



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

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

**THE ARBITRATION COUNCIL**

**Case number and name: 51/07-Goldfame**

**Date of Award: 12 July 2007**

**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: **SIN KIM SEAN**

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

**DISPUTING PARTIES**

**Employer party:**

Name: **Goldfame Enterprises Knitters Limited**

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

Telephone: 012 535 955 Fax: N/A

Representative:

- |                     |                                       |
|---------------------|---------------------------------------|
| 1. Mr. Peter Young  | Assistant to the company director     |
| 2. Mr. Try Soviniya | Administration officer of the company |
| 3. Mr. Chiem Vanna  | Interpreter                           |
| 4. Mr. Long Heang   | Representative of GMAC                |

**Worker party:**

Name: **Local C.CAWDU at Goldfame Company**

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

Telephone: 012 988 623 Fax: N/A

Representative:

- |                      |  |
|----------------------|--|
| 1. Mr. Ek Sopheakdey | General secretary of C.CAWDU                   |
| 2. Mr. Oum Visal     | Dispute resolution officer of C.CAWDU          |
| 3. Mr. Keo Boeun     | President of local C.CAWDU at Goldfame Company |

|                        |   |
|------------------------|---|
| 4. Ms. Chea Thida      | Cashier of local C.CAWDU at Goldfame Company  |
| 5. Mr. Chhit Sarith    | Advisor of local C.CAWDU at Goldfame Company  |
| 6. Mr. Soeun Bunthoeun | Advisor of local C.CAWDU at Goldfame Company  |
| 7. Mr. Srun Chantha    | Advisor of local C.CAWDU at Goldfame Company  |
| 8. Mr. Chim Kichha     | Activist of local C.CAWDU at Goldfame Company |
| 9. Mr. Suong Sophea    | Activist of local C.CAWDU at Goldfame Company |
| 10. Ms. Hun Sreykim    | Activist of local C.CAWDU at Goldfame Company |
| 11. Mr. Hom Bun        | Activist of local C.CAWDU at Goldfame Company |
| 12. Mr. Thuon Vanny    | Activist of local C.CAWDU at Goldfame Company |
| 13. Mr. Chea Sarath    | Activist of local C.CAWDU at Goldfame Company |
| 14. Mr. Huot Dalat     | Activist of local C.CAWDU at Goldfame Company |
| 15. Mr. Ngann Veasna   | Activist of local C.CAWDU at Goldfame Company |
| 16. Mr. Khvek Thom     | Member of local C.CAWDU at Goldfame Company   |
| 17. Mr. Tha Mengly     | Member of local C.CAWDU at Goldfame Company   |
| 18. Mr. Bo Bol         | Member of local C.CAWDU at Goldfame Company   |
| 19. Mr. Sray Pisal     | Member of local C.CAWDU at Goldfame Company   |
| 20. Mr. Seng Bunthoeun | Member of local C.CAWDU at Goldfame Company   |
| 21. Mr. San Borei      | Member of local C.CAWDU at Goldfame Company   |

#### **ISSUES IN DISPUTE**

(In the Non-Conciliation Report)

- 1- The workers demand the company to reinstate 7 workers in the dyeing section and pay back their wages from the day they were terminated. The employer does not agree but pays the workers according to the law.
- 2- The workers demand the company to reimburse annual leave for the workers who have been working for more than three years but the company did not allow them to use their annual leave. The company does not agree but requests to follow the Labour Law.
- 3- The workers demand the company to change from fixed duration contracts to undetermined duration contracts. The employer does not agree.
- 4- The workers demand the company to provide 1,000 riel per hour as the meal allowance to workers who work overtime. The employer does not agree but follows the Labor Law and Ministerial Prakas.
- 5- The workers demand that workers in the overlocking section in the Back Building become piece rate workers like those who work in Building A, B, C. The employer does not agree but follows the company's plan.

- 6- The workers demand that workers in stitching control section become piece rate workers. The company does not agree.
- 7- The workers demand the company to issue pay slips with a description of the wage they would receive like piece rate workers. The employer does not agree.
- 8- The workers demand the company to issue the piece rate for workers in all sections before asking workers to do the work. The employer does not agree but follows the old policies.
- 9- The workers demand the company be responsible for stamping workers out when they leave work. The employer does not agree.
- 10- The workers demand the company to retain the attendance bonus when the workers come 5 minutes late to work on normal days and 30 minutes on any day workers have an accident. The employer does not agree.
- 11- The workers demand the company to increase the piece rate appropriately for all sections. The employer does not agree.
- 12- The workers demand the company to stop using workers to do work not consistent with their skills. The company does not agree; it uses workers to do general work.
- 13- The workers demand the company to provide US\$ 5 more per month to the main wage of each worker. The employer does not agree but follows the Law and the Ministerial Notification.
- 14- The workers demand the company to add US\$ 1 more every year for workers who have 4 years and over of seniority. The employer does not agree.
- 15- The workers demand the company to use short term contracts with new workers and then change them to fixed duration contracts and, after the workers have been working for more than two years, change them to undetermined duration contracts. The company does not agree.
- 16- The workers demand the company to follow the agreements dated 24 November 2006 and 05 April 2007. The company does not agree because it already has followed the agreements.
- 17- The workers demand the company to pay the annual indemnity which they were not paid in the first term. The employer does not agree because it has paid the workers already.

#### **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 was unsuccessful, and the non-conciliation report No. 098 K.B.V/KN, dated 12 June 2007, was submitted to the Secretariat of the Arbitration Council on 13 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:** 25 June 2007 (From 2:00 p.m. to 6:00 p.m.)

#### **Procedural issues:**

On 10 April 2007, the Department of Labour and Vocational Training of Kandal Province received a letter of complaint by C.CAWDU No. 20/07 SBKK, dated 09 April 2007 regarding the demand for the company to improve working conditions according to the Labour Law. After receiving the complaint, the Department of Labour assigned an officer to conciliate this dispute and the last conciliation was held on 18 May 2007 with 4 of 21 issues conciliated. The 17 non-conciliated issues were sent to the Secretariat of the Arbitration Council on 13 June 2007.

After receiving the case, the Secretariat of the Arbitration Council summoned the employer party and the worker party [ ] to the hearing and conciliation on the 17 non-conciliated issues on 25 June 2007 at 2:00 p.m. Both parties were present as invited by the Arbitration Council.

On the hearing day, the Arbitration Council attempted to further the conciliation on the 9 issues in the non-conciliation report by the Department of Labour but did not achieve any conciliation result.

In the hearing, the Arbitration Council required the employer party and the worker party to submit evidence to clarify their position regarding the issues in dispute in this case not later than 29 June 2007. Both parties submitted certain evidence after the deadline. Thus, in this case, the Arbitration Council will not consider such evidence.

Therefore, in this case, the Arbitration Council will consider all the non-conciliated issues mentioned above based on evidence and clarification by the parties in the hearing 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 Work Rules, dated 12 September 2003
2. Letter dated 21 June 2007 to authorized Mr. Peter Young and Mr. Long Heang
3. Contracts of fixed duration of certain workers
4. A copy of Arbitral Award No. 44/06-Goldfame
5. List of wage for March, April and May 2007 of workers in ironing section
6. List of additional annual compensation for workers for year 2006
7. Termination letter of Mr. Huot Dalat
8. Termination letter of Mr. Chea Sarat
9. Termination letter of Mr. Thuok Vanny
10. Termination letter of Mr. Ham Bun
11. Termination letter of Mr. Srun Chantha
12. Minute of collective dispute conciliation between Goldfame company and workers in Goldfame company, dated 12 September 2006
13. Invitation letter by the head of C.CAWDU to the head of Department of Labour and Vocational Training of Kandal Province, dated 23 November 2006
14. Minute of collective labour dispute conciliation between Goldfame company and workers in Goldfame company, by the Ministry of Labour and Vocational Training, dated 23 November 2006
15. Minute of collective labour dispute conciliation between Goldfame company and workers in Goldfame company, dated 9 May 2007
16. Minute of collective labour dispute conciliation between Goldfame company and workers in Goldfame company, dated 23 November 2006
17. Leave request letter of some workers
18. Statement by Goldfame company on case 51/07-Goldfame, dated 05 July 2007, and some attached letters registered as letters in at the Secretariat of the Arbitration Council on 05 July 2007 at 04:00 p.m.

