



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

**ក្រុមប្រឹក្សាអន្តរាគមន៍**  
**THE ARBITRATION COUNCIL**

**Case number and name: 44/08-Siu Quinh**

**Date of Award: 21 April 2008**

### **ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

#### **ARBITRATION PANEL**

Arbitrator chosen by the employer party: **Chhiv Phyrum**

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

Chair Arbitrator (chosen by the two Arbitrators): **Ang Eng Thong**

#### **DISPUTING PARTIES**

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

Name: **Siu Quinh Garment (MFG) Ltd.**

Address: Kvar Khang Keut Village, Sangkat Dangkor, Khan Dangkor, Phnom Penh

Telephone: 017 839 405

Fax: N/A

Representative:

1. Mr. Top Sitha

Assistant to the Company Director

2. Mr. Bun Leng

Administration Officer of the Company

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

Name: **Khmer Youth Federation Trade Union (KYFTU) and local Khmer Youth Trade Union at the Company (KYTU)**

Address: Kvar Khang Keut Village, Sangkat Dangkor, Khan Dangkor, Phnom Penh

Telephone: 017 370 363

Fax: N/A

Representative:

1. Mr. Soum Chanthea

Officer of KYFTU

2. Mr. Pov Bunna

Officer of KYFTU

3. Miss Kimleang Soly

President of KYTU at Siu Quinh Factory

4. Miss Kem Ory

Secretary of KYTU

## ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- The workers demand that the Company maintain wages and bonus for leaders of local union of KYTU who come out of the Company compound to take care of babies in the daycare center.
- 2- The workers demand that the Company allow female workers to bring their children aged over 18-months to seven-years old to the daycare center. The Company states that it allows this only for children aged between 18-months and three-years old.
- 3- The workers demand that the Company maintain wages and bonus for female workers who take their babies to the daycare center. The company states that for female workers who take their children aged over three-years old to the daycare center, the company can not maintain their wages and bonus because they do not come to work for the Company.

### 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. 076 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 hearing was unsuccessful, and the non-conciliation report dated 14 March 2008 was submitted to the Secretariat of the Arbitration Council on 24 March 2008.*

### 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:** 1 April 2008 (From 8:00 a.m. to 11:00 a.m.)

**Procedural issues:**

On 19 February 2008 the Department of Labour received a complaint from the local union of KYTU at the factory to demand the Company to improve three working conditions. The Department assigned its official to conduct conciliation on the 06 March 2008 but the party did not reach agreement so the Department referred the case to the Arbitration Council for further legal resolution.

The Secretariat of the Arbitration Council summoned both parties to the hearing on 1 April 2008.

On 1 April 2008 at 8:00 a.m. the Arbitration Council conducted a hearing to arbitrate and solve the non-conciliation issues. The Arbitration Council encouraged the parties to further the negotiation both in the hearing and at the enterprise level to find a solution through conciliation and attempted to conciliate this dispute but did not obtain a conciliation result. Because of such reason, the Arbitration Council considers the dispute in this Arbitral Award.

## **EVIDENCE**

**Witnesses and experts:** N/A

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

#### **Provided by the employer party:**

1. Certificate of commercial registration No. 2643 PN.PKB.KN, dated 16 December 1996;
2. Internal Work Rules of Siu Quinh Garment (MFG) Company, dated 1 July 2006;
3. Statute of Siu Quinh Garment (MFG) Company;
4. Internal Work Rules of Newton Thylay Kindergarten School, No. 005/06 KSM/BBP, dated 25 July 2006.

#### **Provided by the worker party:**

1. Letter by the Chief of the Department of Labour No. 1050 KB/AK/VK, dated 25 September 2007 regarding recognition of leaders of local KYTU at Siu Quinh Company in the new mandate;
2. Minutes of investigation on the daycare center in Siu Quinh Company, dated 15 January 2008;

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

1. Report of collective labour dispute settlement by the Department of Labour, dated 14 March 2008;
2. Minutes of collective labour dispute conciliation, dated 6 March 2008.

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

1. Invitation No. 225 KB/AK/LKA dated 25 March 2008 to invite the Company party to attend the hearing;
2. Invitation No. 226 KB/AK/LKA dated 25 March 2008 to invite the worker party to attend the hearing;

## **FACTS**

- Having reviewed minutes of collective labour dispute conciliation;
- Having listened to clarification and testimonies by the employer party and the worker party;
- Having examined documents and evidences as mentioned above.

