING**

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

**THE ARBITRATION COUNCIL**

**Case number and name: 44/07- Winner Knitting Factory**

**Date of Award: 04 June 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: **AN NAN**

Chair Arbitrator (chosen by the two Arbitrators): **KONG PHALLACK**

#### **DISPUTING PARTIES**

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

Name: **Winner Knitting Factory [ ] Ltd**

Address: Number 4 Village, Svay Rolom commune, Sang district, Kandal province

Telephone: **016 95 11 88**

Representative:

- |                      |                          |
|----------------------|--------------------------|
| 1 - Mr Chea Lychao   | Administrative Manager   |
| 2- Mr Chea Soheat    | Administrative Assistant |
| 3- Mr. Seng Chamroun | Administrative Assistant |
| 4- Mr. Eng Chaoya    | Security chief           |

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

Name: **Workers of Winner Knitting Factory Company**

Address: Number 4 Village, Svay Rolom commune, Sang district, Kandal province

Telephone: **012 24 71 21**

Representative:

- |                  |   |
|------------------|---|
| - Ms. Meas Vanny | Dispute conciliation officer of C.CAWDU |
|------------------|---|

- Mr. Un Sokrith	Ironing Worker
- Mr. Heang Phon	Ironing Worker
- Mr. Nov Bunthoeun	Ironing Worker
- Mr. Choum Phalla	Ironing Worker
- Mr. Ork Kosal	Ironing Worker
- Mr. Soeun Sombou	Ironing Worker
- Mr. Mea Sophat	Ironing Worker
- Mr. Nov Rotha	Ironing Worker
- Mr. Pum Rotha	Ironing Worker

### **ISSUES IN DISPUTE**

(In the non-conciliation report)

1. The workers demand the company to increase the piece rates for ironing un-buttoned clothes US\$ 0.55 per piece, normal buttoned clothes US \$ 0.65 per piece, and clothes with buttons and pockets US\$ 0.75 per piece. The company doesn't agree and will increase US\$ 0.02 for all types of clothes; and if any calculation for clothing does not reach minimum wage there can be a discussion.
2. The workers demand the company to divide the attendance bonus into quarters so that 1 day absence is equal to 5,000 riels. The company does not agree; workers who are absent one day will not receive the attendance bonus.
3. The workers demand the company to increase seniority bonus \$1 dollar every year from the 6<sup>th</sup> year onward. The company does not agree; the company will follow the Labor Law.

### **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 was unsuccessful, and the non-conciliation report No. 129 K.K.B.V/AK/VK, dated 10 May 2007 was submitted to the Secretariat of the Arbitration Council on 10 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: 23 May 2007** (From 2:00 p.m. to 5:00 p.m.)

### **Procedural issues:**

On 11 April 2007, the Department of Labour and Vocational Training of Kandal province held a conciliation regarding 7 collective disputes, 4 of which were conciliated. The remaining three issues were sent to the Secretariat of the Arbitration Council on 10 May 2007.

After receiving the case file the Secretariat of the Arbitration Council invited the employer and employee parties to attend the hearing and try to further conciliate these three issues on 23 May 2007 at 2:00 p.m.

Both parties were present at the arbitral hearing. The Arbitration Council provided an opportunity for both parties to further try conciliation and tried to coordinate and provide various options for the conciliation but did not reach a successful 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:**

- Commercial registration certificate of the Company number 1056 BNBKB dated 30 April 1997.
- Memorandum and status of the company dated 28 November 2000
- Internal Work Rule of the company dated 15 October 2001
- Authorized letter to represent Ly Chao dated 23 May 2007
- Summary statement of dispute
- Payroll for ironing workers in May 2007
- Pay-slip for working hour of workers

#### **Provided by the worker party:** None

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

- Report No.075/07 KBV/KN regarding collective labor dispute resolution at Winner Knitting factory dated 10 May 2007
- Minute of the collective labor dispute conciliation dated 09 May 2007

