



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 48/07-Eternity

Date of Award: 09 July 2007

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by employer party: **KAO THACH**

Arbitrator chosen by the worker party: **TUON SIPHANN**

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

DISPUTING PARTIES

Employer party:

Name: **Eternity [Apparel (Cambodia) Co., Ltd.]**

Address: Building No. 646, National Road No.2, Sangkat Chak Angre Krom, Khan Mean Chey, Phnom Penh.

Telephone: 023 425 838

Fax: 023 425 838

Representative:

- Ms. Khiev Serey Administrative Assistant
- Mr. Long Heang Labour Dispute Officer at GMAC

Worker party:

Name: **Coalition of Cambodian Apparel Workers Democratic at Eternity Garment (C.CAWDU)**

Address: Building No. 646, National Road No. 2, Sangkat Chak Angre Krom, Khan Mean Chey, Phnom Penh.

Telephone: 012 988 623

Fax: N/A

Representative:

- Ms. Hong Chanthan President of C.CAWDU at Eternity Garment

- Ms. In Chai Im Vice-president of C.CAWDU at Eternity Garment
- Ms. Meas Vanny Dispute Resolution Officer of C.CAWDU

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- The workers demand the company to deduct the union contribution fee from their member to the local C.CAWDU in Eternity factory on the grounds that this deduction is stipulated in Labour Law and Prakas 305 SKBY dated 22 November 2001. The company rejects this demand but permits the union leader to collect from workers, though only during non-working hours. Plus, for other unions the company has also never implemented such practice so therefore to be fair the employer wants to keep this long-standing practice.
- 2- The workers demand the company to provide overtime salary for 4.5 hours even though they have a half-hour rest for meals. The company indicates that they only agree to pay for the hours that workers have been working.
- 3- The workers demand the company to give the total wages for three (3) months of maternity leave (50% of the average [wage] over 12 months) and after returning from maternity leave another US\$ 15.00 for milk formula. The employer does not agree with this idea of providing the total wages of maternity leave as the company transfers money from oversea to Cambodia according to the monthly wage for workers; in addition, the company cannot provide the milk fee as [demanded].
- 4- The workers demand the company to give an additional attendance bonus of US\$ 3.00 for workers who have worked 26 days regularly. Employer party declines to do so as it is not required by the law.
- 5- The workers demand the company to give a seniority bonus of US\$ 5.00 to any workers who have worked more than five (5) years. Again, the company objects to this because there is no requirement at law.
- 6- The workers demand for an allowance of US\$ 10 for the security section. The company doesn't agree as this section actually has their own contract separate from the production section.
- 7- The workers demands the company to allow workers to use their annual leave when workers need to take leave because of necessary concerns. The employer party does not agree as setting off annual leave is for special leave only.

- 8- Workers demand the company to maintain the attendance bonus when workers come to work 30 minutes late. The company does not accept this.
- 9- The workers demand to punch in three (3) times per day (entry in the morning & evening, and exit when OT & when no OT) because this will enable workers to quickly go home. For orderly factory and assurance on workers' presence at the work place, the company does not agree with this idea.

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 099; and the Prakas on the Appointment of Arbitrators No. 076/07 KKBV dated 10 May 2007 (Fifth Term).

An attempt was made to conciliate the collective dispute that is the subject of this Award, as required by Chapter XII, Section 2A of the Labour Law. The conciliation was unsuccessful, and the non-conciliation report No. 893 KKBV dated 07 June 2007 was submitted to the Secretariat of the Arbitration Council on 07 June 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: 15 June 2007 (2:00pm to 5:00pm)

Procedural issues:

On 05 April 2007 the Department of Labour Disputes received a complaint No. 27/07 SBKK from C.CAWDU dated 29 March 2007 demanding the employer to improve working conditions. Upon receipt of this complaint, the Department of Labour Disputes assigned an officer to handle this labour dispute over consecutive sessions of conciliation and the last conciliation was held on 30 May 2007 with seven (7) issues of sixteen (16) issues conciliated. The remaining nine (9) non-conciliated issues were sent to the Secretariat of the Arbitration Council on 07 May 2007.

After receiving the case, the Secretariat of the Arbitration Council invited the employer and worker parties to attend the hearing and conciliate on the nine (9) non-conciliated issues on 15 June 2007 at 2:00 pm. and both party were present as requested.

