



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

**ក្រុមប្រឹក្សាសវនកម្មជាតិ**  
**THE ARBITRATION COUNCIL**

**Case number and name: 52/08-Supreme Garment**

**Date of Award: 07 May 2008**

### **ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

#### **ARBITRATION PANEL**

Arbitrator chosen by the employer party: Ing Sothy

Arbitrator chosen by the worker party: Liv Sovanna

Chair Arbitrator (chosen by the two Arbitrators): Kong Phallack

#### **DISPUTING PARTIES**

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

Name: **Supreme Garment Pte., Ltd**

Address:

Telephone: 012 936 479 Fax: 023 425 368

Representative:

- |                    |                           |
|--------------------|---------------------------|
| 1- Mr. Po Kong     | Export and Import Section |
| 2- Mr. Tao Chung   | Administration            |
| 3- Mr. Chorm Sarin | Punch-in Staff            |

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

Name: **Cambodian Labour Union of Supreme Garment**

Address:

Telephone: 016 657 556 Fax: N/A

Representative:

- |                         |                                                       |
|-------------------------|-------------------------------------------------------|
| 1- Mr. Ken Sokorn       | Secretariat of Cambodia Labour Union Federation       |
| 2- Mr. Seng MengHong    | Assistant of Cambodia Labour Union Federation         |
| 3- Mr. Thoul Bonthoeurn | President of Cambodia Labour Union of Supreme Garment |

## ISSUES IN DISPUTE

(In the Non-Conciliation Report)

1. The workers demand the Company to reimburse 10,100 riel and 12,000 riel medical check fees to each worker according to the Labour Law. The Company is not willing to discuss this issue because it was already decided by an arbitral award of the Arbitration Council.
2. The workers demand that if a probationary worker is not satisfied with the job and resigns, the Company must pay their wage immediately. The Company can not pay immediately, but will provide [payment] on the normal payday with other workers.
3. The workers demand the Company to build a parking place for their bicycles and motorcycles. The Company is not willing to discuss this issue because it was already decided by an arbitral award of the Arbitration Council.
4. The workers demand the Company to build a food canteen. The Company is not willing to discuss this issue because it was already decided by an arbitral award of the Arbitration Council.

### 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.205/08 KB/KN dated 03 April 2008 was submitted to the Secretariat of the Arbitration Council on 08 April 2008.*

### HEARING AND SUMMARY OF PROCEDURE

**Place of hearing:** The Arbitration Council, Phnom Penh Center, Building A, Sothearos Blvd., Sangkat Tonle Basak, Khann Chamkarmorn, Phnom Penh.

**Date of hearing:** 21 April 2008 (2:00pm-17:00pm)

**Procedural issues:**

On 17 March 2008 the Department of Labour and Vocation Training in Kandal Province conducted a conciliation on 13 issues of the collective dispute, of which nine issue were conciliated and four issues remained. The four remaining non-conciliated issues were referred to the Secretariat of the Arbitration Council on 8 April 2008.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer party and the worker party to a hearing and conciliation of the four non-conciliation issues on 21 April 2008 at 2:00pm. Both parties were present as invited by the Arbitration Council.

On the hearing day, the Arbitration Council attempted to conciliate four non-conciliated issues indicated in the non-conciliation report from the Department of Labour and Vocational Training in Kandal province. As a result, issue 1 (Demand for Medical Check Fee 12000riels after May 2007) and issue 2 were conciliated. For issue 1 (Demand for Medical Check Fee 10100riels) and issue 4, workers withdrew them because the Arbitration Council had already made a prior decision.

Therefore, the Arbitration Council will consider the non-conciliation issue 1 (Demand for Medical Check Fee 12000riels from January to May 2007) and issue 3 based on the 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. Letter of Authorization from the Director of the Supreme Garment Company to Mr. Tao Chun and Mr. Por Kong to represent before the Arbitration Council 001/08 dated 21 April 2008.
2. Summary statement by the Supreme Garment company dated 18 April 2008.
3. Business License registration 4179 PNNTK dated 04 December 2000
4. Internal Work Rules of the Supreme Garment Company 050 SKBY dated 24 July 2002.

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

1. Notification regarding election to establish workers union at Supreme, 1927 SSKK dated 18 April 2008.
2. Resignation letter from vice-president of Khmer union Mr. Thol Buntheourn dated 18 January 2008
3. Receipt of receiving case of Supreme Garment dated 28 February 2008
4. Letter to request recognition for new union leader No 1914 KKBV/RK/VK dated 25 December 2006

5. Letter to request recognition for new union leader( 2<sup>nd</sup> term) No 309 KKBV/RK/VK dated 01 March 2006
6. Letter to request recognition for new union leader No 2919 KKBV/RK/VK dated 25 December 2006
7. Registration certificate for union workers in Supreme factory No 491 SKBY.RK dated 08 September 2003.