#### **Provided by the Secretariat of the Arbitration Council:**

- Invitation letter No. 190 K.K.B.V/AK/VK/LKA dated 18 May 2007 to invite the employer party to attend the hearing.
- Invitation letter No. 189K.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:**

- Winner Knitting Factory is located at Number 4 Village, Svay Rolom commune, Sang district, Kandal province and hires workers approximately 4165 workers.
- Base on the conciliation minute dated 09 May 2007, workers who are a complainants are ironing workers and there are 300 workers involved in the case. But based on [a list of] thumb-prints provided to the Arbitration Council only 113 workers are involved in making this claim. Workers in this case asked for help from C.CAWDU to assist them in the hearing.
- Base on the workers' statement, they do not have union yet but they are preparing to establish and register a union. Workers ask for help from C.CAWDU to assist them in the hearing.

**Issue 1:** The workers demand the company to increase the piece rates for ironing un-buttoned clothes US\$ 0.55 per piece, normal buttoned clothes US \$ 0.65 per piece, and clothes with buttons and pockets US\$ 0.75 per piece.

- The company does not allocate piece rates according to the type of clothing such as clothes without buttons, normal buttons and buttons with pockets.
- Base on the workers' statement, the reason for making this claim is because the wages which they have received are not sufficient and also because of the increase of price of goods and rent. Workers mention that there is no agreement related to the piece rate.
- Most of the workers receive more than the minimum wage. For workers who received less than the minimum wage the company provides and increase to reach the minimum wage.
- Workers testified in the hearing that if workers can not reach the minimum wages for 3 months the company will give them a warning. The company denies this testimony

and argued that even when workers can not reach the minimum wage for 3 months the company has never given any warning. The company does not have any policy of giving warnings to workers who can not reach the minimum wage. Workers did not object to this statement. So the Arbitration Council finds that the company does not have any policy to warn workers who do not reach the minimum wages for 3 months.

- In order to set piece rates the company asks workers of average ability to participate in a test. The company's policy is to set proper piece rates for workers of average ability. If there is any piece rate for clothing which does not allow workers to reach the minimum wage, the company discuss the piece rate again with workers. Workers do not deny this statement.
- The company has increased the piece rates for all clothes by 2 cents and more than 90% can reach above the minimum wage, based on the payroll of workers and the summary statement of the company (although there is no mention about date and time). The company provided the payroll to support their statement. Based on this statement, the company argues that there are no workers who are unable to reach the minimum wage in a working day; that is, at least US\$ 1.923 dollars per day (the minimum wage per day is equal to the minimum wage per month of US\$ 50 dollars divided by 26 days) and some workers can reach US\$ 180 dollars per month. Workers do not object to the company's statement.

**Issue 2:** The workers demand the company to divide the attendance bonus into quarters so that 1 day of absence is equal to 5,000 riels.

- Workers demand the company to divide attendance bonus into quarters and each quarter is 5,000 riels (US\$5 divided by 4) in order to encourage workers to work. Workers demand the company to implement a new policy as follows:
  - (a). Deduct 5,000riels whenever workers are absent with permission for urgent needs such as sickness or family problems.
  - (b). Deduct the entire US\$ 5 if workers are absent without permission.
- The company does not agree with point (a), which means that workers who are absent one day per month will lose the entire US\$ 5 dollars of attendance bonus because this bonus is for workers come to work regularly.
- Workers and the company testified that presently when workers are absent a half day with or without permission the company will deduct the entire US\$ 5 dollars of attendance bonus. Both parties stated that there is no agreement on this issue.
- Workers demand is for workers of all work sections in the factory. But the Arbitration Council finds only 113 workers make this demand.

**Issue 3:** The workers demand the company to increase the seniority bonus US\$ 1 dollar in each year starting from year 6.

- Workers demand to increase seniority bonus in the 6th year and upwards by US\$ 1 every year because they have worked for the company for a long time. Workers make this demand for workers in all sections of the factory. Workers demand the employer to increase the seniority bonus immediately.
- The company does not agree with the demand; and the company will follow the law.
- Some workers have been working for the company approximately 10 years since 1997.
- Both parties stated there is no agreement about the seniority bonus.