On the hearing day the Arbitration Council attempted to further conciliate on those nine (9) non-conciliated issues as listed in the Non-Conciliated Report of the Department of Labour Disputes but none were conciliated. Therefore, in this Award, the Arbitration Council

would arbitrate on all the non-conciliated issues based on the witnesses, testimony and findings of fact as follows:

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by employer party:

- Internal Work Rules of the Eternity dated 29 August 2000
- Authorized letter of Eternity factory delegated to Ms. Khiev Serey and Mr. Long Heang

Provided by the worker party:

- Summary of the dispute dated 13 June 2007
- Letter No. 448 KKBV dated 24 March 2005 issued by Labour Inspection Department regarding recognition on C.CAWDU Leaders at Eternity factory

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

- Report on collective dispute resolution at the Chung Fai, No. 893 K.K.B.V dated 07 June 2007
- Minute of the collective labour dispute conciliation dated 30 May 2007
- Complaint No. 27/07 SBKK of C.CAWDU dated 29 March 2007

Provided by the Secretariat of the Arbitration Council:

- Invitation to the hearing for employers, No. 219 K.K dated 12 June 2007
- Invitation to the hearing for the workers, No. 218 K.K dated 12 June 2007

FACTS

- Having examined the related documents submitted by the parties.
- Having reviewed the report of the collective labour dispute.
- Having listened to statements made by the representatives of the worker party and employer party.

The Arbitration Council finds that:

- Eternity factory is located at Building No. 646, National Road No. 2, Sangkat Chak Angre Krom, Khan Mean Chey, Phnom Penh with 630 workers.
- Based on Collective Dispute Conciliation Report dated 30 May 2007, there are 404 claimants out of 630 workers.
- According to the statement made by union representative, C.CAWDU at Eternity is the claimant in this case whose members are around 535. It is the most representative union in this factory with a certification indicating its most

representative status on 09 August 2005. The Arbitration Council has received this certificate dated 20 June 2007.

Issue 1:

- By statement made by C.CAWDU at Eternity, the union submitted a letter of request to the company for a union contribution fee deduction of 1,000 Riels from each member with a written authorized letter from the union members to the employer. But the company does not agree to these deductions. The company permits no union contribution fee deductions for any union, including C.CAWDU.
- The Arbitration Council already issued an arbitral award regarding this issue in case 94/04 dated 07 December 2004. Issue 4 in this Award is about deducting the union contribution fee. The Arbitration Council ordered the employer deduct the union contribution fee from workers' wages from 01 January 2005 onward as requested by the union representative which attached a name list of union members indicating their authorisation. The Employer lodged an objection and does not implement the Arbitral Award to this present day.

Issue 2:

- Workers demand company to provide overtime wages for four (4) hours and a half for overtime from 4:00 to 8:30 p.m. as an encouragement for workers to be more hard-working.
- The worker party claimed that other factories have a policy of providing wages during overtime breaks. Workers do not provide any evidence regarding this statement.
- The employer does not agree, for workers work only four (4) hours and rest half an hour from 5:30 p.m. to 6:00 p.m., in addition, overtime is voluntary work. Workers accept that they work four (4) hours and break half an hour before another overtime shift starts.
- The employer further stated that the break within overtime work is the same as the lunch break in which workers are not entitled to any wages.

Issue 3:

- Workers stated that female there are approximately 60 workers who are pregnant and on maternity leave who are members of C.CAWDU and during their maternity leave the company pays on a monthly basis. Workers demand the company to give wages for maternity leave three (3) months in advance, and after returning to work they want

the company to provide US\$ 15.00 for milk formula instead of building a day care center but the company does not agree as they do not have money.

- The Arbitration Council has issued arbitral awards which considered the demand of C.CAWDU requesting the employer to pay advance wages for maternity leave, read Arbitral Award 94/04 dated 07 December 2004 (issue 3). Regarding this, the Arbitration Council declined to consider this issue as this was an interests dispute, and, at that time the union making the demand did not have the most representative status.
- The employer does not have a day care center yet and workers demand the company to provide US\$ 15.00 for milk fee instead of building a day care center for women workers whose babies are over 18 months. This demand was not in case 94/04 dated 07 December 2004.
- On 20 June 2007, workers gave a letter by four (4) workers that stated they have paid between 60,000 riels to 80,000 riels per month for [external daycare] service outside the factory.