### **The Arbitration Council finds that:**

There are approximately 500 workers in Siu Quinh Garment (MFG) Company and KYTU has approximately 220 workers.

The Arbitration Council in case 08/07-Siu Quinh issued an Arbitral Award to order the employer to build a daycare center. On 27 November 2007, the Labour Medical Department came for an inspection and advised the Company to build a daycare center. On 15 January 2008, the Labour Medical Department came for an inspection at the Company again and found that the Company did not follow the instructions; thus the labour medical official imposed an order that the Company needed to finish building the daycare center before 15 February 2008.

### **Issue 1 & 3: The workers demand that the Company maintain wages and bonus for three union leaders and women workers who are mothers of small children**

- On 13 and 14 February, leaders of KYTU at Siu Quinh Company contacted the Company's administration to ask questions about placing children in the daycare center on 15 February 2008. The administration responded that everything was ready.

#### **A. Facts on 15 February 2008**

- On 15 February 2008, in the morning before work, three union leaders including the President, Vice-president and Secretary of the union went to observe the situation in the daycare center and found that there were 18 children aged between 18 months and over three years old but less than five years old. The children were brought there by their mother and they were crying because there was only one baby sitter. Seeing that, the union leaders did not come to work but remained there to help take care of the children without approval from the employer. At around 10:00 a.m., because the children were crying too much, the factory administration went to call mothers of the children to the daycare center.
- The worker party claims that when the mothers arrived at the daycare center, the Company allowed them to remain there to take care their children. The employer party, on the other hand, claims that the mothers were called to ask for the children's age then the mothers and the union leaders were told to go back to work but they did

not agree to go back. The Arbitration Council found that those mothers did stay to take care of their children until the end of working hours. For the three union leaders, they continued to remain at the daycare center without permission from the employer.

- In the afternoon of 15 February 2008, the three union leaders went back to work normally with the children's mothers. At around 2:00 in the afternoon, someone went to tell the union leaders that the children were crying. The three union leaders came out to take care of the children without permission from the employer and left the mothers to remain at work normally.
- The worker party claims that sometime between 10:00 a.m. and 11:00 a.m. on 15 February 2008, the Company's administration told them to stop taking children aged under 18 months to the daycare center but did not prohibit children aged over three years old. The employer party, on the other hand, claims that at that time it told the mothers and the union leaders to not to take children aged under 18 months and those aged over three years old to the daycare center. In relation to this point, the Arbitration Council found that in the afternoon of 15 February 2008 there were no children aged under 18 months were brought to the daycare center. Children aged over three years old were allowed to the daycare center normally. To this point, the Arbitration Council recognizes the claim of the worker party because in that afternoon there were children aged from 18 months old up and there were no prohibition by the employer party for children aged over three years old.

#### **B. Facts on 16 February 2008**

On the morning of 16 February 2008 all women workers who were mother of the children brought their children aged above 18 months. When they arrived at the factory the security did not allow them to bring four children who were aged above three years old to the daycare center. Then, the mothers of the four children and the three union leaders contacted the administration of the factory to demand to bring the four children to the daycare center and they did not go to work. At around 10:00 a.m., the administration of the Company brought an announcement regarding the limitation of the age of children allowed to the daycare center which is from 18 months old to three years old. At that time, the mothers of the three children took care of their children outside the factory's gate and the three union leaders agreed to remain with the four mothers and made complaint. In the afternoon of 16 February 2008, the employer told the mothers and the union leaders to come for a meeting in the morning of 18 February 2008.

### **C. Facts on 16 February 2008**

In the morning on 16 February 2008, mothers of the four children continued to bring their children aged over three years to the factory and the employer party did not allowed them to bring those children to the daycare center. The mothers of the four children and the three union leaders stayed to look after the children and attempted to wait for a solution. Until around 10:00 a.m., the employer party came to tell them to come and find a solution at 2:00 p.m. At 2:00 p.m., when the employer did not called them to go and find a solution, mothers of the four children and the union leaders went back home. But when they were on the way home, the employer party called them by phone to come back to meet at 3:00 p.m. They reached agreement on two issues but one issue remained which is an issue in dispute in this case.

### **D. Requirement for evidence**

Both parties agreed that the total amount deducted from the mothers and the union members is around US\$ 10.

The Arbitration Council ordered the worker party, the complainant in this case, to provide evidence regarding the identity, number of women workers who are the mothers involved in this case, the actual amount deducted and the number of days or hours deducted. However, the workers failed to provide the evidence. The Arbitration also ordered the worker party to provide some evidence such as pay slip to prove the actual amount of money and the number of days deducted as claimed by the workers and but the workers party failed to submit the evidence.