### **REASONS FOR DECISION**

**Issue 1:** The workers demand the company to increase the piece rates for ironing un-buttoned clothes US\$ 0.55 per piece, normal buttoned clothes US \$ 0.65 per piece, and clothes with buttons and pockets US\$ 0.75 per piece.

Article 108 of Labor Law states *“For task-work or piece-work, whether it is done in the shop or in the home, prices must be calculated in a manner that permits the worker of average ability working normally to earn, for the same amount of time worked, a salary at least equal to the guaranteed minimum wage as established for an employee paid by the hour.”*

Article 137 of Labor Law states *“In all establishments, whether they provide occupational training, are of a charitable nature, or are professionals’ offices, the number of hours worked by workers of either sex **cannot exceed eight hours per day, or forty-eight hours per week.**”*

Clause 1 of Notification 745 KKBV dated 23 October 2006 states *“The minimum wage for garment textile workers and shoes 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 this Notification states *“This new Notification regarding minimum wage shall be in effect from 01 January 2007 on until year 2010.”*

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

Base on the legal provisions above, for piece work the employer has an obligation to calculate wages in order to allow the worker of average ability to receive at least US\$ 50 dollars per month, [working] 8 hours per day. In this case the company sets piece rates in the ironing section based on an ironing test for average workers. As a result 90% of the workers can make at least the US\$ 50 dollars minimum wage. Workers whose wages are below US\$ 50 dollars will be bumped up to US\$ 50 dollars. Workers do not deny that the company's piece rate calculation allows most of the ironing workers to obtain at least the US\$ 50 minimum wage per month as set by law.

In the hearing workers mention that they demand the company to increase the piece rates for ironing clothes without button US\$ 0.55 per piece, for clothes with normal buttons US\$ 0.65 per piece, and for clothes with buttons and pockets US\$ 0.75 per piece because the wages are not much and the increase in price of goods and rental houses, but not because the employer pays below the minimum wage.

According to the above analysis, the employer has already met the obligation to guarantee that workers receive the US\$ 50 minimum wage. So the demand to the company to increase piece rates is an interests demand that is above the stated law because the increase of piece rates can [add to the wage so that it is] above the minimum wage. It means that this labor dispute is an interests dispute.

Generally the Arbitration Council will consider an interests dispute only if the union who brings the dispute has the most representative status in the factory. Most representative status provides the legal qualification for the union to negotiate to establish a collective bargaining agreement in the company (See Article 96, paragraph 2-B of the Labour Law and Clause 9, paragraph 1 of Prakas 305 [of 2001]) and the right to bring an interests dispute to the Arbitration Council for resolution. In order to obtain most representative status, Article 277 of the Labor Law in 1997 states that the union shall register and complete other conditions which are mentioned in that Article. (See Arbitral Award 57/04-Evergreen; 60/04-United Art, reasons for decision, issue 3, 08/07- Siu Quinh, reasons for decision, issue 3; 37/07-JR&B reasons for decision, issue 2). If the union has most representative status the Arbitration Council will consider the demand of workers based on relevant factors such as financial capacity of the company to increase the piece rates.

However, in this case workers have not established a union yet. The Arbitration Council does not consider the demand of workers.

**Issue 2:** The workers demand the company to divide attendance bonus into four, so that a 1 day absence is 5,000riels.

In the hearing, workers raise that this demand is made for workers in all work sections of the factory. However, the evidence that the Arbitration Council received stated that there are only 113 workers who make this demand. There is no evidence to show that other workers asked the union to make this demand. So the Arbitration Council decides that the decision for this demand applies only to the 113 workers who make the demand.