Issue 4:

- Workers demand the company to provide extra attendance bonus of US\$ 3.00 for any workers who have been working 26 days regularly as an encouragement for their hard work. The employer party does not agree with this because it is not required by law.
- The employer provides US\$ 5.00 attendance bonus per month.

Issue 5:

- Workers demand company to provide seniority bonus of US\$ 5.00 for those who have been working more than 5 years to encourage them to continue working hard. Again, the employer disagrees with this on the ground it is not a legal obligation.
- Workers further stressed that the employer is financially capable of providing this seniority bonus. But the employer responded that their finances are not sufficient to provide every worker this seniority bonus. The union does not give any proof to support their claim that the company is financially healthy.
- The employer has already provided the seniority bonus in accordance with law.

Issue 6:

- Workers demand the company to provide an additional US\$ 10.00 to the security section which has 10 security guards on the basis that they do not have any seniority bonus or annual leave.

- The employer does not agree as security is a special kind of work unlike the workers. Security guards receive a salary between US\$ 70-90 and they are not employees of the company, they are all sub-contractors. Therefore, when a security guard is sick, the company does not cut their salary but when there is a work-related accident the company will be responsible for this liability. Workers stated that the ex-security guards entered into same contract as labourers therefore they are the company's employees.
- On 20 June 2007, the worker party submitted a letter which has the names and thumbprints of nine (9) security guards who claimed that they are company's employees because they were recruited just like others and their working hours, twelve (12) hours, are set by the company, although without any meal allowance, annual leave compensation or seniority bonus, but they do punch in and out as other normal workers. Also, their contracts are unwritten.

Issue 7:

- Workers demand the company to permit workers to use annual leave for necessary [events] such as an engagement, civil registration and identification, etc. because the company never allows leave.
- Generally, the company allows workers to use annual leave during Khmer New Year and Pchum Ben but not for circumstances where workers need leave for personal matters.

Issue 8:

- Workers demand the company to retain the attendance bonus in case workers come to work late 30 minutes per month, for example because of a car or motorcycle flat tire or traffic jam, etc. The employer does not agree; company provides the attendance bonus only to workers who come to work regularly and on time.
- Under the current practice, worker who comes to work late are required to go to the Administrative Office and if late for one minute, US\$ 5.00 will be cut.
- C.CAWDU already made a demand regarding this issue (to retain the attendance bonus when workers came to work late) from the employer in case 94/04 in which the Arbitration Council issued the Arbitral Award dated 07 December 2004. The Arbitration Council declined to consider this demand because it was an interests dispute.

Issue 9:

- Workers demand to punch in and out only three (3) times per day (when starting work in the morning at 7:00 a.m., [re-]starting work at 12:30 p.m. and leaving from work at 4:00 p.m. or after finishing overtime) because after having a meal at 11:30 a.m. it is too crowded because the exit gates are too narrow and the company only has two (2) punch-in machines.
- Workers indicated that when company has only two punch in machines, they have to spend 20-25 minutes when leaving for lunch each time in order to punch out for the factory. Before when company had three (3) machines, the workers spent from 15-18 minutes after getting back from lunch.
- Company does not object to the statement raised by workers yet they stress that the punching in and out must be four (4) times.
- Workers testified that they did not receive any wages for the period they spent on punching out after working hours. Workers claimed that they have to spend too much time leaving the factory when breaking for lunch, the food sold at the vendors outside the factory often finished before they have a chance to make a purchase so they often have nothing to eat.
- Workers requests the company to have more punch-in machines, at least 5 units, as this would help workers during the lunch break if the company still requires them to punch in and out four (4) times per day.
- The company has three (3) punch-in machines but one of them broke down so only two machines remain for 600 workers.

REASONS FOR DECISION

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

Issue 1:

Regarding the demand to the employer for deduction of the union contribution fee from the workers who agreed to the deduction, the Arbitration Council finds that the Arbitration Council already considered and issued an arbitral award which provided a final solution of this dispute in Arbitral Award 94/04 dated 07 December 2004, issue 4.

In the past cases, the Arbitration Council interpreted that "*By application of the principle of Res Judicata, for a case that is already decided by the Arbitration Council, the Arbitration Council will not reconsider the case,*" read Arbitral Award 10/06-North Gaiety (issue 1), 24/06-Fortune (issue 4), 106/06-Quick Sew (issue 5) and 45/07-Wilson (issue 2).