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

1. Report of the collective labour dispute resolution at Supreme Garment KB/KN dated 18 March 2008.
2. Minutes of collective labour dispute conciliation of Supreme Garment dated 17 March 2008

Provided by the Secretariat of the Arbitration Council:

1. Invitation letter No. 250 K.B/AK/VK/LKA dated 09 April 2008 to invite the workers to attend the hearing.
2. Invitation letter No. 249 K.B/AK/VK/LKA dated 17 March 2008 to invite the employer to attend the hearing.

**FACTS**

- Having examined the documents the parties submitted to the Arbitration Council
- Having reviewed the report of the collective labour dispute conciliation
- Having listened to statements by representatives of the workers and the employer

**The Arbitration Council finds that:**

- Supreme Garment employs approximately 665 workers.
- The claimant in this case is the union in Supreme Garment.
- Base on union and employer's statement in the factory there is no Most Representative Status Union.
- This union in Supreme Garment claims that it has 162 members.
- The Arbitration Council ordered the workers party to submit an authorization letter if there are any workers who are not union members in Supreme [but who are party to the dispute] and provide some relevant document or evidence to the Secretariat of the Arbitration Council on 30 April 2008. However, the union did not disclose how many workers are not union members but authorize this union in Supreme to

represent them, other than the list of 38 workers who demand for the company to reimburse medical check fees.

**Issue 1: Workers demand the company to reimburse 12000riels of medical check fees from January 200[7] until before May 200[7].**

- Workers demand the company to reimburse 12000riels of medical check fee from January 200[7] until before May 200[7] to workers who did medical check and paid by themselves because the company has not yet reimbursed them. Moreover, this is the obligation of the company based on Inter-Ministerial Prakas1191 SHV PrK. ChMP dated 21 November 2006 on Fees for Employment Card, Employment Book and Medical Check of Minister and Economic and Finance and Minister of Labour and Vocational Training. The Arbitration Council considers that the employer has an obligation to pay medical check fees for the workers.
- The employer did not agree to the reimbursement. The company's representative stated that the company has a policy to provide reimbursements only from May 2007 because this is the decision from the director of the company; for demand's past this the Arbitration Council can make a decision.
- In the hearing the workers did not mention how many workers are involved in the demand. The Arbitration Council ordered the workers to provide a name list of workers who demand for the company to reimburse medical check fees and other relevant document to support their claim to the Secretariat of the Arbitration Council on 30 April 2008. The Arbitration Council received the workers' name list on 29 April 2008 which included 38 workers and the Secretariat sent this name list to the employer for [the opportunity to provide] a response.

**Issue 3: Workers demands the company to build a parking lot shelter to protect vehicles from the rain.**

- The factory has parking lot, which is 50 meters x 6 meters and has a green netting shelter.
- Workers demand the company provide a closed shelter because the net cannot block the heat and causes vehicle damage. Additionally, the rainy seasons is approaching and the net shelter cannot provide protection from the rain.
- The Company did not agree to have such shelter because it disturbs the cars from transporting goods. The company stated that staff's vehicles also park at this parking lot. The company does not have another space for building the parking lot.

## **REASONS FOR DECISION**

### **Issue 1: Workers demand the company to reimburse 12000riels of medical check fee from January 200[7] until before May 200[7].**

In this case the workers demand the company to reimburse 12000riels of medical check fee from January 200[7] until before May 200[7].

The Arbitration Council will consider whether the employer has an obligation to reimburse 12000riels of medical check fee to the workers or not?

Article 247 of the Labour Law states “*Regulations of the Minister of Labor establish:*

- a) *the conditions under which pre-employment, re-employment, periodical, and special physical exams are given.*
- b) *the number, qualifications, and the duties of the medical personnel to be hired*
- c) *the conditions under which employers are required to install and provide at their expense:...4. The medical exams of workers and laborers stipulated in point a) of the present Article.”*

Clause 2(d) of Inter-Ministerial Prakas 1191 SHV PrK. ChMP dated 21 November 2006 on Fees for Employment Card, Employment Book and Medical Check of Minister and Economic and Finance and Minister of Labour and Vocational Training states “ *Fees for employment card, employment book and medical check are determined as follows: ... (d) fee for medical check which employees shall pay is determined as follows:*

*- For each Cambodia worker, it is determined to 12000riels ( twelve thousand riels). “*

Based on Article 247 (a) and (c) of Labour Law and Clause 2(d) of Inter-Ministerial Prakas 1191 SHV PrK. ChMP dated 21 November 2006 on Fees for Employment Card, Employment Book and Medical Check of Minister and Economic and Finance and Minister of Labour and Vocational Training, the Arbitration Council considers that the employer has obligation to pay for the medical check for workers.