### Provided by the worker party:

1. Letter No. 071/07 SBKK by the head of C.CAWDU, dated 04 July 2007 to reject some of the document submitted by Goldfame company to the Arbitration Council, registered as letter in at the Secretariat of the Arbitration Council on 15 July 2007 at 10:00 a.m.

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

1. Report of collective dispute resolution at Goldfame Company, No. 098 K.B.V/KN, dated 12 June 2007
2. Minute of collective labour dispute resolution, dated 18 May 2007.

Provided by the Secretariat of the Arbitration Council:

1. Invitation letter No. 225 K.B/AK/VK/LKA dated 19 June 2007 to invite the worker party to attend the hearing.
2. Invitation letter No. 224 K.B/AK/VK/LKA dated 19 June 2007 to invite the employer party to attend the hearing.
3. Request dated 25 June 2007 by the parties in labour dispute No. 51/07-Goldfame to postpone [the arbitral award] to 12 July 2007

**FACTS**

- Having reviewed the report of the collective labour dispute conciliation
- Having listened to statements by the representatives of the worker and the employer parties
- Having examined additional documents.

**The Arbitration Council finds that:**

- Goldfame Enterprises Knitters Limited company employs a total number of approximately 5,000 workers. The company started its operation in 1997.
- There are three unions in the company: C.CAWDU, Cambodian Labourer Union, and Khmer Youth Trade Union. Among these three unions, none of them have the most representative status.
- C.CAWDU who is the claimant in this case has approximately 1,315 members.
- The employer mentions that most of the issues in this dispute are the same as issues in case 33/07-Goldfame in which the Arbitration Council already issued an award on 30 April 2007. But in that case Cambodian Labourer Union was the claimant. The Award was binding and the company implemented the Award to all workers in the factory and made an agreement in detail regarding that Award.
- C.CAWDU who is the claimant in this case mentions that it is true that most of the issues in this dispute are the same as those in case 33/07-Goldfame but in that case C.CAWDU was not the claimant.

**ISSUE 1: The workers demand the company to reinstate 7 workers in the dyeing section and pay back their wages from the day they were terminated to the day they will be reinstated**

- The workers and the employer mention that among the 7 workers, two of them have received money for compensation.
- The five remaining workers were terminated on 07 March 2007 and paid termination compensation according to Article 75 (compensation in lieu of prior notice), Article 89

(indemnity for dismissal), Article 91 (damages), last wage, and compensation for unused annual leave in accordance with Article 166. These workers have undetermined duration contracts and they are:

1. Mr. Huot Dalat, a union activist, started work on 23 September 2004
2. Mr. Chea Sarat, a union activist, started work on 28 June 2004
3. Mr. Thuok Vanny, a union activist, started work on 26 March 2004
4. Mr. Hom Bun, a union activist, started work on 08 May 2004
5. Mr. Srun Chantha, a union advisor, started work on 23 September 2004

- The workers demand the company to reinstate the 5 workers because they are a union advisor and union activists and the termination amounted to union discrimination because the 5 workers did not have any mistake. [The workers] mention that the five of them are union activists who always helped to solve workers' problems and recruit union members.

- In the company's Internal Work Rules, there is no point that mentions about the termination of undetermined duration contracts by the employer's will.

- The company argues that it cannot reinstate the five workers. The company does not discriminate against the union because if it did there would have been no union in the factory and all union members would have been dismissed. The company acknowledges that the termination of the five workers does not relate to their mistakes and the company terminated them by the its unilateral will, that is why it provides termination compensation as required by the Law [ ]. The company adds that the five workers do not listen to their supervisor's advice and they used to drink alcohol during working hours for which the company gave them oral warnings. However, this dismissal does not related to these mistakes but the company terminated employment contract of the five workers by its unilateral will.

- The workers do not agree and continue to insist that the employer reinstates the five workers because, among the 5 of them, Mr. Srun Chantha is a union advisor who is protected according to Prakas 305. The union already provided a letter to inform the company and the Ministry of Labour about this issue.

- The company mentions that it did not receive a letter of recognition of Mr. Srun Chantha from the Ministry of Labour. Thus, it cannot say that Mr. Srun Chantha is a worker protected by the Law.

- The workers mention that based on Prakas 305, it does not require a recognition letter from the Ministry but a notification made by the union is sufficient.

**ISSUE 2: The workers demand the company to reimburse annual leave for those workers who have been working for more than three years but have not been allowed by the company to use the leave**

- This issue is the same as issue 5 in case 33/07-Goldfame. Before the Arbitration Council issued the Award, for workers who had been working for three years and more the company did not allow them to the additional one day of leave every three consecutive years.

- Currently the company follows the Arbitral Award 33/07-Goldfame, that is, the company adds one day every three years which means that there are workers who take 19 days leave or 20 days leave... based on their seniority. However, in this case, the workers demand the company to reimburse them the one day the company did not provide them since 1997. The workers promised to provide a list of names of workers who have been working for more than three years and are making this demand to the Arbitration Council by 29 June 2007. However, the workers did not provide the evidence by the deadline.

- The company does not agree and mentions that it already follows Arbitral Award 33/07-Goldfame.

**ISSUE 3: The workers demand the company to change the fixed duration contracts to undetermined duration contracts**

- This issue is the same as issue 4 in case 33/07-Goldfame. In this case, the union demands that workers who have written fixed duration contracts be changed to undetermined duration contracts.

- The Arbitration Council finds that in case 33/07-Goldfame, Cambodian Labourer Union also demanded that workers who have written fixed duration contracts be changed to undetermined duration contracts.

- The company mentions that currently there are no workers on undetermined duration contracts. The Arbitration Council asks the union to provide names and employment seniority of workers who are making the demand or their written contracts to the Arbitration Council to support their claim by Friday, 29 June 2007. However, the workers did not provide the evidence by the deadline.

**ISSUE 4: The workers demand the company to provide 1,000 riel per hour as meal allowance to workers who work overtime**

- The workers demand the company to provide 1,000 riel per hour as meal allowance because [the amount paid] is not sufficient as the market price of goods always increases. The workers mention that they make this demand for all union members.

- The employer does not agree but follows Notification 017/2000.

- In the current practice, the company provides meal allowance of 500 riel per hour, 1,000 riel per two hours and 1,500 riel per three hours.

**ISSUE 5 AND 6: The workers demand that all workers in the overlocking section in the Back Building and in stitching control section become piece rate workers like workers in Building A, B, C**

- This issue is the same as issue 8 in case 33/07-Goldfame, the union demands the company to facilitate all workers in the Back Building and in the stitching control section to become piece rate workers like workers in Building A, B, C.

- The Arbitration Council finds that in case 33/07-Goldfame the Cambodian Labourer Union asks the company to facilitate workers in stitching control and fray-stitching control to work according to the piece rate.

- The workers mention the reason that they demand for workers in the Back Building and stitching control section to be piece rate workers like those in Building A,B,C is because they want to earn more, since working in a [monthly based] wage system they can receive only US\$ 50.

- The company says that it cannot do this because if the company changes them into piece rate workers, the company has to create more sections; workers in the Back Section and in stitching control section have to work according to a monthly based wage because the work in the finishing section needs to be worked on carefully to ensure good quality. The workers do not respond to this assertion.

- There are 20 workers working in the Back Building and 11 of them are making the demand and it is not known about the number of workers in stitching control section who are demanding to be piece rate workers. The union promised to provide the names of workers in these two sections who are making the demand to the Arbitration Council by Friday, 29 June 2007. However, the workers did not provide the evidence by the deadline.

**ISSUE 7: The workers demand the company to issue pay slips of monthly wages like those for piece rate workers**

- This issue is the same as issue 10 in case 33/07-Goldfame; the workers demand the company to issue pay slips describing the monthly wage that should be paid to workers, like those for piece rate workers.

- The Arbitration Council finds that in case 33/07-Goldfame the workers demanded the company to issue pay slips to workers receiving monthly-based salaries, like it does for the piece rate workers.

- As practiced by the company, the employer already issues pay slips to piece rate workers. As claimed by the company, it needs five more months to arrange the system [as

demanded by workers] because arranging the data requires time to avoid mistakes. The company mentions that it is following the Arbitral Award and asks the workers to wait but the workers do not agree to wait and will leave this to the Arbitration Council to decide.