Therefore, the Arbitration Council will not consider and re-decide this demand as requested by workers.

Issue 2:

Workers demand company to include a half hour break from 5:30 p.m. to 6:00 p.m. [(the period] before starting overtime work[)] as overtime hours and provide wages to workers. First the Arbitration Council will consider if the workers has a legal basis to demand the company such a wage calculation during this break or not?

Concerning this, the Arbitration Council finds that generally the Labour Law does not require the employer to give wage to workers for break hours, including the lunch break. The Arbitration Council considers that there are exceptional cases, [for example] in Article 184 of Labour Law regarding wages provided for breast-feeding babies.

In case 57/04-Evergreen, the Arbitration Council determined that “*the 30 minutes of lunch time are not working hours as stipulated in Labour Law*” therefore the workers did not have a legal basis to receive wages during that period. In this case, the Arbitration Council finds that the half hour break from 5:30 p.m. to 6:00 p.m. is also not working hours. So the Arbitration Council finds that the dispute in this case is not a rights dispute (the workers do not have a right that is provided by law) but it is an interests dispute (when resolution cannot be found by conciliation or arbitration the workers have a rights to negotiate with the employer to find an agreement regarding additional rights).

The Arbitration Council has consistently determined that only the union which has been granted the most representative status can bring interests disputes to the Arbitration Council, read Arbitral Award 31/03-Hong Wa, issue 1; 60/04-United Art, issue 3; 99/04-A I A, issue 4.

The Arbitration Council also agrees with the interpretation made by the arbitration panels in the previous cases that only the most representative union can bring interests disputes to the Arbitration Council. Likewise for this case, based on the above facts the Arbitration Council finds that the C.CAWDU is the most representative union. Such union consequently has a legal right to make a collective agreement on behalf of all workers in the factory, read article 96 (2) of Labour Law and Prakas 305, clause 9 (1). So C.CAWDU can bring this interests dispute to the Arbitration Council for consideration.

Nonetheless, in this case the Arbitration Council considers that there is no reason to require the employer to provide wages during work-break periods, for in this period the workers do not fulfill any work that benefits the company. The worker party does not provide any reliable evidence to the Arbitration Council to prove that it is reasonable and equitable for workers to receive this right which is in addition to the minimum rights given by law.

Therefore, based on the equity principle the Arbitration Council decides to reject this demand.

Issue 3:

There are two points that the workers demand of the company:

- 1) 3 months wages of maternity leave paid in advance; and
- 2) US\$ 15.00 for milk formula to be paid instead of building a day care center for babies aged 18 months and up.

1) 3 months wages of maternity leave, in advance

Regarding this demand, the Arbitration Council already [issued] the Arbitral Award on this point in case 94/04 dated 07 December 2007, issue 4 which declined to consider those issues as this is an interests dispute; also, at that time the union was not granted the most representative status. Presently, the C.CAWDU is the most representative union which means that the facts in these two cases are changed. Therefore, the Arbitration Council will re-consider the issue for a final decision.

Article 183 of Labour Law states that *“During the maternity leave as stipulated in the preceding article, women are entitled to their wage, including their perquisites, paid by employer.*

Women reserve their rights to other benefits in kind, if any.

Any collective agreement to the contrary shall be null and void.

However, the wage benefits specified in the first paragraph of this Article shall be granted only to women having a minimum of one year of uninterrupted service in the enterprise. “

The Arbitration Council finds that this Article does not state anything related to when payment shall be made.

In addition, the Arbitration Council noticed that article 115, paragraph 3 provided that *“Payment shall not be made on a day-off. If payday falls on such a day-off, the payment of wages shall be made a day earlier.”*

Regarding this Article, the Arbitration Council finds that in previous jurisprudence the Arbitration Council understood that payment for maternity leave shall be paid to such workers before maternity leave starts, read Arbitral Award 57/06-Evergreen, issue 6 and 97/06-New Max, issue 1.

In this case, the Arbitration Council agrees with the above interpretations, because this is the workers' rights to such payment based on Article 115, paragraph 3. Thus, to be

consistent with the past Arbitral Awards the Arbitration Council decides that prior to the start of workers' maternity leave the company has to provide these payments.