Additionally, the Arbitration Council noted that in previous Arbitral Award the Arbitration Council ordered the employer to reimburse payments for medical checks to workers who paid by themselves. (See AA 02/03- Chu Sing issue 1, 21/03- Royal Cambodia issue 7, 19/04- Kbal Koh II issue 2, 53/04-Kong Hong issue 3, 59/05-Tat Fat issue 5, 05/06-W &D issue 1, 56/07- Golden issue 2, 86/07- Target Shoe issue 2, 93/07-Global Footwear issue 2 and 98/07-Sky Sino issue 2)

In this case the Arbitration Council agrees with decision in previous arbitral awards, so that the employer has an obligation to pay for the medical check. In this case, there are 38 workers making a demand for 12000riels for medical check fees and the company did not make any objection to the 38 workers in the name list which sent to the Secretariat of the Arbitration Council. Therefore, to follow the Labour Law and consistent with previous arbitral

awards the Arbitration Council orders the company to reimburse the medical check fee of 12000riels to the 38 workers in the name list.

**Issue 3: Workers demands the company to build parking lot with a shelter to protect vehicles from the rain.**

Regarding this demand the Arbitration Council finds that the Labour Law and other labour-related regulations do not state anything about the building of a parking lot shelter and also do not require the employer's obligation to build the parking lot. Moreover, the workers did not provide evidence to support their demand for building a shelter in order to protect vehicle from damage. Thus, the Arbitration Council considers that this demand is above the obligations of the employer required by law. Therefore, it is an interests dispute. The Arbitration Council considers that the workers' demand for the company to build a parking lot is an interests dispute.

Generally, in an interests dispute, the Arbitration Council will always consider whether the union who is bringing the dispute has most representative status to negotiate a collective bargaining agreement within a factory (see Article 96 of Labour Law paragraph 2 (b) nig Prakas 305 clause 9 paragraph 1) and legal rights to bring a dispute before the Arbitration Council.

In order to achieve most representative status, Article 277 of the Labour Law and Clause 6 of Prakas 305 SKBY dated 22 November 2001 *on the Representative status of Professional organizations of workers in enterprises and establishments and the rights of collective negotiation and to conclude a collective agreement for enterprises and establishments* provides that a union's membership must be more than a half [of the total workforce] and must be registered and meet all the requirements stated in this Article.

In general, the Arbitration Council will consider the interests dispute only if the union that brought the dispute has the most representative status in the factory. The most representative status of a union provides legal capacity to negotiate the collective bargaining agreement within a factory and legal rights to bring a dispute before the Arbitration Council. In order to receive the most representative status, Article 277 of the Labour Law (1997) provides that a union must be registered and meet all requirements stated in this Article. (See Awards 57/06 – Evergreen, 60/04 – United Art, Issue 3 and 08/07 – Siu Quinh, Issue 3)

Base on the facts, the Arbitration Council finds that the workers' union does not have most representative status in Supreme. Therefore, this union does not have right to collectively bargain on behalf of workers in the whole factory. (See *Clause 9 of Prakas 305 SKBY dated 22 November 2001 on the Representative status of Professional organizations*

*of workers in enterprises and establishments and the rights of collective negotiation and to conclude a collective agreement for enterprises and establishments.)*

Furthermore, Clause 43 of Prakas 099/04 SKBY dated 21 April 2004 on the Arbitration Council states that, *“An Arbitral Award that settles an interests disputes will replace the collective bargaining agreement for one year starting from the date that Award comes into practice unless parties negotiate a new collective bargaining agreement to replace the Award.”*

Base on Clause 43 of Prakas 099/04 SKBY dated 21 April 2004 the Arbitration Council found that if the Arbitration Council issues an Arbitral Award [that settles an interests dispute] on this issue, it will become a collective bargaining agreement that applies to all workers in the company and it will mean other workers are prevented from striking when there are interests disputes in the future; it will cause unfairness to other.

Therefore, the Arbitration Council decides not to consider the demand for the company to build parking lot .

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

**DECISIONS AND ORDERS**

**Issue1:** Order the employer to reimburse 12000riels to 38 workers in the name list who demand for reimbursement of medical check fee during January until May.

**Issue 2:** Decline to consider the demand for the company to build parking lot .

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

This Award will become binding after 8 days of the date of its notification unless one of the parties lodges a written opposition to the Minister of Labour through the Secretariat of the Arbitration Council within this time period.

**SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:**

Arbitrator chosen by the employer party:

Name: **Ing Sothy**

Signature: .....

Arbitrator chosen by the worker party:

Name: **Liv Sovanna**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: .....