**ISSUE 8: The workers demand the company to issue the piece rate in advance before asking workers to work according to it**

- The workers mention that there was an agreement in 2006 which required the employer to issue the piece rate within 7 days after the workers begin working.

- The workers state that the reason that they make this demand is because some clothes are finished before the 7 days. The company does not agree but follows the old policy.

- The employer party mentions that there are no workers who receive less than the minimum wage. The workers do not object to this.

**ISSUE 9: The workers demand the company to do the stamping for them when they leave work**

- This issue is the same as issue 3 in case 33/07-Goldfame; the workers demand that, although the workers will punch in by themselves, when they leave work the company should be responsible [for punching out] as before.

- The Arbitration Council found that in case 33/07-Goldfame the workers also demanded that, although the workers would punch in by themselves, the company should be responsible for punching them out, as before.

- The employer does not agree and gives the reason that the change requiring workers to punch out by themselves is required by the purchaser so that it creates clarity regarding the recording of workers' time out.

- Since the company started its operation in 1997, the workers punched in by themselves when they came to work, and at the lunch break, and when it was time to go home the company punched out for the workers.

- In the hearing, the workers mention that the reasons that they want the company to punch out for them at the lunch break and when they leave work is because they do not want to waste time, also this had been the practice since the company started its operation. The workers add that this practice was changed on 27 March 2007. The company does not object to this claim.

- The company mentions that in addition to the requirement by the buyer, there are some workers who would sneak out before the working hour is over if the company punches out for them. This makes it difficult in managing staff and can cause the company to lose some clothes. The worker party does not deny this.

- The union says that workers spend about 3 to 5 minutes to leave the factory when the company punched out for them in the past.

- The workers mention that on average the company installs 2 machines for about 100 workers. The company does not object to the workers' claim.

**ISSUE 10: The workers demand the company to retain the attendance bonus when the workers come 5 minutes late to work on normal days and 30 minutes on any day workers have accident**

- The workers demand the company to retain the attendance bonus when workers come late to work by 5 minutes on a normal day such as when they oversleep because of late overtime at the factory on previous nights, and 30 minutes on the days of an accident, for example flat tires or too many water hyacinths that delay the trip to work by boat, etc.

- The Internal Work Rules of the company does not state about provision of the attendance bonus when workers come to work late.

- The company has an agreement with the Cambodian Labourer Union by which it allows workers to be late for 2 minutes on normal days and 5 minutes on the days of accidents and the employer retains the attendance bonus.

- The company does not agree. The current principle of the company is in accordance with the agreement the company made with the Cambodian Labourer Union, dated 09 May 2007. The agreement states, *"The company deducts US\$ 1 from attendance bonus if a worker is absent with permission for one day, US\$ 2 for 2 days absence with permission. The US\$ 5 attendance bonus will be deducted if a worker is absent with permission from 3 days up."*

**ISSUE 11: The workers demand the company to increase piece rate appropriately in all sections**

- This issue is the same as issue 11 in case 33/07-Goldfame; the workers demand the company to increase the piece rate appropriately in all sections. The employer party does not agree because at least 80 percent of workers already receive the minimum wage. The workers do not deny this, but they still demand the company to increase the piece rate appropriately in all sections.

- The worker party promises to provide names of workers who insist that the company increase the piece rate in [all] sections to the Arbitration Council by Friday, 29 June 2007. But the workers did not submit this evidence by the set deadline.

**ISSUE 12: The workers demand the company to stop using workers to do work that is not consistent with their skill**

- The Arbitration Council found that in case 33/07-Goldfame, when there is no work to do, the workers demanded that they not be required to go to work in other sections where there is work.

- The workers mention that the employer uses workers to do work that is not consistent with their skills, for example it asks the electricians to clean fans, and use workers in the washing and ironing sections to move clothes, etc. The workers did not provide evidence regarding a list of names of electricians and workers in the washing and ironing sections whom the company uses for work that is not consistent with their skills, but promised that the evidence would be provided on 29 June 2007. However, the union did not provide the evidence by the deadline as promised.

- The employer mentions that this is [temporary] work which happens once a while when there is no work between January to April each year. The workers agree with this but they still insist the company to stop using workers to do work that is not consistent with their skills.

- The employer mentions that using electrician to clean the fan is not wrong because this job is related to electricity, and normal workers cannot perform this work. Regarding the use of washing and ironing workers to move clothes, this is not wrong either because this work of moving clothes is normal work. The workers do not object to this.

- The employer party and the worker party agree that this transfer of work is temporary and those workers work on the same shift, receive the same wage and work in the same factory.

- The employer adds that the transfer of work is done following an agreement for the period of no work that the company has to provide 100 percent of the wage and find proper work for workers to perform. The employer considers that using electricians to clean fans once a while is proper work when there is no other work. The workers do not object to this.

**ISSUE 13: The workers demand the company to provide US\$ 5 more of wages per month in addition to the main wage of all workers**

- This issue is the same as issue 6 in case 33/07-Goldfame; the workers demand the employer to add US\$ 5 for 10 workers who were the heads of groups whose wages were US\$ 50 or more based on the reason that the wage increase of only workers who received less than US\$ 45 was unfair for those who already received more than US\$ 50.

- The Arbitration Council finds that in case 33/07-Goldfame, the workers also demanded the company to increase by US\$ 5 the wage for workers whose earned from US\$

50 and up [also] based on the reason that the wage increase of only workers who received less than US\$ 45 was unfair for those who already received more than US\$ 50.

- Both parties agree that from the beginning of 2007 the company increased the wage for workers from US\$ 45 to US\$ 50 in accordance with Notification No. 745 K.K.B.V by the Ministry of Labour and Vocational Training. For workers who earned US\$ 50 and up, the company did not provide any increase.

- The union does not provide the specific names of workers who make this demand but only mentions that they are making this demand for those who receive a wage of US\$ 50 and up.

- The Arbitration Council requests the union to provide names of the 10 workers who are making the demand for the company to increase US\$ 5 to the Arbitration Council to support this demand by Friday, 29 June 2007. However, the union did not provide the evidence by the deadline.

**ISSUE 14: The workers demand the company to add US\$ 1 for workers who have 5 years and over of seniority, that is to add US\$ 1 every year in accordance with workers' seniority**

- This issue is the same as issue 2 in case 33/07-Goldfame; the workers demand the company to increase by US\$ 1 per month the seniority bonus for workers who have been working for the company 5 years and up. This demand is for the practice from now on.

- The Arbitration Council finds that in case 33/07-Goldfame the workers also demanded an increase of US\$ 1 per month for workers who have been working for the company 5 years and up. The workers demand this for general workers in the whole factory and this is for the practice from now on.

- The company does not agree; instead it will follow the law. The workers mention that the company has followed the law already in this regard. But the workers demand for this in addition to what is provided by the law.

- The Arbitration Council requests the union to provide the names of the workers who make this demand for the company to provide an increase of US\$ 1 for workers who have 5 years and up of seniority to the Arbitration Council to support their claim by Friday, 29 June 2007. However, the workers did not provide the evidence by the deadline set.

**ISSUE 15: The workers demand the company to use short term contracts with new workers and then change to the fixed duration contracts and, after the workers have been working for more than two years, change to undetermined duration contracts**

- The workers demand the company to use short term contracts with new workers and then change them to the fixed duration contracts and, after the workers have been

working for more than two years, change them to undetermined duration contracts; but they do not provide any specific reason and do not show the number of workers who are making this demand or their types of contracts. The workers do not mention how long that short term contract is. The workers do not provide any other evidence to clarify this demand either.

- The Arbitration Council required the workers to provide specific evidence such as the number of workers who are making this demand, their types of contract and employment seniority to the Arbitration Council to clarify their demand. However, up to Friday, 29 June 2007 which is the deadline for submission of the additional evidence, the Arbitration Council did not receive such evidence from the workers.

- The employer does not agree with this demand claiming that this is the employer's rights. In the company, the employer utilises two types of contracts: fixed duration contracts and undetermined duration contracts.

- Point 1 of the company's Internal Work Rules mention apprentice training contracts which are of 2 month periods; and probationary contracts are for three months. However, it does not mention fixed duration contracts and undetermined duration contracts.