In this case workers demand the company to allocate the attendance bonus into four parts, each one of which is in the amount of 5,000 riels (US\$ 5 dollars divided by 4) and ask the company to deduct only 5,000 riels when workers are absent with permission for 1 day. The Arbitration Council considers as follows:

Clause 3 of Notification 745 dated 23 October 2006 states that *“Benefits workers used to receive from Notification No. 017 SKBY dated 18 July 2000 on points 3, 4, 5 and 6 shall be retained”*.

Clause 3 of Notification 017 dated 18 July 2000 states that *“Any workers who regularly work according to number of working days per month shall have a reward at least 5 US dollars per month.”*

The Arbitration Council considers that there is no clear mention about how many days per month workers shall work in order to be regarded as working regularly. This Notification also does not state clearly about whether workers who are absent with permission are entitled to obtain the attendance bonus or not.

Point 5( c ) of the Internal Work Rules of the company states that *“workers who come to work regularly during the number of the day of work in a month must receive US\$ 5 of bonus per month.”* The Arbitration Council considers that the Internal Work Rules of the company does not clearly define the words “work regularly “ or about leave with or without permission; so it is similar to Clause 3 of Notification 017 dated 18 July 2000. Thus the Arbitration Council will review and analyse the words “work regularly “ as mentioned in Clause 3 of Notification 017.

In previous cases the Arbitration Council interpreted the word “work regularly” in Notification 017 to mean that “if work regularly means workers shall come to work 26 days per month the Arbitration Council considers that this example is not always right because in some months in which there is a national holiday or leave set by the state, then workers work

less than 26 days and workers still receive the bonus for working regularly. So the Arbitration Council finds that leave for national holidays or leave set by the state is a leave with proper permission and also employer's permission." (See Arbitral Award case 45/05-B&N, issue 6.)

In this case the Arbitration Council also follows this interpretation. In conclusion, the Arbitration Council considers that the words "work regularly" have two meanings, as below:

- (a) work 26 days per month if there is no national festival or leave set by the state.
- (b) work least than 26 days per month for national festival or leave set by the state which is a leave with proper permission and also employer's permission.

The Arbitration Council considers that attendance bonus is a bonus to encourage workers who come to work regularly in a month without inappropriate absences. (See Arbitral Award 62/04-Wing Tai, issue 1 and 48/06-Bill Up, issue 1)

In particular, the Arbitration Council considers that principle for the provision of attendance bonus stated in Notification 017 of the Ministry Labour and Vocational Training does not mean workers who leave with permission should be punished. When workers take leave with permission because of urgent needs the employer has the right to determine based on the real circumstances whether the request is proper and reasonable or not and whether workers really have an urgent need before the employer makes a decision to to allow such leave or not. When employer allows workers [to take such leave], then the employers acknowledges that workers really have a reasonable motivation to take leave.

Because Notification 017 of the Ministry of Labour and Vocational Training does not mention clearly about this issue the Arbitration Council decides to solve this issue base on equity principle which requires the employer to deduct attendance bonus in proportion to the days which workers take leave in urgent need and with permission per month. So the Arbitration Council considers that the company shall pay the attendance bonus in a proportion to the number of working days per month to workers who take leave with proper permission. (See Arbitral Award 48/06-Bill Up, issue 1 and 56/06-Borex, issue 2). For example: if workers have permission to take leave 1 day, then the attendance bonus should be deducted according the following formula:

- (a)  $\text{US\$ } 5 \text{ dollars divided by } 26 \text{ days} = \text{approximately US\$ } 0.20$
- (b)  $\text{US\$ } 5 \text{ minus } \$0.20 = \text{approximately US\$ } 4.80$

So in case a worker takes leave for an urgent need which employer gives permission of 1 day, then the worker has the right to receive approximately US\$ 4.80 if the worker comes to work regularly beside that day of leave.