2) Demand for provision of US\$ 15.00 for milk formula instead of building a day care center for babies aged 18 months and up

Article 186 of the Labour Law stipulates that "*Managers of enterprises employing a minimum of one hundred women or girls shall set up, within their establishments or nearby, a nursing room and a day-care center.*

If the company is not able to set up a day-care center in its premises for children over eighteen months of age, female workers can place their children in any day-care centers."

According to this Article, the Arbitration Council finds that the employer has two options:

- a) Preparing a day care center for children above 18 months;
- b) Paying the cost of taking care of those children.

However, the employer cannot perform choice a) for the company has no place to build a day care center. So employer only has choice b) for consideration. But the Labour Law has not specified how much employer should pay to the workers; so the Arbitration Council finds that this will be based on the actual cost of taking care of children as charged in [the external day care].

Concerning this problem, the Arbitration Council finds that in Award 96/06-Wilson the Arbitration Council ordered "*the company to provide an allowance of US\$ 15.00 per month to all women workers whose children are over 18 months in case that company is not able to build day care center for children aged above 18 months.*"

In this case workers also demand the company provide the child day care fee of US\$ 15.00 per month as in the Wilson case. The workers provided evidence of four workers who claim that they had paid from 60.000 riels to 80.000 riels per month for day care services. Therefore, the Arbitration Council finds that the amount of money being paid by the workers for day care service is reasonable and it should be paid by the employer.

So on this ground made by the workers, the Arbitration Council decides that the employer instead of building a day-care center must pay US\$ 15.00 per month as a day care fee to the workers.

Issue 4:

Workers demand company to provide a US\$ 3.00 attendance bonus in addition to the US\$ 5.00 which is stated by law to the workers who worked 26 days regularly as an encouragement allowance for workers who overtime work. The Arbitration Council finds that

the dispute in this case is not a rights dispute but an interests dispute, for the workers request for something that is above the minimum rights which is granted by Notification 017 dated 18 July 2000 and Notification No. 745 dated 23 October 2006. Similarly to issue 2 above, C.CAWDU is the most representative union therefore this union has the right to bring an interests dispute to the Arbitration Council for resolution.

Nonetheless, in this case the workers do not provide any evidence regarding this demand for additional rights to convince the Arbitration Council that granting this right would be equitable; please refer to the explanation made in issue 1 and 2.

Without any [presentation of] reliable evidence or proof, the Arbitration Council decides to reject this demand for the extra right of US\$ 3.00 attendance bonus.

Issue 5:

Workers demand company to provide a seniority bonus of US\$ 5.00 in addition to the stated seniority bonus in Notification 017/00 to any workers who have worked more than 5 years as an encouragement bonus for workers to work harder. The Arbitration Council understands that the dispute in this case is not a rights dispute but an interests dispute.

Similar to issues 2 and 4 above, C.CAWDU has been granted the most representative status so it has the right to bring this interests dispute to the Arbitration Council for resolution.

Workers claimed that the additional seniority bonus will encourage the workers to work harder. Workers do not provide any evidence concerning this demand, for instance the ability to pay of the employer etc. The Arbitration Council finds that this additional seniority bonus for workers who work more than 5 years could provide positive benefits to the employer and worker parties. But the worker party does not provide any argument about how or to what extent this additional seniority allowance will benefit the employer, therefore by having no reliable evidence or basis for a [favourable] equitable decision, the Arbitration Council decides to reject this demand.

Issue 6:

Workers demand the company to provide a US\$ 10.00 allowance in addition to the current wages of 10 security guards [because] the security guards do not receive any seniority bonus or annual leave.

The Arbitration Council considers the evidence of the 9 security guards who were recruited and employed as other normal workers. In a letter, the workers claimed that they were employed by oral contracts. But the employer stated that those guards work as sub-contractors. Therefore, they do not have certain rights and they are not entitled to this additional US\$ 10.00 per month. In Arbitral Award 04/05-Eternity dated 01 February 2005,

the Arbitration Council determined that security guards in the case were the company's staff. The Arbitration Council in this case also agrees with Arbitration Panel in case 04/05-Eternity so the Arbitration Council considers that these security guards are the employees of the company.