**ISSUE 16: The workers demand the company to follow the agreements dated 24 November 2006 and 05 April 2007**

- The workers and the employer state that the agreements dated 24 November 2006 and dated 05 April 2007 have the same meaning.

- Agreement dated 05 April 2007 is an agreement to implement the agreement dated 24 November 2006.

- Agreement dated 24 November 2006 states,

*A. All workers whose contracts were terminated should come back to work on 01 April 2007, on 6 month contracts.*

*B. The company will provide notification in writing to local union(s) regarding the recruitment of those workers back to work.*

*C. For workers in the ironing section, the company agrees to continue 2 month contracts and then practice point (A) as mentioned above.*

*D. In case the company has work to do before the set date, it will provide notification through a committee of local unions and if any worker does not start working on the date set the company will allow 15 days more after which the company has the rights to recruit new workers to replace them.*

*E. When it is 01 April 2007 and if any workers do not show up, the company will allow 10 days more after which the company can recruit new workers to replace them.*

*F. When it is 01 April 2007 but the company still does not have work, the company will make another notification.*

- The workers mention that the company does not implement this agreement properly, i.e., it does not make 6 month contracts, and instead makes 3 month contracts; and it does not recruit all the workers. The workers do not provide any evidence regarding seniority or the three month contracts to the Arbitration Council.

- The employer mentions that the company does make 3 month contracts and the company has no idea how to go to look for all the workers. The company follows the contract but workers whom the company did not recruit did not appear on the date set in the agreement of 24 November 2006. Thus the company cannot wait for those workers. The workers do not object but still insist that the company implement the agreement dated 24 November 2006 by making 6 month contracts and re-recruiting all workers back to work. The company states that it has already implemented this.

- The Arbitration Council ordered the worker party to provide a name list of all workers whom the company has recruited and the type of their contract and the list of names of workers whom the company has not yet recruited back to work by 29 June 2007. However, the worker party did not provide evidence by the deadline set.

**ISSUE 17: The workers demand the company to pay the annual indemnity which they were not paid in the first term**

- The workers and the employer state, regarding the annual leave, that the worker party agrees to accept cash in lieu of annual leave, for those workers who do not take annual leave. This payment is made two times per year, i.e., before Khmer New Year and before Water Festival.

- In the hearing the workers mentioned that before Water Festival in 2006, the company did not make this payment to some workers. The company objects to this assertion and mentions that the reason that the company did not pay was because the workers already used up their leave. If any workers have not been paid, the union should provide their names [to the company].

- The union promised to provide this list of names to the Arbitration Council by 29 June 2007. The union did not provide the evidence by the deadline.

**REASONS FOR DECISION**

**ISSUE 1: The workers demand the company to reinstate 07 workers in dyeing section and pay back their wages from the day they were terminated to the day they will be reinstated**

In this case, the workers and the employer mention that, among the 7 workers, two of them have received termination payments. Thus, the Arbitration Council will consider only the 5 workers: Mr. Huot Dalat, Mr. Chea Sarat, Mr. Thuok Vanny, Mr. Hom Bun, and Mr. Srun Chantha.

Based on the above mentioned facts, the Arbitration Council finds that the five workers have undetermined duration contracts. Thus, the Arbitration will consider this issue as follows:

1. Is the termination of the five workers in accordance with the Labour Law?
2. Is there discrimination in terminating the five workers?
3. Do the five workers receive special protection?
4. What remedies should the workers be entitled to if the employer did not terminate them in accordance with the Labour Law?

#### **1. Is the termination of the five workers in accordance with the Labour Law?**

Article 74 of the Labour Law states, *“The labor contract of unspecified duration can be terminated at will by one of the contracting parties. This termination shall be subject to the prior notice made in writing by the party who intends to terminate the contract to the other party. However, no layoff can be taken without a valid reason relating to the worker's aptitude or behavior, based on the requirements of the operation of the enterprise, establishment or group.”*

Based on the contents of this Article, the Arbitration Council considers that both the employer and the workers have a right to terminate the contract by their unilateral will. This Article also requires the employer to fulfill some conditions such as a **proper reason** relating to the workers' aptitude or behaviour and based on necessity for operation of the enterprise or establishment.

In the hearing the employer mentions that the workers did not commit any misconduct but the employer terminated the contract unilaterally and paid all the payments required by the Labour Law to the workers. This shows that in terminating the contract of the five workers, the employer does not have a proper reason related to the workers' aptitude or behaviour and based on necessity for operation of the enterprise or establishment or the company. Thus, the employer did not terminate the contract of the five workers in accordance with the Law.

Clause 34 of Prakas 099 SKBY, dated 21 April 2004 states, *“...Within the limitations of the Labor Law and this Prakas, the Arbitration Council has the power and authority to provide any civil remedy or relief which it deems just and fair, including:*

- A. *orders to reinstate dismissed employees to their former or any other appropriate position...”*

In previous awards, the Arbitration Council interprets that Article 34 grants rights and power to the Arbitration Council, for instance, to order to reinstate the dismissed workers in case the employer does not terminate the contract in accordance with the Labour Law. (See Arbitral Award 93/06-Evergreen, issue 1).

## **2. Is there discrimination in terminating the five workers?**

Based on the inquiry made during the hearing, the Arbitration Council considers that the contracts of the 5 workers were made in 2004. The company had not canceled them even though the production line in some seasons had very few purchase orders or did not have any at all. Only when there was a notification about the [membership] of the five workers did the company terminate their contracts, and when the company terminated the five workers it did not terminate other workers besides the five of them. In addition the company also mentions in the hearing that this termination of contracts was done by the unilateral will of the company. Thus, the Arbitration Council found that the termination in this case is an act of discrimination against the five workers.

## **3. Do the five workers receive special protection?**

In the hearing and the letter from the worker party as well as clarification from the union, among the five workers terminated, 4 of them are union activists and one of them is a union advisor and they started work on 23 September 2004. The union claims that it provided notification about the activists and the union advisor to the company and Ministry of Labour but the company claims that it has not received any recognition letter from the Ministry of Labour.

Article 293 of the Labour Law states, "The dismissal of a worker delegate or a candidate for worker delegate can take place only after authorisation from the Labor Inspector."

Clause 7 of Prakas 313, dated 27 November 2000 on The Roles of the Worker Delegate and Trade Union states, "*The 3 senior leaders, in the enterprise and establishment, including the President, the First Vice President, and the First Secretary who are registered with the Ministry of Social Affairs, Labor, Vocational Training, and Youth Rehabilitation, shall be protected from being dismissed from jobs in the same manner as the worker delegate.*"

In this case, the five workers are not worker delegates or president, vice-president or first secretary of the union thus the five workers are not under protection of the Labour Law and Prakas 313. In the hearing the union mentions that Mr. Srun Chantha has special protection in accordance with Prakas 305. The Arbitration Council will consider this case as follows:

Clause 4 of Prakas 305 states, *“From the time of applying for union registration, all workers and employees that are founders or all workers and employees that are voluntary members of the union while asking for registration also receive protection like worker delegates. This protection lasts for 30 days after the date of registration of syndicate.*

*Exceeding the period mentioned in above paragraph, the protection will be granted to 3 union leaders in terms set out in articles 282 and 293 of labor law. For a union having more than 200 persons, the protection shall be granted to one union member for each additional 200 members. More protection can be granted through a collective bargaining agreement. To receive the protection, the union shall inform the employer about the names of people having to receive it by official means. A copy of this information shall be sent to the Ministry of Social Affairs, Labor, Vocational Training and Youth Rehabilitation.”*

Based on the above mentioned facts, the employer acknowledges that it received a letter from the union notifying it about the status of the five workers that they have special protection. Because the union has 1,350 members, based on the contents of Prakas 305, the five workers receive protections like worker delegates, including the requirement of obtaining permission from the Labour Inspector to terminate them.

In the hearing the employer mentions that the company received notification from the union regarding the request for special protection for the five workers but this notification procedure is not sufficient for the five workers to receive special protection as it is acceptable only when the notification is made by the Ministry of Labour. The Arbitration Council considers that according to the contents of Prakas 305 mentioned above, the notification does not required any recognition letter from the Ministry but the notification from the union alone is sufficient.

In this sense, the five workers are under protection of the Labour Law and Prakas 313 and 305 as mentioned above. The Arbitration Council finds that the employer did not follow the procedures required by the Labour Law and the Ministerial Prakas. (See Arbitral Award in 17/07-Charm Textile, issue 1; 07/06-Dai Young, issue 1 and 09/06-Grand Diamond City). In conclusion, the Arbitration Council found that the termination is union discrimination.

#### **4. What remedies should the workers be entitled to if the employer did not terminate them in accordance with the Labour Law?**

Clause 34 of Prakas 099 SKBY, dated 21 April 2004 states, *“In matters referred to the arbitration panel, the panel shall have the power and authority to fully remedy any violation of provisions provided in the Labor Law, implementing regulations under the Labor Law, collective bargaining agreements or other obligations arising from the professional relationship between employer and employee...”* Because the employer did not terminate the contracts of the five workers in accordance with the Labour Law, the Arbitration Council is

empowered under Clause 34 to require the employer to provide a full remedy to the five workers.

In previous cases, the Arbitration Council ordered the employer to pay full wages during the time of the termination to the workers who were terminated unlawfully. (See Arbitral Awards 10/03-Jaquesintex, issue 4; 07/06-Dai Young, issue 1; 73/06-FY). In this case, the Arbitration Panel also agrees with the order of the arbitrators in previous cases.

Thus, the Arbitration Council decides to accept the workers' demand for the employer to reinstate Mr. Huot Dalat, Mr. Chea Sarat, Mr. Thuok Vanny, Mr. Hom Bun and Mr. Srun Chantha and order the employer to pay the five workers' wage from the day of termination to the day of reinstatement.

**ISSUE 2: The workers demand the company to reimburse annual leave for those workers who have been working for more than three years but the company did not allow them to use the leave**

Paragraph 4 of Article 166 of the Labour Law states, *"Unless there are more favorable provisions in collective agreements or individual labor contracts, all workers are entitled to paid annual leave to be given by the employer at the rate of one and a half work days of paid leave per month of continuous service..."*

*The length of paid leave as stated above is increased according to the seniority of workers at the rate of one day per three years of service..."*

Based on the interpretation of these Articles, the Arbitration Council in case 33/07-Goldfame interpreted and ordered that

- At year 1, 2 and 3, workers are entitled to 18 days annual leave.
- At year 4, 5, and 6, workers are entitled to 19 days annual leave.
- At year 7, 8, and 9, workers are entitled to 20 days annual leave.
- Workers are entitled to receive one additional day of annual leave for every three years of consecutive service.

For paid annual leave, currently the company follows Arbitral Award 33/07-Goldfame, that is, the company adds one day on the 18 days every three years which means that workers take 19 days leave in the 4<sup>th</sup> year, 5<sup>th</sup> year and 6<sup>th</sup> year; 20 days in the 7<sup>th</sup> year, 8<sup>th</sup> year, and 9<sup>th</sup> year... and so on. Thus, in this case the Arbitration Council considers that the employer has fulfilled its obligation in accordance with the Labour Law.

Nonetheless, in this case, the union party demands the company to pay back the annual leave to workers who have been working for more than three years and who were not allowed by the employer to use their annual leave, before the time when the employer began to follow Arbitral Award 33/07-Goldfame. The Arbitration Council requires the union to provide evidence to prove who are the members of C.CAWDU at Goldfame company which

have more than three years seniority who are requesting the employer to pay back their annual leave. However, up to Friday, 29 June 2007 which was the deadline for submission of the evidence, the Arbitration Council had not received the evidence from the union.

In previous awards the Arbitration Council rejected the demand of the parties in dispute if the party who is making the demand does not have specific evidence to prove the demand. See Arbitral Award 63/04-Shine Well, issue 4; 99/06-South Bay, issue 5; and 33/07-Goldfame, issue 4.

Therefore, the Arbitration Council does not have any evidence to consider this demand. Thus, the Arbitration Council decides to reject the workers' demand for the company to pay back annual leave for workers who have been working for more than three years.

**Issue 3: The workers demand the company to change the fixed duration contracts to undetermined duration contract**

In order to consider this demand, the Arbitration Council has to consider specific evidence related to workers who are involved in this demand such as the names of workers who are making the demand, the type of their contracts and the employment seniority of those workers. The Arbitration Council required the union to provide these documents to the Arbitration Council. However, up to Friday, 29 June 2007 which is the deadline for submission of evidence, the Arbitration Council had not received documents as evidence to support this demand from the union.

Because the union does not provide specific evidence for the Arbitration Council to [be able to] consider this demand, the Arbitration Council decides to reject the workers' demand for the company to change the fixed duration contract to the undetermined duration contract. See the reason related to submission of evidence for the Arbitration Council to consider the demand in issue 2 above.

**ISSUE 4: The workers demand the company to provide 1,000 riel per hour meal allowance to workers who work overtime**

In its current practice the employer provides a 500 riel meal allowance for one hour of overtime work, 1,000 riel for two hours of overtime work and 1,500 riel for three hours of overtime work. The union demands the company to provide a 1,000 riel meal allowance for workers who work overtime. That is, the workers demand the company to provide a 1,000 riel meal allowance for one hour of overtime work, 2,000 riel for two hours and 3,000 riel for three hours and so on. The reason for this demand is because [the current rate] is not sufficient to pay for expenses as the price of goods is always rising.

Clause 3 of Notification 745 KKVB, dated 23 October 2006 states, *“Benefits workers previously received from Notification No. 017 SKBY dated 18 July 2000 on Clauses 3, 4, 5 and 6 shall be retained.”*

According to Clause 4 of Notification 017 SKBY, dated 18 July 2000, *“Workers who voluntarily work overtime upon request from the employer shall receive a meal allowance of 1,000 riels per day or receive one free meal.”*

The wording in this Notification mentions clearly that the meal allowance is 1,000 riel per day and it does not distinguish between different working hours. (See Arbitral Awards 53/05-Finegis, issue 3 and 75/05-Global Footwear, issue 2).

Regarding one hour of overtime work, the employer provides only 500 riel to workers. This practice is not in accordance with Notification 017 mentioned above because this Notification requires the employer to provide a meal allowance for overtime of at least 1,000 riel.

Thus, for one hour of overtime work, the Arbitration Council decides to accept the workers' demand which requires the employer to provide a meal allowance of 1,000 riel.

For overtime in the 2<sup>nd</sup> and 3<sup>rd</sup> hours, the employer provides 1,000 riel and 1,500 riel, respectively, as meal allowance based on the number of hours worked. Notification 017 mentioned above, requires the employer to pay only 1,000 riel. Thus, the employer has fulfilled its obligation in accordance with the Law. This means that the union's demand for the employer to provide 2,000 riel when workers work overtime for two hours and 3,000 riel when they work overtime for three hours is a demand for an interest which is above the law. Thus, the Arbitration Council considers that this demand is related to interests.

Generally, the Arbitration Council will consider an interests dispute only when the union who brings the labour dispute is the union with the most representative status in the factory. The union's most representative status provides legal qualification in negotiating to establish a CBA in a company (see [Labour Law] Article 96, paragraph 2-B and Prakas 305, Clause 9, paragraph 1) and the legal rights to bring an interests dispute to the Arbitration Council for resolution. In order to obtain this most representative status, Article 277 of the Labour Law (1997) states that the union has to be registered and fulfill other conditions mentioned in that Article. (See Arbitral Awards 57/04-Evergreen; 60/04-United Art, issue 3; 08/07-Siu Quinh, issue 3; and 33/07-Goldfame, issue 2).

In this case, C.CAWDU at Goldfame factory does not have the most representative status. Thus, the Arbitration Council decides not to consider this point of demand by the union.

**ISSUES 5 AND 6: The workers demand that all workers in the overlocking section in the Back Building and in stitching control section become piece rate workers like workers in Building A, B, C**

In the hearing the workers agreed to combine issue 5 and issue 6 because the purpose of the demand is the same, that is, the workers demand that all workers in the overlocking section in the Back Building and in the stitching control section become piece rate workers like workers in Building A, B, C. The union party claims that the reason that workers in the overlocking section in the Back Building and stitching control section [want to become] piece rate workers is because the wage they receive currently is not enough for their expenses as price of goods is always rising.

The employer party and the union agree that all workers in the overlocking section in the Back Building and stitching control who are working on monthly based wages receive a main wage of least US\$ 50 per month in accordance with the Law.

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

In previous cases, the Arbitration Council considers that Article 2 means that the employer party has the rights to manage and supervise human resources in the company as long as this rights is implemented in accordance with the Law and is reasonable. (See Arbitral Awards 06/06-M&V 3, issue 1; 18/06-GHG, issue 2 and 108/06-Trinunggal Komara).

In this case, the workers demand the company to help to facilitate all workers in the Back Building and in stitching control to become piece rate workers like workers in Building A, B, C. The Arbitration Council considers that the determination for workers to work according to a piece rate or [fixed] wage is the employer's rights as stated in Article 2 mentioned above. Both parties also agree that the employer provides a basic wage of at least US\$ 50 in accordance with the Law. This demand by the workers is for an interest which is above what the Law provides. Thus, the Arbitration Council considers that the dispute in this issue is related to interests.

Because the union does not have most representative status, the Arbitration Council decides to decline to consider the workers' demand for workers in the overlocking section in the Back Building and in the stitching control section to become piece rate workers like workers in Building A, B, C. (See reasoning in issue 4 above).

**ISSUE 7: The workers demand the company to issue pay slip of monthly wage like that for piece rate workers**

In this case the workers demand the company to issue pay slips from immediately after the Arbitral Award came into effect. Arbitral Award 33/07-Gold Fame, Issue 10, already

resolved this dispute by ordering the employer to issue the monthly pay slip to monthly-based wage workers at each time of payment, like piece rate workers.

In this case, the Arbitration Council finds that the employer agreed to follow the Arbitral Award. In order to implement the obligation to arrange pay slips for monthly-based workers, the employer asked for a time of 5 months to arrange this system based on an agreement dated 09 May 2007 with Cambodian Worker Union in addition to Arbitral Award 33/07-Goldfame, dated 30 April 2007. The employer also mentions that it will implement the provision of pay slips to all workers in the factory.

In the hearing, the employer stated that the arrangement and testing of a wage payment system that runs smoothly and correctly is not an easy matter and it needs experts and appropriate time. The employer adds that if this payment system is arranged in haste then the pay slips may be issued with mistakes regarding workers' wages, and this will cause even more complications for the company. The Arbitration Council considers that the employer's statement is reasonable and acceptable.

The Arbitration Council also considers that the period of 5 months under the contract [agreement] between the company and Cambodian Workers Union is an appropriate period of time for the employer to arrange and test a wage payment system which runs smoothly. Moreover, to the date of the hearing on case 51/07-Goldfame on 25 June 2007, the employer has only 3 and a half months left to arrange the computer system to issue wage description pay slip for workers who work according to fixed wages. Thus, in this case, the Arbitration Council decides to allow the employer to follow the agreement of the company and Cambodian Workers Union which mentions that the company has to issue pay slip for workers within 5 months.

Therefore, the Arbitration Council decides to reject the workers' demand for the company to issue pay slips immediately.

**ISSUE 8: The workers demand the company to issue the piece rate in advance before asking workers to work according to it**

In this issue, the workers want to know the piece rate of each model. The Arbitration Council found that the workers' demand is related to a right provided by the Law, that is, the employer has an obligation to inform to workers in advance about the conditions of their wage.

Article 12-B of the Labour Law states, *"The employer must take measures to inform the workers in a precise and easily comprehensible fashion of:*

a) ...

b) *The items that make up their wage for every pay period when there is a change to the items."*

This means that whenever there is a change to the workers' wage, the employer has to clearly inform the workers about the wage they are going to receive in the future. The Arbitration Council considers that the change of model the workers are going to work on can lead to a change in workers' wage. Therefore, the employer has to tell the workers about the new rate for the new model. (See Arbitral Award 05/06-W&D, issue 6).

The Arbitration Council considers that Article 112 of the Labour Law, as mentioned earlier, does not mention clearly how many days in advance should the employer inform the workers about wage. However, the meaning of this point of the Law is clear that the employer has an obligation to inform [the workers]. Thus, for the number of days the employer needs in order to be able to inform the workers, the Arbitration Council will consider based on the employer's actual needs.

In the hearing, the workers and the employer say that there is an agreement in 2006 which requires the employer to issue piece rate within 7 days after the workers have worked. The Arbitration Council considers that the agreement which requires the employer to issue piece rate within 7 days after the workers have worked is not contrary to the Labour Law. In addition, the content of this agreement was born out of the will of the parties and it is reasonable that the company should implement this practice to be in accordance with the Labour Law Article 112, mentioned above. Moreover, the Arbitration Council found that no worker receives a wage less than the minimum wage. Therefore, the Arbitration Council considers that the company should inform the workers about the piece rate which they should receive within 7 days after the test of each model. (See Arbitral Awards 62/04-Y Sin, issue 2; 05/06-W&D, issue 6; 03/07-United Art Knitting, issue 3). In conclusion, the Arbitration Council decides to reject the workers' demand for the company to issue piece rate for workers in all section before asking workers to work according to that piece rate.

**ISSUE 9: The workers demand the company to do the stamping for them when they leave work**

In case 33/07-Goldfame, issue 3, Cambodian Labourer Union made the same demand as the demand in this issue. In Arbitral Award 33/07-Goldfame, the Arbitration Council decided to reject the workers' demand. In this case, 51/07-Goldfame, the Arbitration Council also decides to reject this demand of C.CAWDU of Goldfame because of the following reasons:

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

In previous Arbitral Awards, the Arbitration Council interpreted this Article to mean that the employer has the rights to manage and supervise human resources in the company

as long as the management and supervision is in accordance with the Law and reasonable. (See Arbitral Awards 62/06-Quick Sew, issue 5; and 108/06-Trinunggal Komara.)

In this case, the Arbitration Council agrees with this interpretation that the employer has the right and power to manage and supervise work in *the enterprise as long as the management and supervision is done in accordance with the Law*.

In this case, the workers demand the company to punch them out as before; the Arbitration Council considers that the workers' demand for the company to punch them out is related to the employer's rights to manage. This means that it is the right of the employer to supervise workers in the factory, it is not the workers' rights. In addition, the workers do not show any evidence to prove that when workers punch out by themselves it will affect their benefits such as losing wage or that their health is affected. The union only stated that when workers punch out by themselves they lose about 3 to 5 minutes of time to leave the factory. The Arbitration Council considers that this is a small amount of time to leave the factory.

The workers' demand for the company to punch out for them is a demand for an interest which is above the Law. Thus, the Arbitration Council considers that the dispute in this case is related to interests.

Because the union does not have most representative status, the Arbitration Council decides to decline to consider this demand. (See reasoning in issue 4 above).

**ISSUE 10: The workers demand the company to retain the attendance bonus when the workers come 5 minutes late to work on normal days and 30 minutes on any day workers have an accident**

In this case the workers demand the company to retain the regular attendance bonus when the workers come 5 minutes late to work on normal days, for example because of oversleeping caused by overtime work at the factory the previous night, and 30 minutes on the day of accidents, for example flat tire punctures or too many water hyacinths that delay trips to work by boat, etc.

Clause 3 of Notification 745 KKBV, dated 23 October 2006 states, "*Benefits workers used to receive pursuant to Notification No. 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 2005 states, "*Workers who come to work regularly on regular working days of a month shall receive a bonus of at least \$ 5.00 per month.*"

In the hearing the union party raise that coming to work late also means that they come to work regularly to the number of working days each month. Thus, according to the meaning of this Notification, the workers have the right to receive full attendance bonus in

case they come to work late. The Arbitration Council considers that the union's statement is not correct for the following reasons:

In Arbitral Award 44/07-Winner Knitting, issue 2, the Arbitration Council interpreted that "... *the word regular has two types as follows:*

*a) Work for 26 days per month if there is no national holiday or any day-off determined by the government*

*b) Work for less than 26 days per month when there are national holidays or any day-off determined by the government which is day-off with proper permission and with permission from the employer."*

In addition, in previous awards the Arbitration Council interprets that regular work means that workers come to work according to the number of hours determined by the employer. (See Arbitral Award 94/04-Eternity, issue 9 and 08/07-Siu Quinh, issue 4).

The Internal Work Rules of the Company does not mention about coming to work late or the attendance bonus either.

Thus, workers who do not come to work on time as set by the employer do not have a right to receive the attendance bonus. This means that the workers' demand for the employer to retain the bonus when they are late for 5 minutes for normal reasons and 30 minutes because of accidents is a demand about an interest above the law. This means that this labour dispute is an interests dispute. Because C.CAWDU at Goldfame factory does not have the most representative status, the Arbitration Council decides to decline to consider the workers' demand in this issue. (See reasoning in issue 4 above.)

**ISSUE 11: The workers demand the company to increase piece rate appropriately in all sections**

Clause 1 of Notification 745 KKBV, dated 23 October 2006 states, "... *a full-right worker receives the minimum wage of US\$ 50 per month.*"

In this case, the workers do not provide specific evidence about who are the workers in the sections of the factory who receive less than the minimum wage nor from what piece rate to what rate is demanded for this increase.

In previous Arbitral Award, the Arbitration Council rejects the demand if the party who is making the demand does not have specific evidence to support the demand. (See Arbitral Award 63/04-Shine Well, issue 4; 99/06-South Bay, issue 5 and 33/07-Goldfame, issue 11).

In this case, the Arbitration Council agrees with the reasoning provided in previous arbitral awards. Thus, the Arbitration Council decline to consider the demand for the company to increase piece rate in all sections.

**ISSUE 12: The workers demand the company to stop using workers to do works that is not consistent with their skill**

Article 2 of the Labour Law states, *“All natural persons or legal entities, public or private, are considered to be employers who constitute an enterprise, in the sense of this law, provided that they employ one or more workers, even discontinuously. Every enterprise may consist of several establishments, each employing a group of people working together in a defined place such as in factory, workshop, work site, etc., under the supervision and direction of the employer. A given establishment shall be always under the auspices of an enterprise. The establishment may employ just one person...”* According to the meaning of this Article, the Arbitration Council considers that the employer has the right and power to manage and supervise human resources in the company as long as the management and supervision is in accordance with the Law. In general, the power to manage allows the employer to manage the production process in the company but this management must be in accordance with the Law.

The workers mention that the employer uses workers to do work that is not consistent with their skills such as using electricians to clean fans and using workers in the ironing section to move clothes and so on. The employer states such work is performed once a while when there is no work to do between January to April every year. The workers agree with this assertion but still demand that the company should not use workers to do work not of their skill again in the future. The Arbitration Council will consider this issue according to two points as follows:

**1. The transfer of electricians to clean fans when there is not enough work from January to April every year**

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

In previous cases, the Arbitration Council considers that Article 2 means that the employer has rights to manage and supervise the company as long as the management and supervision is practiced in accordance with the Law and reasonable. (See Arbitral Award 06/06-M&V 3, issue 1; 18/06-GHG, issue 2 and 108/06-Trinunggal Komara.)

In cases 17/03 and 18/03-Ho Hing the Arbitration Council found that the employer’s right to manage and supervise the company includes transferring workers from one place to another under the following conditions: 1) no reduction of wage, 2) do not transfer workers to a faraway place 3) not to change from day shift to night shift or vice-versa 4) there is no substantial change of skill.

The employer party and the worker party agree that the employer transfer the electricians temporarily and these workers receive the same wage, work in the same factory

and in the same shift. Thus, the Arbitration Council considers that the transfer does not affect condition 1, 2, and 3 mentioned above.

For the 4<sup>th</sup> condition regarding workers' skill, the union claims that using electricians to clean fans would require them to perform work which is not consistent with the skill they have. The employer claims that cleaning fans is also one part of electricians' work who should check and clean electronic appliances in the factory. The Arbitration Council is more in favor of the employer's claim because cleaning of electronic appliances in the factory is one part of electricians' work. Therefore, the Arbitration Council considers that asking electricians to clean fans does not require much change to their skill. This means that this transfer does not affect condition 4.

In conclusion, the Arbitration Council rejects the workers' demand that the company should stop using electricians to clean fans when there is not enough work.

## **2. The transfer of workers in ironing section to move clothes when there is not enough work from January to April every year**

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

In previous cases, the Arbitration Council considers that Article 2 means that the employer has the right to manage and supervise the company as long as the management and supervision is practiced in accordance with the Law and is reasonable. (See Arbitral Award 06/06-M&V 3, issue 1; 18/06-GHG, issue 2 and 108/06-Trinunggal Komara.)

In cases 17/03 and 18/03-Ho Hing the Arbitration Council found that the employer's right to manage and supervise the company include transferring workers from one place to another under the following conditions: 1) no reduction of wage, 2) do not transfer workers to a faraway place 3) not to change from day shift to night shift or vice-versa 4) there is no substantial change of skill.

The employer party and the worker party agree that the employer transfers the workers in the ironing section temporarily and these workers receive the same wage, work in the same factory and in the same shift. Thus, the Arbitration Council considers that the transfer does not affect condition 1, 2, and 3 mentioned above.

For the 4<sup>th</sup> condition regarding workers' skill, the union claims that using workers in ironing section to move clothes when there is not enough work would make them perform work that is not consistent with the skills they have. The employer claims that the transfer of workers from the ironing section to move clothes when there is no work once a while is a proper work according to the agreement for the period of no work that the company has to provide 100 percent of wage. The Arbitration Council agrees with the employer's claim because this is the implementation of an agreement and the work is a reasonable work

because ironing section is a normal work, not a special skill work which normal people cannot do. Therefore, the Arbitration Council considers that asking workers from the ironing section to move clothes when there is not enough work does not have much change to their skill. This means that this transfer does not affect condition 4.

In conclusion, the Arbitration Council rejects the workers' demand that the company should not transfer workers from ironing section to move clothes when there is not enough work to do.

**ISSUE 13: The workers demand the company to provide an additional US\$ 5 of wage per month, in addition to the main wage of all workers**

Clause 1 of Notification 745 KKBV, dated 23 October 2006 states, "... a full-right worker receives the minimum wage of US\$ 50 per month."

In case 33/07-Goldfame, the Arbitration Council notes that *"this Notification is only to ensure the minimum wage of US\$ 50 per month but is not meant to increase by US\$ 5 the wages for workers in general. Therefore, the workers who receive more than the minimum wage of US\$ 5 per month are not entitled to an increase of wages, according to this Notification."*

In addition, in this case the Arbitration Council found that there is no agreement, CBA or any past practice in accordance with the workers' demand. Thus, the employer does not have an obligation to provide US\$ 5 in addition per month to the monthly basic wage of each worker.

The workers' demand for the company to provide US\$ 5 more per month on each workers' monthly main wage is a demand for an interest which is above the Law. Thus, the Arbitration Council considers that the dispute in this case is related to interests.

Because the union does not have most representative status, the Arbitration Council decides to decline to consider this demand. (See reasoning in issue 4 above).

**ISSUE 14: The workers demand the company to add US\$ 1 more for workers who have 5 years and over of seniority; that is, to add US\$ 1 every year in accordance with workers' seniority**

The workers demand the company to add US\$ 1 more for workers who have 5 years and over of seniority; that is, to add US\$ 1 every year in accordance with workers' seniority. The workers make this demand because workers are working hard for the employer and, in addition, in the present economic situation, price of goods is always rising.

In Arbitral Award 33/07-Goldfame, issue 2, the Cambodian Labourer Union at Goldfame factory also made the same demand as this demand in issue 14. In case 33/07-Goldfame, issue 2, the Arbitration Council issued an Award to decline to consider the union's

demand. In this case the Arbitration Council also decides to decline to consider C.CAWDU at Golffame factory's demand because of the following reasons:

Clause 5 of Notification 017 SKBY, dated 18 July 2000 states, "*Workers who have been working for a long time in a factory or an enterprise shall receive a seniority bonus as follows:*

- 5.1. *have been working for more than 1 year shall receive a seniority bonus of \$ 2.00 per month.*
- 5.2. *have been working for more than 2 years shall receive a seniority bonus of \$ 3.00 per month that is \$ 2.00 from the first year plus \$ 1.00 from the second year.*
- 5.3. *have been working for more than 3 years shall receive a seniority bonus of \$ 4.00 per month that is \$ 2.00 from the first year plus \$ 1.00 from the second year and \$ 1.00 from the third year.*
- 5.4. *have been working more than 4 years shall receive a seniority bonus of \$ 5.00 per month that is \$ 2.00 from the first year plus \$ 1.00 from the second year, \$ 1.00 from the third year and \$ 1.00 from the fourth year."*

This Notification mentions only that if a worker works for more than four years s/he will receive a seniority bonus of US\$ 5 per month but it does not mention about work more than five years. The wording in Clause 5 of this Notification does not show that workers can receive additional seniority bonus after five years of work. Therefore, this Notification does not require the employer to provide one more dollar every year to workers who have been working after the 5<sup>th</sup> year.