However, in this case workers demand the company to allocate US\$ 5 into four parts and request the company to deduct 5,000 riels (about US\$ 1.25) per day in case workers leave with permission for an urgent need with the company's permission. This means that in case workers leave with permission for urgent needs, then workers can receive about US\$ 3.75 if workers come to work regularly beside the day of leave. See chart, below:

<b>Number of Leave</b>	<b>Attendance bonus by Law</b>	<b>Attendance bonus by request</b>
1 day	US\$ 4.80	US\$ 3.75
2 days	US\$ 4.60	US\$ 2.50
3 days	US\$ 4.40	US\$ 1.25
4 days	US\$ 4.20	US\$ 0

Base on the above interpretation, the workers' demand is a demand to abandon their entitlement to a legal right. So the Arbitration Council decides based on the demand of workers for the company to deduct 5,000 riels from the US\$ 5 attendance bonus each day in case workers leave with permission for urgent needs and the company agrees.

**Issue 3:** Workers demand to increase the seniority bonus by adding \$1 every years beginning the 6<sup>th</sup> year.

In the hearing, workers raise that the demand is for workers in all work sections. However, the evidence which the Arbitration Council received states that there are only 113 workers in the ironing section who make this demand. So the Arbitration Council decides that the decision in this case applies only to the 113 workers who make this demand. (See Reasons for Decision, issue 2 above)

In this case workers demand to increase the seniority bonus starting from year 6 and onward, by adding \$1 each year because workers have been working for a long time in the company, some workers have been working for the employer since 1997.

Clause 3 of Notification 745 KKBV dated 23 October 2006 states that "*Benefits workers used to receive from Notification No. 017 SKBY dated 18 July 2000 on Clauses 3, 4, 5 an 6 shall be retained.*"

Clause 5 of Notification 017 SKBY dated 18 July 2000 stated "*Workers who work for a long time in a factory or an enterprise shall receive the seniority bonus as follows:*

*5.1. those who have been working from one year up shall receive a seniority bonus of US\$ 2 per month;*

5.2. those who have been working from two years up shall receive a seniority bonus of US\$ 3 per month, that is US\$ 2 for the first year plus US\$ 1 for the second year;

5.3. those who have been working from three years up shall receive a seniority bonus of US\$ 4 per month, that is US\$ 2 for the first year plus US\$ 1 for the second year and US\$ 1 for the third year;

5.4. those who have been working from three years up shall receive a seniority bonus of US\$ 5 per month, that is US\$ 2 for the first year plus US\$ 1 for the second year, US\$1 for the third year and US\$ 1 for the fourth year..”

Base on this Notification the Arbitration Council considers that Clause 5 of Notification 017 SKVY dated 18 July 2000 provides that the seniority bonus does not change after working more than 4 years. This means that workers receive a seniority bonus of \$5. (See Arbitral Award 33/07-Gold Fame, reason for decision, issue 2)

In this case, the employer paid the seniority bonus to workers as stated in Notification 017 dated 18 July 2000. But workers demand to increase the seniority bonus from the 6<sup>th</sup> year onwards by adding \$1 every year. So this demand does not have a legal basis. So the workers' demand is above the entitlements provided to workers in the law so this dispute is an interests dispute. In this case the worker-party is not a union which has the most representative status to bring an interests dispute for resolution before the Arbitration Council. (See Reasons for Decision on the interests dispute of issue 1, above)

So the Arbitration Council declines to consider the demand of workers in this issue.

Base on fact finding and rules and reasoning as explained above the AC decides as following:

#### **DECISION AND ORDER**

##### **Issue 1:**

- Reject the workers demand for the the company to increase the piece rates for ironing un-buttoned clothes US\$ 0.55 per piece, normal buttoned clothes US \$ 0.65 per piece, and clothes with buttons and pockets US\$ 0.75 per piece.

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

- Order the employer to deduct 5,000 riels when workers take 1-day leave for urgent needs when the employer gives permission.

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

- Decline to consider the demand to increase the seniority bonus by adding US\$ 1 each year from the 6th year, onward.

**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: **ING SOTHY**

Signature: .....

Arbitrator chosen by the worker party:

Name: **AN NAN**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **KONG PHALLACK**

Signature: .....