### **Issue 2: The workers demand that the Company allow children aged between 18 months and 6 years old to the daycare center**

- Siu Quinh Company established a daycare center and limited the age of children allowed to the daycare center between 18 months to three-years old.
- There were four women workers whose children aged over four-years old intended to bring their children to the daycare center. However, the employer did not allow them.
- In the hearing, the worker party demanded that the Company allow children aged between three years old and six years old to the daycare center for the reason that their mother is not capable to bring them to the daycare center. However, the employer party claims based on the notification of Newton Thlay Kindergarten that it accepts children aged from three years old to the Kindergarten to limit the children's age to three years old.

## **REASONS FOR DECISION**

### **Issue 1 & 3: The workers demand that the Company maintain wages and bonus for three union leaders and women workers who are mothers of small children**

The Arbitration Council did not receive evidence by the deadline from the claimant, the KYTU at Siu Quinh Company, to support the claim.

Evidence is very important to prove whether something is true or false and it serves as a basis for a decision on the dispute in this case. When both parties agree on a specific fact, in general the Arbitration Council does not need to demand the parties to provide additional evidence. However, when the parties in dispute provide different facts, the Arbitration Council requires the claimant to provide evidence to support its demand [for the Arbitration Council to] determine whether it is true, reasonable and believable.

The Arbitration Council has a wide range of authority to require the parties to provide evidence and it has the authority to determine the acceptability, relevance, and weight of the evidence and it has the freedom to require a party to bring supporting evidence. (See Article 312(C) and (D) of the Labour Law and Prakas 099 SKYB, dated 21 April 2004, Clause 24, 25 and 26).

In previous cases, the Arbitration Council reject the demand if the claimant party does not provide specific evidence to support its demand (see Arbitral Awards 63/04-Shine Well, issue 4; 99/06-South Bay, issue 5 and 33/07-Goldfame, issue 4).

In this case, the Arbitration Council agrees with the reasons for decision in previous cases. The lack of evidence from the claimant party regarding the amount of money demand can lead the Arbitration Council to [conclude] the lack of sufficient ground for consideration and decision.

In order to consider and decide on the above case related to reimbursement of wage and regular attendance bonus, in general the Arbitration Council needs evidence and information such as who are the workers who are making the demand for the reimbursement, how much wage and attendance bonus they are demanding for reimbursement and what are the grounds for the demand that they are entitled to the reimbursement.

In this case, the Arbitration Council ordered the worker party, the claimant in this case, to provide the following evidence: names of the mothers, the actual number of workers involved, who are the workers whom the Company deducted their wage and attendance bonus on 15 February 2008 and the amount of money deducted, the number of workers whose wages were deducted on 16 and 18 February 2008 and how much was deducted.

Because the party failed to provide evidence as required by the Arbitration Council, it was not able to proceed to make a decision regarding this labour dispute. In this case, both parties agreed that the total amount of money deducted from each worker was approximately US\$ 10 (including workers who are mothers of children aged up to three years old, workers

who are mothers of children aged above three years old and union members). However, there is no evidence to prove whether the same amount of money were deducted from each worker or whether some workers claim for less than US\$ 10 and some demand for more than US\$ 10.

If the workers' demand is for equal amount of money for all workers, then it requires additional evidence to explain why an equal amount of money was deducted from all workers, as some of them (for example, the mothers of children aged up to three years old) did not work normally only for one day (on 15 February 2008) while some of them (for example, workers who are mothers of children aged above 3 years old and the union members) did not worked normally for three days (on 15, 16 and 18 February 2008). If the workers demand for different amount of money for each worker, then it requires additional evidence to clarify the amount of money deducted on what days and for which workers.

In issues 1 and 3, the Arbitration Council notes that the establishment of a daycare center and provision of adequate baby sitters is the obligation of the employer. (See Article 186 of the Labour Law and Arbitral Award 11/05-South Bay, issue 1). The employer should have advanced consideration regarding the limitation of the children's age allowed to the daycare center and should know the number of children accepted to the daycare center to arrange an appropriate number of baby sitters. Siu Quinh Company should have prepared a better daycare center before its opening on 15 February 2008. Because the Company did not arrange the daycare center well, the administration staff needed to call the children's mother to help in taking care of the children. Thus, the employer should not deduct wage from those workers when they offered their help at the daycare center on that day.