In this case, the workers demand the company to increase one dollar per month of seniority bonus to workers who have been working for the company more than five years even though the employer has followed this Notification already.

In this case, the Arbitration Council found that there is no agreement, CBA or past practice in accordance with what the workers are demanding. The workers' demand for the employer to add one more dollar from the 5<sup>th</sup> year on is a demand for an interest which is above the Law. Thus, the Arbitration Council considers that the dispute in this case is related to interests.

Because the union has no most representative status, the Arbitration Council decides to decline to consider this demand. (See reasoning in issue 4 above).

**ISSUE 15: The workers demand the company to use short term contracts with new workers and then change to the fixed duration contracts and, after the workers have been working for more than two years, change to undetermined duration contracts**

The Arbitration Council will consider this demand on two points:

**1. The workers demand the company to use short term contract with new workers and then change to the fixed duration contract**

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

In previous cases, the Arbitration Council considers that Article 2 means that the employer has the rights to manage and supervise human resources in the company as long as the management and supervision is in accordance with the Law and reasonable. (See Arbitral Awards 06/06-MV3, issue 1; 18/06-GHG, issue 2; and 108/06-Trinunggal Komara.)

In this case, the Arbitration Council agrees with this interpretation that the *employer has the rights and power to manage and supervise works in the enterprise as long as the management and supervision is done in accordance with the Law and reasonable.*

Article 65 of the Labour Law states, “*A labor contract establishes working relations between the worker and the employer. It is subject to common law and can be made in a form that is agreed upon by the contracting parties...*”

Article 1 of Decree 3[8] Kr. Ch, dated [28] October 1988 on Contract and Other Liabilities states, “*A contract is an agreement freely entered into by two or more persons to create, change or terminate one or more obligations which bind them....*” In this case, the workers demand the company to use short term contracts and then change to fixed duration contracts. The Arbitration Council considers that the workers’ demand for the company to use short term contracts and then change to fixed duration contract is involved with the employer’s rights to manage which means that this is the employer’s right to manage workers in the factory, not the workers’ rights. In addition, the Arbitration Council considers that the Law allows the employer party which is a party to the employment contract to have rights to make contract with the worker party in its own will as long as the contract entered into is not contradictory to the law in effect. Therefore, the Arbitration Council declines to consider the workers’ demand for the company to use short term contract with new workers and then change it to fixed duration contract.

**2. The workers demand that workers who have been working for more than two years be converted to workers with undetermined duration contract.**

In this point of the demand the Arbitration Council requires the worker party to provide specific evidence such as number of workers who are making the demand, type of their contract, and their employment seniority to the Arbitration Council to prove their claim. However, up to Friday, 29 June 2007 which is the deadline for submission of the evidence, the Arbitration Council does not receive these evidences from the worker party.

Because the union does not provide specific evidence for the Arbitration Council to make consideration on this demand, the Arbitration Council decides to decline to consider

the workers' demand for workers who have been working for more than two years be converted to be workers with undetermined duration contract. (See reasoning regarding failure to provide evidence for the Arbitration Council to make consideration in issue 2 above).

**ISSUE 16: The workers demand the company to follow the agreements dated 24 November 2006 and 05 April 2007**

In this case, the workers demand the company to implement the agreements dated 24 November 2006 and 05 April 2007 regarding contracts and recruitment of workers.

The agreement dated 05 April 2007 is an agreement to implement the agreement dated 24 November 2006. The agreement dated 24 November 2006 states,

*A. All workers whose contracts were terminated should come back to work on 01 April 2007, on 6 month contracts.*

*B. The company will provide notification in writing to local union(s) regarding the recruitment of those workers back to work.*

*C. For workers in the ironing section, the company agrees to continue 2 month contracts and then practice point (A) as mentioned above.*

*D. In case the company has work to do before the set date, it will provide notification through a committee of local unions and if any worker does not start working on the date set the company will allow 15 days more after which the company has the rights to recruit new workers to replace them.*

*E. When it is 01 April 2007 and if any workers do not show up, the company will allow 10 days more after which the company can recruit new workers to replace them.*

*F. When it is 01 April 2007 but the company still does not have work, the company will make another notification.*

Based on the above mentioned facts, the Arbitration Council found that the employer does not implement six month contracts as stated in the agreement but it uses 3 months contracts; the company also acknowledges this. Thus, the employer does not follow the "condition" of the agreement it made with the workers.

Therefore, the Arbitration Council considers that the employer has to implement the agreement by accepting all workers whose contracts were terminated back to work under the meaning of this agreement and provide 6 month contracts as agreed.

**ISSUE 17: The workers demand the company to pay annual indemnity which they have not been paid**

In this case, the workers demand the company to pay the annual indemnity which they have not been paid before Water Festival 2006. In the hearing the employer claims that it already paid the workers. The employer adds that certain workers were not paid annual leave because they had used their annual leave.

In the hearing the Arbitration Council required the union party to provide evidence about workers who are making this demand for the Arbitration Council to make consideration. However, up to Friday, 29 June 2007 which was the deadline for submission of the evidence, the Arbitration Council did not receive the evidence from the union.

Therefore, the Arbitration Council rejects the workers' demand for the company to pay their annual leave indemnity which they have not been paid.

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

**DECISION**

**Issue 1:**

- Order the employer to reinstate Mr. Huot Dalat, Mr. Chea Sarat, Mr. Thuok Vanny, Mr. Hom Bun and Mr. Srun Chantha in the dyeing section and pay their wages from the day of termination to the day of reinstatement.

**Issue 2:**

- Decline to consider the workers' demand for the company to payback annual leave for workers who have been working more than three years.

**Issue 3:**

- Decline to consider the demand for the company to change fixed duration contracts to undetermined duration contracts.

**Issue 4:**

- Order the employer to provide 1,000 riel as meal allowance to workers for a period of overtime work.

- Decline to consider the workers' demand for the company to add 1,000 riel for meal allowance per hour from two hours up to workers who work overtime.

**Issue 5 and 6:**

- Decline to consider the demand for workers in the overlocking section in the Back Building and in the stitching control section to become piece rate workers like workers in Building A, B, C.

**Issue 7:**

- Reject the workers' demand for the company to issue pay slips immediately.

**Issue 8:**

- Reject the demand for the company to issue the piece rate for workers in all sections before asking them to perform the work.

**Issue 9:**

- Decline to consider the demand for the company to punch out workers when they leave work.

**Issue 10:**

- Decline to consider the demand for the company to retain the attendance bonus when the workers are late for 5 minutes on normal days and 30 minutes on any day workers have an accident.

**Issue 11:**

- Decline to consider the demand for the company to increase the piece rate [ ] for piece rate workers in all sections.

**Issue 12:**

- Reject the workers' demand for the company not to use electricians to clean fans when the electricians do not have enough work to do.

- Reject the workers' demand for the company not to use workers from the ironing section to move clothes when there is not enough work to do.

**Issue 13:**

- Decline to consider the workers' demand for the company to add US\$ 5 more per month to the main wage of each worker for all workers whose main wage is already in accordance with the Law.

**Issue 14:**

- Decline to consider the demand for the company to add US\$ 1 every year to workers who have more than 5 years of seniority.

**Issue 15:**

- Reject the workers' demand for the company to use short term contracts with new workers and then change them to fixed duration contracts.

- Decline to consider the workers' demand for the company to change employment contract of workers who have been working for more than two years to undetermined duration contracts.

**Issue 16:**

- Order the employer to take all workers whose contracts were terminated back to work under the meaning of agreement dated 24 November 2006 and agreement dated 05 April 2007 and to provide 6 month contracts as agreed.

**Issue 17:**

- Reject the workers' demand for the company to pay annual indemnity which they have not been paid.

**Type of Award: Non binding**

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: **KAO THACH**

Signature: .....

Arbitrator chosen by the worker party:

Name: **SIN KIM SEAN**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **KONG PHALLACK**

Signature: .....