

**KINGDOM OF CAMBODIA  
NATION KING RELIGION**

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**THE ARBITRATION COUNCIL**

**Case number and name: 48/06 - Build Up**

**Date of Award: July 7, 2006**

**ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

**ARBITRATION PANEL**

Arbitrator chosen by the employer party: **KAO Thach**

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

Chair Arbitrator (chosen by the two Arbitrators): **RUN Saray**

**DISPUTING PARTIES**

**Employer party:**

Name: **Build Up (CAMBODIA) Manufacturing Limited**

Address: Ang village, Kantauk commune, Ang Snuol district, Kandal province

Telephone: (855) 23 219 907, 016 369 869, Facsimile: (855) 23 219 958

Representatives:

- |                         |                  |
|-------------------------|------------------|
| 1. Mr. LEUNG HO CHEUNG  | Company Director |
| 2. Mr. SENG Lyhong      | Administrator    |
| 3. Miss YAM Sokchamreun | Secretary        |

**Worker party**

Name: **Khmer Youth Federation Trade Union, and Khmer Youth Trade Union at Build Up Company**

Address: No. 34 Street 265, village 13, Teuk Laak quarter, Tuol Kok district, Phnom Penh

Telephone: 092 902 569      Facsimile: N/A

Worker representatives:

1. Mr. NOV Titha, Official of the Khmer Youth Federation Trade Union
2. Mr. PICH Kunthea, Official of the Khmer Youth Federation Trade Union
3. Mr. OU Phoeun, Official of the Khmer Youth Federation Trade Union
4. Mr. SIENG Rin, Vice-President of the Khmer Youth Trade Union at Build Up Company
5. Mr. KANG Touch, Secretary of the Khmer Youth Trade Union at Build Up Company

## **ISSUES IN DISPUTE**

(In the non-conciliation report)

According to the non-conciliation report, the following non-conciliated issues are the demands raised by the worker party to this case:

1. The workers demand that the company not deduct the regular attendance bonus when they are absent with permission for three days.
2. The workers demand that the company pay US\$1 when they work overtime for two hours per day.

### **JURISDICTION OF THE ARBITRATION COUNCIL**

The Arbitration Council derives its power to make this award from Chapter XII, Section 2 (B)(Articles 309 to 317) of the Labor Law 1997; Prakas on the Arbitration Council No. 099, dated April 21, 2004; the Arbitration Council Procedural Rules annexed to Prakas No. 099; and Prakas on the Appointment of Arbitrators No. 099, dated May 11, 2006 (Fourth Term).

An attempt was made to conciliate the collective labor dispute that is the subject of this Award, as required by Chapter XII, Section 2 (A) of the Labor Law. However, the conciliation hearing was unsuccessful, and the non-conciliation report No. 088 MoLVT/K, dated June 16, 2006 was submitted to the Secretariat of the Arbitration Council on June 16, 2006.

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

**Place of hearing:** The Arbitration Council, Phnom Penh Center, Building A, Sothearos Blvd., Tonle Bassac quarter, Chamkar Mon district, Phnom Penh

**Date of hearing:** - June 22, 2006 (2:00 p.m. to 4:00 p.m.)

**Procedural issues:**

After receiving a complaint from the workers demanding that the company improve the working conditions in conformity with the Labor Law on 16 June 2006, the Kandal Provincial Department of Labor and Vocational Training designated its labour dispute officer in order to settle and conciliate two issues of the collective labor dispute. None of the issues were successfully conciliated out of a total of two issues. These two non-conciliated issues were referred to the Arbitration Council on 16 June 2006. After receiving the case, the Arbitration Council summoned the disputing parties to attend the hearing on 22 June 2006 at 2:00 p.m.

Both parties attended the hearing of the Arbitration Council. The Arbitration Council made a further attempt to conciliate the two unresolved issues, which had been forwarded to the Arbitration Council for settlement, but the results remained unresolved.

Therefore, the Arbitration Council will consider the two unresolved issues only on the basis of the evidence and the 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:

1. Company's internal regulations, registration No. 061 MoSALVY, dated 8 December 2003
2. Letter No. 2199 C.LA, dated 9 July 2002, on the commercial registration of Build Up Company
3. Minutes of conciliation of collective labor dispute dated 15 June 2006

#### Provided by the worker party:

- Letter No. 1867 MoSALVY/LI, dated 4 November 2003, from the Chief of Department of Labor Inspection, to the President of the Khmer Youth Trade Union at Build Up Company, on the recognition of the management of the trade union

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

1. Report on the settlement of collective labor dispute at Build Up Company No. 088 MoLVT/K, dated 16 June 2006, from Mr. **THOL Neang**, Chief of the Kandal Provincial Department of Labor and Vocational Training
2. Minutes on settlement of collective labor dispute dated 16 June 2006

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

1. Invitation to the worker party to attend the hearing, No. 237 SAC, dated 20 June 2006
2. Invitation to the employer party to attend the hearing, No. 238 SAC, dated 20 June 2006

## **FACTS**

Build Up Company is located in Ang village, Kan Tauk commune, Ang Snuol district, Kandal province, and employs approximately 180 workers.

- Having examined the report on collective labor dispute conciliation;
- Having listened to arguments raised by the worker party and the employer party;
- Having reviewed other supplementary documents;

**The Arbitration Council finds that:**

**Issue 1: The workers demand that the company not deduct the regular attendance bonus when they are absent with permission for 3 days.**

- The company's internal regulations specify the working hours, which are divided into 2 shifts. The first shift is from 6:30 a.m. to 3:30 p.m. There are three (3) interval meal breaks during the shift as follows:
  - o First break: starting at 10:00 a.m.
  - o Second break: starting at 10:30 a.m.
  - o Third break: starting at 11:00 a.m.
- The second shift is from 2:30 p.m. to 11:00 p.m. at night. There are three (3) interval meal breaks during the shift as follows:
  - o First break: starting at 5:30 p.m.
  - o Second break: starting at 6:00 p.m.
  - o Third break: starting at 6:30 p.m.
- The parties agree that in the past, the company, upon agreement with the workers, arranged for annual leave when the company has no work for them to do and wages and attendance bonus were maintained.
- The parties also agree that in the past, if any worker encountered an accident at the workplace or was sick with proper medical certification, the company maintained the wage but deducted the regular attendance bonus. However, the company has sometimes favored some workers by maintaining their regular attendance bonus.
- The company is of the opinion that regular work refers to twenty-six days worked per month and eight hours per day.
- The Khmer Youth Trade Union at Build Up Factory has fifty-eight members out of 180 total workers. Such trade union does not have most representative status.
- The workers' stated that the basis for this demand is Notice No. 017, dated 18 July 2000, clause 3. They understand that, as long as the workers come to work on a regular basis, even if they are a few hours late, such work should also be considered as regular work.
- The workers refer to the traditional practice of nearby companies which do not deduct the regular attendance bonus for a worker who takes a three-day authorized leave of absence. The employer party did not refute this argument.

**Issue 2: The workers demand that they be paid US\$1 for two hours of overtime work;**

- The company requests implementation in accordance with the law; however, if there is any letter from the Ministry of Labor specifying such payment of US\$ 1 for two hours' overtime work, then the company will make such payment.
- The workers' claim is based on the practice of nearby factories, whose workers are always paid US\$ 1 for two hours' overtime work performed during a normal working day.
- The workers have heard that they should receive US\$ 1 for their said overtime work since goods are now very expensive.
- The company's internal regulations stipulate that the normal overtime rate during a normal working day shall be equal to one and a half (1.5) times the normal rate or shall be added at a rate of fifty percent (50%) of the normal rate.
- Both the worker party and the employer party mutually agree that, in accordance with the law, by adding the 1,000 riels for a meal, the amount for two hours of overtime work is 3,594 riels.

### **REASONS FOR DECISION**

#### **Issue 1: The workers demand that the company not deduct the regular attendance bonus during a three-day authorized leave of absence;**

Clause 3 of Notice No. 017, dated 18 July 2000, from the Ministry of Social Affairs, Labor, Vocational Training and Youth Rehabilitation reads, "Workers who work regularly during their monthly working days shall receive a bonus of at least five US dollars per month." The said notification neither specifies clearly as to whether workers who take authorized leave of absence shall be subject to this bonus or not, nor as to how many days the workers shall work per month for it to be considered as regular work that is subject to receiving the said bonus. In addition, the Arbitration Council has examined the company's internal work rules and found that Article 5 (B) of the said rules also provides for an attendance bonus of five dollars, but does not give any definition of the term "regular work". What does this term really mean? If regular work means that workers shall work twenty-six days per month and on a regular and timely basis as defined in the company's internal regulations, the Arbitration Council is of the opinion that such hypothesis is only partly correct, since there are public holidays or days off issued by the state for some months, when workers work less than twenty-six days per month; yet they are still entitled to receive the attendance bonus. Therefore, the Arbitration Council finds that the days off during public holidays or days off issued by the state and the annual leave are days off with due permission when the regular attendance bonus shall be also given.

In case 45/05 - B&N, it is explained, "*In case 63/04 – Shine Well, the Arbitration Council is of the opinion that the term **regular attendance bonus** should be referred to as the bonus to encourage and show appreciation to those workers who work regularly within a complete one-month period without being absent without a valid reason in accordance with the law. However, the principle of the provisions on the granting of the regular attendance bonus stipulated in Notice No. 017 from the Ministry of Social Affairs, Labor, Vocational Training and Youth Rehabilitation as well as the Labor Law does not intend to impose any sanction against those workers who take leave of absence. The Arbitration Council is of the opinion that if the workers were to lose the full regular attendance bonus of five dollars just because they were on any authorized leave during a month, it would be unfair to the workers since it is not their fault that they are unable to come to work regularly for important personal reasons. In addition, each worker comes to work to get a wage. Workers also know that if they do not come to work, they will not receive their wages. Therefore, they take leave of absence only for important personal reasons that may prevent them from going to work.*

*However, if the employers were required to provide the regular attendance bonus for a period when the worker takes leave of absence, it would be unfair to them either since it would reduce their profit during such leave of absence by the workers. Due to the fact that Notice No. 017 from the Ministry of Social Affairs, Labor, Vocational Training and Youth Rehabilitation does not clearly elaborate on this issue, the Arbitration Council has decided to adopt an equity-based principle through which it orders the employer to deduct the regular attendance bonus in proportion to the number of days that the worker has taken leave of absence per month. Therefore, the Arbitration Council is of the opinion that the company shall provide its workers who take authorized leave of absence with a partial regular attendance bonus in proportion to the number of working days completed by workers per month." Please refer to case No. 26/04 - Sport Wear, 15/05 – Wing Tai, 48/05 – Manhattan, 52/05 – [Cambodia] Hoy Fu.*

**Issue 2: The workers demand that they be paid one dollar for two hours' overtime work during normal working days;**

In accordance with article 5 of *Prakas* No. 80 MoSALVY, dated March 1, 1999, it is stipulated that the "*Owner or director of enterprise or establishment shall pay overtime wage to workers as follows: (a) equal to 150 percent (or one and a half) of the wage during normal work, for overtime work during daytime for a normal working day.*"

Based on the findings and the considerations in accordance with *Prakas* 80 above and Article 139 of the Labor Law, both parties—the employer party and the worker party—are of the same opinion, that by adding the meal cost of 1,000 riels, the amount for the two hours' overtime work in the meantime is equal to 3,594 riels. But the workers

demand that the employer pay one US dollars, equal to 4,000 riels for two hours' overtime work during a normal working day.

Article 139 of the Labor Law stipulates, *"If workers are required to work overtime for exceptional and urgent jobs, the overtime hours shall be paid at a rate of fifty percent higher than normal hours. If the overtime hours are worked at night or during weekly time off, the rate of increase shall be one hundred percent."*

The Arbitration Council finds that the employer does pay 150 percent of the normal wage for overtime work during a normal working day by adding to the meal allowance of 1,000 riels, required to be paid by law. Therefore, the Arbitration Council is of the opinion that the benefits demanded by the workers to the company are beyond the Labor Law 1997 and *Prakas* No. 80. Thus, the demand from the workers is associated with their interest. Regarding the dispute associated with interests, the Arbitration Council has until now always considered whether the trade union that forwarded the dispute to the Arbitration Council for settlement has most representative status, because the Arbitration Council has determined that most representative status by a trade union gives legal capacity in negotiation for establishing a collective bargaining agreement in a company, along with the legal right to forward a case in dispute to the Arbitration Council for settlement.

In order to receive most representative status, Article 277 of the Labor Law 1997 stipulates that the trade union shall be duly registered and shall meet certain other requirements as stipulated in that Article.

In this case, the Arbitration Council finds that the Khmer Youth Trade Union at Build Up Factory does not have most representative status in the factory. Therefore, the said trade union does not have the legal right to make a collective bargaining agreement in the name of the entire factory (please refer to Article 96, paragraph 2-B and *Prakas* 305, Article 9, paragraph 1). In the Award of case No. 07/06-Dai Young, it is explained, *"This right belongs to the registered trade union that has the majority members and meets the other requirements as stipulated in Article 277 of the Labor Law."* Therefore, in conformity with the previous cases, the Arbitration Council is of the opinion that the said trade union has not fulfilled the requirements in accordance with the law to be representative in order to settle the dispute in connection with the collective interests of all workers in Build Up Company.

Moreover, article 43 of *Prakas* No. 099, dated 21 April 2004 stipulates that *"The Award of the Arbitration Council that deals with a conflict of interests shall take the place of a collective bargaining agreement for a period of one year from the date the award becomes effective onward, with the exception that the parties negotiate to create a collective bargaining agreement to replace such award."*

In the past, the Arbitration Council has determined that if the Arbitration Council issues an award on this item, it will become a collective bargaining agreement to be implemented by all workers in the company. As a result, those workers who are not the members of this trade union will lose their rights in staging a strike in order to demand interests in a conflict of interest in the future. Therefore, this will cause unsuitable results and unfairness for all workers. (Please refer to the Awards of case No.'s 04/03 – Lida Garment, 06/04 – Chou Sing Garment, 24/03 – Top One Company, 61/04 - Best Honor, 62/04 - Ecent and 09/05 - Kin Tai). In addition, until now the Arbitration Council has concluded that a union without most representative status shall not be entitled to bring an interest dispute to the Arbitration Council for settlement (Please refer the Awards No. 31/03 – Hong Wa, 60/04 - United Arts and 99/04 – AIA Garment). Therefore, the Arbitration Council declines to consider the request of the workers demanding that the company pay one dollar for two hours' overtime work during normal working days.

Based on the evidence, facts, law, and reasoning as shown above, the Arbitration Council decides as follows:

**DECISION**

1. Order the employer to pay partial regular attendance bonus in proportion to the number of working days of each worker per month to workers who take authorized leaves of absence.
2. Decline to consider the demand of the worker that the company pay one dollar for two hours of overtime work during normal working days.

**Type of Award:** Non-binding award

*This award shall be effective eight days following the date of its notification unless one of the parties lodges a written objection with the Secretariat of the Arbitration Council within this period of time.*

**Signatures of Members of the Arbitration Panel:**

Arbitrator chosen by the employer party

Name: **KAO Thach**

Signature: -----

Arbitrator chosen by the worker party

Name: **LIV Sovanna**

Signature: -----

Chair arbitrator

Name: **RUN Saray**

Signature: -----