For the union and the union leaders, they have rights to perform their role to protect benefits and rights for their members. See examples in the Labour Law, Article 266, 267, 269, 274, 275 and 284 and Prakas 313 SKBY, dated 27 November 2000. However, generally the union does not have rights to use working hours to perform their union activities. There could be some exception if there is proper permission or in emergency case or in an emergency case related to health and safety of workers. In this case, after the children's mothers were called by the administration officer to the daycare center, the union leaders should have come back to their work.

Nonetheless, the employer should give sufficient notification regarding changing of policy regarding the maximum age of children allowed to use the daycare center. On 16 February 2008, mothers of children aged over three years old did not have a mistake because yesterday they could bring their children aged over three years old to the daycare center but on that day, 16 February, children aged over three years old were not allowed to enter. The mothers did not know in advance that they were prohibited to bring the children aged over three years old to the daycare center so they could not just leave their children

outside of the factory. The employer should not have deducted money from mothers whose children aged above three years old. However, union leaders should have gone back to their work after they had helped those mothers to make complain to the employer.

However, on 18 February 2008, women workers who are the mothers already knew that the employer did not allow children aged above three years old to the daycare center but they still attempted to bring their children again and did not agree to go to work; such action means that they made a mistake. The employer had legal rights to deduct wage from women workers who are the mothers who made a mistake of not going to work on that day. Regarding the union leaders, it is the same as what have been described above that they have rights and roles to protect rights and benefits for workers who are their members. In this case, the union leaders were explicitly invited by the employer to a negotiation on 18 February 2008. Thus, the union leaders had a legal right to prove their absence from work.

## **Issue 2: The workers demand that the Company allow children aged between 18 months and six years old to the daycare center**

The employer party agrees to accept only children aged from 18 months to three years.

The Arbitration Council will consider whether the employer has an obligation to accept children aged from 18 months until what age.

Article 186 of the Labour Law states, *“Business owners employing a minimum of one hundred women or girls must install within their establishment, or nearby, a nursing room and daycare center for babies.*

*If the company is not able to install a nursery on its premises for children over eighteen months of age, female employees can place their children in any daycare center and the charges there incurred must be covered by the employer.”*

Article 186 above does not limit the children’s age in being eligible to use the service in the daycare center, neither does it mention the age this service should end.

In previous cases, the Arbitration Council ordered the employer to arrange a breastfeeding room and daycare center for women workers who have children from the time the women come back to work, but which was not limited to children aged above 18 months (See Arbitral Award 96/06-Wilson, issue 2).

The Arbitration Council agrees with the above interpretation and in this case the employer prohibits children under 18 months to enter the daycare center. This prohibition is against the Law.

Clause 34(D) [of Prakas 099] states, *“The Arbitration Council has power and authority to orders to cease immediately any other illegal or prohibited conduct.”*

Based on this Prakas, the Arbitration Council has the authority to order the employer to stop prohibiting children aged under 18 months to come to they daycare center.

In case 45/07-Wilson, issue 1 and 3, the Arbitration Council in the case determined that the reasonable maximum age of children accepted to a daycare center is 3 years old. The Arbitration Council in the case states that it is unreasonable to expect that the intention of Article 186 of the Labour means that the employer should take care of the children forever. In relation to this issue, the Arbitration Council determined that workers who have children can use this service until their children reach an age they can take care of themselves or when there is alternative service. The Arbitration Council considers that there is kindergarten service available when the children are three years old.

The Arbitration Council considers that the establishment of a daycare center in an enterprise is for the purpose of assisting women who are the mothers of the children to be able to come to work without interruption or worries about their children as well as for the sake of safety of the children. However, in general, children need basic knowledge training. Thus, women workers can bring their children to the daycare center until they reach the age the education service can take them for schooling. In the Kingdom of Cambodia, the majority of kindergarten services accepts children aged between three years old and six years old.

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

#### **DECISIONS AND ORDERS**

**Issue 1 & 3:** Reject the workers' demand for the company to maintain wage and attendance bonus for three union leaders and women workers who are mothers of small children.

**Issue 2:**

- a. Reject the workers' demand for the Company to accept children aged above three years old to seven years old to daycare center.
- b. The employer should stop prohibiting children aged under 18 months to come to the daycare center.

#### **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 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: **Chhiv Phyrum**

Signature: .....

Arbitrator chosen by the worker party:

Name: **Liv Sovanna**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Ang Eng Thong**

Signature: .....