Because the security guards are the workers of the company and receive wages that exceed the minimum wage of US\$ 50.00 per month as stated in law; so the Arbitration Council determines that the demand of workers for the US\$ 10.00 increase in addition to the wage is not a rights dispute but an interests dispute because workers demand for something that is above the minimum rights guaranteed by law.

Similar to the above issues 2, 4 and 5, C.CAWDU is the most representative union who has the right to bring interests disputes to the Arbitration Council for resolution.

In this case, the workers claimed that these security guards should receive an additional US\$ 10.00 to make up for annual leave and seniority bonuses. As the Arbitration Council has considered security guards to be employees, then they must have the right to annual leave but not a payment in lieu of this annual leave, read Article 167 of Labour Law. Therefore, the Arbitration Council notes that this demand for increases wages is not appropriate.

The Arbitration Council notes that it does not consider the right to annual leave in this award because this is not the demand in this issue, but parties are advised to read case 04/05-Eternity on this issue.

The Arbitration Council finds that security guards are paid more than the minimum wage, as well as more than the minimum wage plus seniority allowance, which is approximately US\$ 55.00 per month. Therefore, security guards seem to be sufficiently compensated for the seniority bonus. So the Arbitration Council determines that workers have not persuaded the Arbitration Council to believe that this demand for additional wage is equitable.

To conclude, the Arbitration Council rejects this demand.

Issue 7:

Article 170 of Labour Law states that *“In principle, annual leave is normally given for the Khmer New Year unless there is a different agreement between the employer and the worker. In this case, the employer must inform the Labour Inspector of this arrangement.*

In every case of the paid annual leave exceeding fifteen days, employers have the right to grant the remaining days-off at another time of the year, except for the leave for children and apprentices less than 18 years of age.”

In this case, the workers demand the company to allow workers to use annual leave for necessary circumstances such as engagements, civil registrations or identification

issuances, etc., for in the past the company never allowed for such leave. The Arbitration Council finds that civil registration and Identification Card issuance are compulsory obligations of every Khmer citizen to fulfill. Therefore, the Arbitration Council determines that the demand of the workers is reasonable. Concerning an engagement, it is only once per life except when the marriage is broken up. So the Arbitration Council also considers that this demand is appropriate.

However, in the past cases the Arbitration Council decided that annual leave must be approved by the employer and worker party, other than annual leave during Khmer New Year, read arbitral award 21/05-Sino Max and 45/05-B & N.

In this case, the Arbitration Council agrees with the above explanations, for annual leave must be approved by the employer and worker parties. Therefore, to be consistent with past awards the Arbitration Council decides that workers and the employer should discuss this so that the production chain is not interrupted.

The Arbitration Council rejects the demand made by workers regarding the use of annual leave upon necessity.

Issue 8:

C.CAWDU already brought a demand on this point to the Arbitration Council in case 94/04. In the Arbitral Award dated 07 December 2004, issue 9, the Arbitration Council declined to consider that demand as it was an interests dispute and at that time C.CAWDU was not the most representative union.

Similar to issue 2, 4, 5 and 6 as above, C.CAWDU is the most representative union which means that the actual facts in these two cases are different. Therefore, the Arbitration Council will consider this issue to give a final resolution.

The workers demand the company retain the attendance bonus although workers are late for work 30 minutes per month, for example in cases of flat tires of cars or bikes or traffic jams, etc.

Clause 3 of Notification 745 KKBV dated 23 October 2006 provides that “*Any benefits which workers used to receive by Notification 017 SKBY dated 18 July 2000 on Clauses 3, 4, 5 and 6 shall be retained.*”

Clause 3 of Notification 017 SKBY dated 18 July 2000 provides that “*Workers who come to work regularly on regular working days of a month shall receive a bonus of at least USD 5.00 per month.*”

In case 33/07-Gold Fame, the Arbitration Council noticed that “*US\$ 5.00 attendance bonus as stated in this notification means that the US\$ 5.00 amount is provided to only workers who come to work regularly.*” But this Notification does not clearly provide for cases where the workers are absent with permission.

In the same case of 33/07-Gold Fame, the Arbitration Council as well observed that *“The Arbitration Council finds that attendance bonus is an encouragement allowance for workers who work for the full month with no absences without permission. Workers who are absent without permission do not have a right to this attendance bonus. But this attendance bonus is not intended to fine workers who are absent without permission.”*

According to past jurisprudence, the Arbitration Council interpreted that workers have a right to receive attendance bonus in proportion to the days that they come to work if workers take a day off for urgent matters with permission from the employer, read arbitral award 52/05-Hoy Fu (issue 2), 62/04-Y Sin (issue 1), 45/05-B & N (issue 6).

Furthermore, in case 60/06-New Max, the Arbitration Council determined that the employer has a right to set the working hours and a right to expect the workers will come to work on time. Therefore, phrase *“work regularly on usual working days”* also includes punctuality of employees.

In this case, the Arbitration Council agrees with the past jurisprudence that workers have a right to receive attendance bonus in proportion to the number of days that they come to work and workers have an obligation to respect the working hours. So the Arbitration Council considers that workers have no legal right for this demand.

But workers do not provide any reliable proof to the Arbitration Council to find that granting this additional right will result in equity. By this, the Arbitration Council decides to reject this demand.

Issue 9:

Article 2 of Labour Law states that *“Every enterprise may consist...a group of people working...under the supervision and direction of the employer.”*

In case 28/04, the Arbitration Council interpreted this Article to mean that *“By this meaning the Arbitration Council understands that the employer has the right and power to manage and supervise work related to human resources of the company so long as such management and supervision are in accordance with law.”*

In this case, the Arbitration Council as well agrees with the above interpretation that employer has right and power to manage and supervise work in the enterprise as long as it is done in line with law.

The workers demand to punch-in 3 times per day because lunch time is at 11:30 a.m. or install more punching machines.

In relation to first part of this demand, the workers' demand to punch in only 3 times per day, the Arbitration Council finds that this demand is against the employer's managerial rights. The employer needs to know when workers start working and leave from work so that the wage calculation and production records will be accurate. Therefore, the employer has

the privilege to determine the methods to be used for this information collection so long as the system used is not contrary to the law and is reasonable.

Article 230 of Labour Law states that *“Establishments and work places must be set up to guarantee the safety of workers. Machines, mechanical devices, transmission facilities, tools, and motors must be used, and the materials, tools, motors, and products used must be appropriate for guaranteeing the safety of workers.”*

Article 250 of Labour Law ruled that *“All heads of business must take all appropriate measures to prevent work- related accidents.”*

Concerning the second part of the demand, the Arbitration Council finds that the demand for additional installation of punching machines does not affect the managerial right of the employer. In this case, the lack of machines affects the health and safety of the workers, for instance lunch is not on time and there is not sufficient time for the noon break, etc., because the employer places only two punching machines for more than 600 workers. Although at this time no worker has yet been injured, the Arbitration Council finds that it causes many workers to hurriedly leave the factory at the same time for the shortened lunch break and in some cases there is not enough food left for them to eat.

Based on the above Article, the Arbitration Council determines that the demand of workers for additional punching machines is appropriate. The employer claims that there is not enough space for extra machines. Workers object to this statement; and because there is no other evidence submitted by the employer, the Arbitration Council accepts the arguments made by workers that there is space for new machines.

So the Arbitration Council finds that employer is required to install two extra machines as well as repair the punching machines that are broken down so that workers can easily exit for lunch on time and have a sufficient break.

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

DECISION

1. Decline to consider the demand made by the union to the company for the union contribution fee deduction.
2. Reject the demand of the union for the company to provide wages during breaks of before the overtime work starts.
3. a) Order the employer to provide the three-months-wage of maternity leave before it actually starts.

b) Order the employer to, instead of building a day care center, pay US\$ 15.00 per month to every worker whose baby is more than 18 months of age.

4. Reject the demand of the union regarding an additional US\$ 3.00 attendance bonus.
5. Reject the demand of the union for an additional US\$ 5.00 seniority allowance.
6. Reject the demand of the workers for an extra US\$ 10.00 per month for the [9] security guards.
7. Reject the demand of the union for to use annual leave in the case of necessity.
8. Reject the demand of the union concerning maintaining the attendance bonus if workers come to work late.
9. Order employer to install 2 more punching machines and repair the punching machines that are broken down.

Type of Award: Non binding awards

This Award will become binding after 8 days of the date of its notification unless one of the parties lodges a written opposition 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 employer party:

Name: **KAO THACH**

Signature:

Arbitrator chosen by the worker party:

Name: **TUON SIPHANN**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **KONG PHALLACK**

Signature: