



**KINGDOM OF CAMBODIA**

**NATION RELIGION KING**

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

**THE ARBITRATION COUNCIL**

**Case number and name: 54/07-Yung Wah I**

**Date of Award: 27 July 2007**

### **ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

#### **ARBITRATION PANEL**

Arbitrator chosen by the employer party: **CHHIV PHYRUM**

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

Chair Arbitrator (chosen by the two Arbitrators): **PEN BUNCHHEA**

#### **DISPUTING PARTIES**

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

Name: **Yung Wah Industrial ( Company) Co., Ltd**

Address: St 210, Preak Somrroung village, Ta Mkao Commune, Ta Mkao District, Kandal Province

Telephone: **012 882 870**

Representatives:

- |                     |                    |
|---------------------|--------------------|
| 1- Mr Ng Min Chuan  | Officer Management |
| 2- Mr Henry Yong    | Compliance Officer |
| 3- Mr Som uy pigly  | Human Resource     |
| 4- Mr.Chan Chu Fang | Human Resource     |

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

Name: **Khmer Youth Trade Union Federation**

Address: Preak Somrroung village, Ta Mkao Commune, Ta Mkao District, Kandal Province

Telephone: **012 906 811 and 011 975 670**

Representatives:

- Mr. Pin Thouk	Worker Representative
- Mr. Mom Sovann	Worker Representative
- Mr. NovTika	Chief of Group 1 of the union
- Mr. Hun Sopharith	Officer of the union
- Mr. Phal Sovanarra	Officer of the union
- Sok Nakri	Officer of the union
- Pea Phearun	Worker
- Phan Sovannarith	Worker
- Phan Ken	Worker
- Mao Chanda	Worker

### **ISSUES IN DISPUTE**

(In the non-conciliation report)

1. The workers demand the company to follow the Labor Law in case the workers commit serious misconduct; but the employer does not agree and will forward [any such case] to the authorities.
2. The workers demand the company to reimburse the medical check fee and the [fee for] employment cards to workers. The employer does not agree.
3. The workers demand the company accept Mr. Huy Sopharithy and Tang Chanthoul back to work. The employer does not agree.
4. The workers demand the company pay the salary not later than the 5<sup>th</sup> of every next month. The employer does not agree, but the company will try not to pass beyond the 10<sup>th</sup> of every month.
5. The workers demand the company not cut the attendance bonus of US\$ 5 when the workers are absent for part of the day. The employer does not agree.
6. The workers demand the company to provide a 1 week [grace] period for workers who are absent without permission before considering them to have abandoned employment. The employer does not agree.
7. The workers demand the company to prepare sufficient lamps; the employer will take this matter under consideration.
8. The workers demand the company to provide toilets in proportion to the number of workers. The employer will take this matter under consideration.
9. The workers demand the company to accept the medical letter for workers who ask permission [for leave] from the administrator; the employer agrees for workers who work during the night shift, but does not agree for the day shift.

## 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. 076/07 KKBV dated 10 May 2007.*

*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. 129 K.K.B.V/AK/VK, dated 19 June 2007 was submitted to the Secretariat of the Arbitration Council on 22 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:** 04 July 2007 (From 2:00 p.m. to 5:00 p.m.)

**Procedural issues:**

On 14 June 2007, the Department of Labor and Vocational Training began conciliation on 21 issues, 12 of which were conciliated. The 09 non-conciliated issues were referred to the Secretariat of the Arbitration Council on 22 June 2007 by the non-conciliation report dated on 19 June 2007.

Upon receipt of the case, all parties to the dispute were summoned by the Secretariat of the Arbitration Council to attend a hearing on 04 July 2007 at 2:00 p.m.

Both parties were present at the arbitral hearing. The Arbitration Council provided an opportunity to both parties to further the conciliation and tried to coordinate and provide various options for the conciliation but did not have any conciliated result. Therefore, the Arbitration Council will consider these non-conciliated issues based on the evidence and findings of fact as follows:

### EVIDENCE

**Witnesses and experts:** N/A

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

Provided by the employer party:

- Company Registration Certificate of Yung Wah Industrial ( Cambodia) Co.,Ltd dated on 22 March 1998
- Company's Internal Rule dated on 18 February 2002

- Yung Wah Company statute dated on 02 April 2002
- Letter of suspended contract of Mr. Huy Sopharith dated on 15 July 2006 N° 434/2006 issued on 15 July 2006.
- Agreement between the employer and the Khmer Youth Union in Yung Wah I and Yung Wah II dated on 11 August 2005
- Ms. Tan Chany's Job Application form dated on 02 June 2004
- 3 warning letters of Ms. Tan Chany dated on 04 March 2005, 26 March 2005, 19 December 2005 respectively.
- Dismissal letter of Ms. Tan Chany dated on 03 March 2007
- Minute of individual dispute conciliation dated on 16 March 2007

Provided by the worker party:

- Letter of Ms. Tan Chany to ask Mr. Pin Touk to be her representative
- Letter of Mr. Pin Touk to the president of KYFTU to ask for resignation from the union without any conditions dated on 19 June 2007.
- Letter of Mr. Mom Sovann vice-president of the KYFTU in Yung Wah I about the resignation from the Union dated on 23 May 2007
- Agreement between the employer and the KYFTU in Yung Wah I and II dated on 11 August 2005
- Letter of KYFTU to the chief of the Department of Labor and vocational training about the request to help in conciliation the labor disputes in Yung Wah Company dated on 02 June 2007
- List of workers ( with print thumb) working in Yung Wah to the president of the union in order to ask for intervention and solve the labor conditions dated on 02 June 2007

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

- Report No. 106/07 KB/KN regarding collective labour dispute resolution at Yung Wah company, dated 19 June 2007
- Minute of the collective labour dispute conciliation of Yung Wah Company, dated 15 June 2007

Provided by the Secretariat of the Arbitration Council:

- Invitation letter No. 069 K.K.B.V/AK/VK/LKA dated 19 February 2007 to invite the employer party to attend the hearing.
- Invitation letter No. 068 K.K.B.V/AK/VK/LKA dated 19 February 2007 to invite the worker party 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 worker party and the employer party

**The Arbitration Council finds that:**

**Issue 1:**

- Yung Wah Company was established in 1998. Currently, the total of number of workers is approximately 8,000 workers in three branches. In Yung Wah I, there are approximately 6,600 workers.
- The workers demand the company to apply the Labor Law in cases of serious misconduct. This means that if the workers commit serious misconduct the company must apply the Labor Law which provides [termination compensation] to the workers first. After that the company can make a complaint to the police to arrest the workers as this is the company's rights. The workers stated in the hearing that the serious misconduct mostly consists of stealing clothes.
- The workers added that in the past the company apprehended workers who stole the clothes of the company, then the company dismissed those workers and sent them to the police, then gave them the [termination compensation].
- The company stated that regarding workers who commit serious misconduct by stealing the company's clothes, the company will apprehend them to seek the truth then send them to the police for investigation. The company added that if the serious misconduct is committed in the night the company can not provide the [termination compensation] immediately because the accountant does not work at night.

**Issue 2:**

**A. Medical Check Fee:**

- The workers demand the company to reimburse them 10,100 riel for medical check fees because the company asks the workers to pay for their own medical checks from the time the company started the business.
- The company stated that when the company recruits workers to work in the company the workers have to pay for their own medical checks. This means the workers are require have the medical check completed before they submit their application form [to work]. So the company is not required to reimburse the 10,100 riel medical check fee.
- The company submitted to the Arbitration Council the agreement between the company and the KYFTU in Yung Wah I and II dated on 11 August 2004, point 2 of which states that *"the workers agree not to demand for 10, 100 riel which the company deducts for the*

wages or the workers pay to the company or the pay directly to labor hospital for medical check fees. However, from now on the company agrees to pay for medical checks for new workers.” This agreement was signed by the employer named Mr. Lim Bun Kung and the president of KYFTU, Mr. Yun Rith.

- The workers gave the Arbitration Council the agreement between the company and the KYFTU in Yung I and II dated on 11 August 2004, point 2 of which states that “ *From now on the company must pay for the medical check of the workers who come to work.*” This agreement was signed by the employer named Mr. Lim Bun Kung and the president of KYFTU Mr. Yun Rith along with the thumbprint of Mr. Pin Touk the president of the local KYFTU in Yung Wah I , thumbprint of Mr. Mom Sovann the vice-president of the local KYFTU in Yung Wah I, thumbprint of Mr. Huy Sopharith secretary of the local KYFTU in Yung Wah I, the thumbprint of Mr. Neangh Toeun the president of the local KYFTU in Yung Wah II and the thumbprint of Ms. Pen Sophany secretary of the local KYFTU in Yung Wah II.
- The company stated in the hearing that both the same agreement dated on 11 August 2004 the company can not accept because:
  - These two agreement contain the different meanings and phrases
  - The agreement given by the company to the Arbitration Council has the signature of Mr. Lim Bun Kung and the signature of the KYFTU president Mr. Yun Rithy. While the agreement given by the workers has signature of Mr. Lim Bun Kung the signature of the KYFTU president Mr. Yun Rithy along with the thumbprint Mr. Pin Touk the president of the local KYFTU in Yung Wah I, thumbprint of Mr. Mom Sovann the vice-president of the local KYFTU in Yung Wah I, thumbprint of Mr. Huy Sopharith secretary of the local KYFTU in Yung Wah I, thumbprint of Neangh Toeun the president of the local KYFTU in Yung Wah II and thumbprint of Pen Sophany secretary of the local KYFTU in Yung Wah II.
- When the Arbitration Council asked the company about the signature of the company representative, the company agreed that this signature was really the signature of Mr. Lim Bun Kung. The Arbitration Council considered that this agreement did bind the company and the workers.

**B. Employment Card Fee:**

- The worker-party stated that workers demand the company to reimburse the employment card fee to them because in past the company deducted US\$ 2 of the wages from the workers to pay for the employment card fee to the Labor Department.
- The workers did not provide any documents or evidence to support the demand.

- The company added that the company has never deducted wages to pay for the employment card because the workers must provide the employment card to the company in the recruitment period.
- The workers now state that the company abides by the law regarding employment cards so the workers do not make the demand any longer.

### **Issue 3:**

The workers demand the company to reinstate Mr.Huy Sopharith and Ms. Tan Channy.

#### **A. Mr. Huy Sopharith:**

- Mr. Huy Sopharith was suspended on 15 July 2006 indefinitely without pay until the problem is resolved, so during the suspension Mr. Huy Sopharith has not been paid.
- The workers stated in the hearing that in the past the staff of the company had stolen clothes and stored them in a truck. When the police wanted to check the truck the staff fled by the truck to Mr. Huy Sopharith's house while the police gave chase and reached Mr. Huy Sopharith's house by truck, then the police took a report and sent it to the court.
- The company mentioned in the hearing that the suspension of Mr. Huy Sopharith is a temporary suspension until a decision from the court [is issued]; if the court decides that Mr.Huy Sopharith is innocent, the company will reinstate Mr.Huy Sopharith back.

#### **B. Ms. Tan Channy:**

- In the minute of the collective dispute conciliation dated 15 June 2007 Mr. Pin Touk signed as the president of local KYFTU in Yung Wah I to represent the workers in this case.
- On 19 June 2007, Mr. Pin Touk submitted a resignation letter to the president of the Federation Union about the resignation from the committee of the KYFTU without condition because he was not able to work for the union.
- On 01 July 2007 Ms. Tan Channy authorised Mr. Pin Touk by written letter to represent her case. Ms. Tan Channy could not attend the hearing because she was ill and had a personal matter. So Mr. Pin Touk was authorised to represent Ms. Tan Channy in the hearing.
- On the hearing day, the workers and Mr. Pin Touk agreed that Mr. Pin Touk participate in a separate hearing from the workers to resolve Ms. Tan Channy's case. The Arbitration Council reviewed the official documents and because there was an agreement between the workers and Mr. Pin Touk, it was decided that Mr. Pin Touk can participate in the hearing to resolve Ms. Tan Channy's case.
- Ms. Tan Channy commenced her work on 02 June 2004.

- Ms. Tan Channy was dismissed on 03 March 2007.
- Mr. Pin Touk argued that Ms. Tan Channy did not commit any serious misconduct which could lead to dismissal. He added that Ms. Tan Channy unintentionally caused a scratch on the hand of the group head when she tried to explain about some lost clothes and this was the reason for her dismissal.
- There was an agreement signed by Ms. Tan Channy, Mr. Pin Touk former local president of the Union, administrative manager and the representative of the company. This agreement states *“the company forgives and transfers her from group D1 to group A sewing section.”* The employer did not raise any objections regarding this agreement.
- The company stated that the agreement was made but the owner of the factory [ ] refused to implement the agreement and would not reinstate Ms. Tan Channy.
- The company gave 3 of warning letters to Ms. Tan Channy dated on 04 March 2005, 26 March 2005, 19 December 2005 respectively regarding misconduct not related to this case (absence without permission, sleep during working hours, looking at pictures during working hours).

**Issue 4:**

- The workers demand the company to pay wages to the workers not later than the 5<sup>th</sup> of every month.
- The workers stated that normally the company pays wages around the 9<sup>th</sup> to 12<sup>th</sup> of every month. But sometimes the company pays wages before the 10<sup>th</sup> of the month.
- In the hearing the workers requested the company to schedule pay day on the 7<sup>th</sup> of the month, if the company can not do so the workers demand the company to pay according to the law which requires the payment of wages two times per month.
- The company mentioned that the accountant needs time to collect the list of each work section at the end of every month and needs time to make proper calculations; also the company receives the money from Singapore by bank so the company can not have the pay day on the 7<sup>th</sup> of every month, but the company promises to pay wages to the workers not past the 10<sup>th</sup> of each month. If the payment day falls on a holiday the company will pay before the 10<sup>th</sup> of the month.

**Issue 5:**

- The workers demand the company not deduct the US\$5 of attendance bonus from workers who are absent for a half-day without permission. Presently, the company deducts the attendance bonus if the workers are absent without permission.
- The workers did not give any reasons for or evidence [in support of] making such a claim.

**Issue 6:**

- The Internal Work Rules of the company states that *“leave without permission is considered as misconduct, as follows:*
  - *absent two days considered as a slight mistake*
  - *absent two day to three days considered as a medium mistake*
  - *absent more than three days considered as this workers abandon their work without prior notice.”*
- The workers demand the company to set 1 week [as the period of] absence without permission for workers to be considered as having abandoned their work.
- The workers mention that sometimes the workers can not contact the company on time such as when the workers are traveling to or from remote provinces and lack of access to the company. In such cases, the workers have not abandoned their work. The workers did not provide any evidence or legal arguments for making such a claim.
- The workers mention in the hearing that in the past the company did not implement the Internal Work Rules of the company. The workers did not provide any evidence or examples about the date of this allegation.

**Issue 7:**

- The workers demand the company to install lamps along the path next to the factory’s gate.
- The workers raise in the hearing that in the past the company allowed the workers to leave work through the gate in front of the factory which is by the National Road and already has lamps; but now the company directs the workers to leave work through the gate at the back of the factory which is approximately 50 meter farther away, there are no lamps, and it is dark until the path reaches the National Road. The demand involves the night shift workers who leave for meal time and for home about 5 o’clock in the morning. The workers are afraid of unexpected accidents because in the past workers were drugged and robbed.
- The company raises that the property in the unlit area is private property causing difficulty for the company to ask for permission, and the company would have to spend much money for putting lamps at that area.

**Issue 8:**

- The workers demand the company to repair toilets [so that the total number is] in proportion to the number of workers and consistent with the law.

- The workers raise in the hearing that the total number of toilets is 40, but 8 are broken and closed.
- The company raise in the hearing that there are approximately 1,866 day shift workers and 1,796 night shift workers. The workers did not refute the number of the workers who work in those two shifts.

**Issue 9:**

- The workers demand the company to implement the same system regarding permission [for leave] for day shift workers as for night workers.
- The workers raise in the hearing that for day shift workers, normally the workers have to ask permission from the head of group then go to the head of the administrative department. The workers mention that in the past the workers asked permission from the head of group but sometimes the head of group ignored the letters [ ] and sometimes the head of group was not free so that the workers had to wait. Consequently, the workers demand to ask permission only from the head of the administrative department.
- The company raises in the hearing that the leave procedures require the workers to go to the administrative department to complete the leave form, then go to the head of the group, and then, lastly, to go to the head of administrative department. If any workers ask for leave from the head of group and the head of group ignores the letter the workers should notify the administrative officer along with a witness, and the administrative officer will allow the worker to take leave.

**REASONS FOR DECISION**

**Issue 1: The workers demand the company to pay termination compensation to the workers who commit serious misconduct before the workers are sent to the police**

The workers accept that the serious misconduct committed most often is the stealing of clothes from the company.

Article 65 of the Labor Law states that *“the labor contract is a contract which establishes the relationship between the workers and the employers....etc.”*

Based on the above Article the Arbitration Council considers that through the labor contract the employers has an obligation to pay wages for the workers when the workers do their work for the employers while the workers have an obligation to work for the employers. If the workers were terminated by the employers it means that the contract was terminated. So the employers has to pay wages for termination to the workers according to the law.

Article 116, paragraph 5 of the Labour Law states that “if a labor contract is terminated, salary and compensation of any kind must be paid within forty-eight hours following the

stoppage of work..” Based on this Article, because the contract was terminated, wages and indemnities of any kind must be paid to the workers within 48 hours.

In this case the Arbitration Council considers that the Article 116 paragraph 5 of the Labour Law mentions clearly about the time within which the employers must pay the termination compensation to the workers when the company terminate the workers, without any exceptions for [extending] time. So the Arbitration Council considers the company must pay the termination compensation to the workers within 48 hours, even though the company already contacts the police.

The Arbitration Council decides that the company must give the termination compensation to the workers according to the Labor Law within 48 hours after the company terminates the workers.

## **Issue 2:**

### **A. The demand for the company to reimburse 1, 0100 riel of medical check fee**

In this case the Arbitration Council examines the agreement dated on 11 August 2004 between the employers and the local KYFTU union in Yung Wah I and II; Clause 2 states that *“the workers agree not to demand for 10,100 riel which the company deducted from the workers’ wages to pay for medical checks by the labor medical department. But from now on the company agrees to pay the medical check fee for new workers.”* The Arbitration Council examines that the same agreement dated on 11 August 2004 between the employers and the local KYFTU union in Yung Wah I and II states that *“From now on the company will pay the medical check fee for new workers.”* These two agreements are dated on 11 August 2007 and the company accepted the signature of Mr. Lim Bun Koun in both agreements as being the representative of the company. The Arbitration Council considers that these two agreements have the same meaning since the company is supposed to pay the medical check fee starting from 11 August 2004, but the company has not implemented the agreements yet. The Arbitration Council considers that the employers can not refuse to implement the agreement unless the employers and workers make a new agreement or convention as a substitute or if they agree to end it.

Article 247(a) of the Labour Law states that “[Labor ministry shall issue a Prakas to determine] the conditions under which the pre-employment, re-employment, periodical and special physical exams are given.”

Article 247(c) of the Labour Law states that *“the conditions under which employers are required to establish and provide at their expense [as stated in paragraph a)].”*

Regarding demands for medical check fee, in previous arbitral awards the Arbitration Council has noted that *“Article 247(c) of the Labour Law 1997 provides sufficient legal basis to*

*require the employer to pay for workers' medical check fees before the workers commence work with the company.” (See Arbitral Awards 63/04-Shine Well, reason for decision, issue 1; 64/04-Mercury Garment, reason for decision, issue 1; 78/04-AIA, reason for decision, issue 1; 98/04-Great Union, reason for decision, issue 2; 106/04-Suit Way, reason for decision, issue 1; 107/04-Jacqsintex, reason for decision, issue 3; 05/05-GHG, reason for decision, issue 1; 05/06- W&D, reason for decision, issue 1.)*

According to previous arbitral awards the Arbitration Council finds that *“The employer shall pay for the expense and reimburse the workers.”* ( See Arbitral Award 02/03-Chu Hsing, reason for decision, issue 1; 21/03-Royal Camodia, reason for decision, issue 7; 19/04-Kbal Koh 2, reason for decision, issue 2; 53/04-Kong Hong, reason for decision, issue 3, 60/04-United, reason for decision, issue 2; 63/04-Shine Well, reason for decision, issue 1; and 05/06-W&D, reason for decision, issue 1.)

In this case the Arbitration Council agrees with the interpretation of the Arbitration Council in previous awards as mentioned above. The Arbitration Council considers that the employer has a legal obligation to reimburse the medical check fee to the workers who pay for medical checks by themselves.

The Arbitration Council considers that the agreement between the employer and the employees about the payment of the medical check fee for the workers is legal by the Labor Law under which the employers are required to pay medical check fee for the workers..

The Arbitration Council decides to order the employer to reimburse the medical check fee to the workers in amount of 10,100riel to each worker from 11 August 2004 as written in the agreement.

**B. The demand for employment book fee:**

For this demand the Arbitration Council considers that the workers raised in the hearing that they withdrew their demand for the employment book fee.

The Arbitration Council decides not to consider this demand.

**Issue 3: The workers demand the company to reinstate Mr. Huy Sopharith and Ms. Tan Channy**

**A. The case of Mr. Huy Sopharith:**

On 15 July 2006 the company suspended the contract with Mr. Huy Sopharith indefinitely without any pay starting from 15 July 2006 until the case is solved after a company staff member drove a container to Mr. Huy Sopharith's house in order to hide from the police; however, the police found the container at Mr. Huy Sopharith's house and made a report to the court. The company stated in the hearing that the suspension of Mr. Huy Sopharith is a temporary suspension while waiting for the decision from the court. If the court decides that Mr. Huy

Sopharith is innocent the company will reinstate Mr. Huy Sopharith. Mr. Huy Sopharith does not reject the statement of the company. The Arbitration Council suggested the parties to make an agreement on this point, but the parties asked the Arbitration Council to make a decision by issuance of an award.

The Arbitration Council considers that the verbal agreement by the parties in the hearing that, *“in case the court decides that Mr. Huy Sopharith is innocent the employer will reinstate Mr.Huy Sopharith”* is legal.

The Arbitration Council considers that the employer shall reinstate Mr. Huy Sopharith in case the court decides that Mr. Huy Sopharith is innocent.

**B. The case of Ms. Tan Channy:**

Normally, the Arbitration Council will abide by the decision of the labor inspector and the Minister of labor that a dispute is a collective dispute when it forwards the non-conciliation report to the Arbitration Council [unless there is a clear reason to determine the dispute is not a collective dispute]. (See Arbitral Awards 10/03-Jacqsintex, reason for decision, issue 4; 07/05-Coca Cola, reason for decision, issue 1; 41/04-MiCasa, reason for decision, issue 1; and 02/04-Cambodiana, reason for decision, issue 1)

In this case, the Arbitration Council considers that in the hearing the company did not raise any objection that the case of Ms. Tan Channy is an individual dispute. However, the Arbitration Council considers that in this case, the issue regarding Ms. Tan Channy is one in which the Arbitration Council will consider whether or not Ms. Tan Channy's issue is individual dispute or collective dispute.

Article 302 of the LL sets three conditions of collective dispute as following:

- a. *the dispute between one or more employers and a certain of their staff;*
- b. *dispute over working conditions, the exercise of the recognized rights of professional organizations, the recognition of professional organizations within the enterprise, and issues regarding relations between the employers and workers;*
- c. *and the dispute could jeopardize the effective operation of the enterprise or social peace.*

The Arbitration Council considers that, regarding the case of Ms. Tan Channy:

- *1<sup>st</sup> condition: this condition has not been satisfied because, regarding the demand to reinstate Ms. Tan Channy, KYFTU which is the workers' representative raised in the hearing that the union stopped representing Ms. Tan Channy because she executed the letter of authorisation dated on 01 July 2007 for Mr. Pin Touk, president of the KYFTU, to resolve the dispute after Mr. Pin Touk issued a resignation letter to the committee of KYFTU without any conditions dated on 19 June 2007.*

- *2<sup>nd</sup> condition: this condition has not been satisfied because there is no exercise of rights of a professional organisation because Ms. Tan Channy executed the letter of authorisation dated on 01 July 2007 to Mr. Pin Touk who was normal worker not the president of the union to resolve the dispute.*
- *3<sup>rd</sup> condition: [this condition] is also not satisfied because the dispute could not jeopardize the effective operations of the enterprise because KYFTU raised in the hearing they did not support Ms. Tan Channy anymore.*

Moreover, the Arbitration Council considers that Ms. Tan Channy, who executed the letter of authorisation to Mr. Pin Touk, is the plaintiff who is required to provide facts, documents, witnesses and evidences but in the hearing Mr. Pin Touk did not know much fact. He just stated that he came because of the letter of authorisation. The Arbitration Council requested Mr. Pin Touk to provide evidence related to Ms. Tan Channy but Mr. Pin Touk raised in the hearing that he could not provide evidence. Base on this, the Arbitration Council considers that the workers did not provide evidence (including documents or witnesses) related to the demand.

To conclude, the Arbitration Council considers that the issue of Ms. Tan Channy is an individual dispute and based on Chapter 12 Section 2 of the Labor Law the Arbitration Council has no legal obligation to decide on individual disputes. So the Arbitration Council decides not to consider the demand to reinstate Ms. Tan Channy.

**Issue 4: The workers demand the company to pay wages two times per month:**

Article 11 of the Labor Law states that “. Workers are classified as follows based on how they are paid:

- workers paid on the basis of time worked (monthly, daily, hourly) and who are paid daily or at intervals not to exceed two weeks or one month
- workers paid by the piece or by the task
- workers paid on commission”

This Article provides the method for remuneration for time, daily or monthly base on the types of works.

In previous awards the Arbitration Council considers that the workers in garment and shoes making section are specialized workers (see Arbitral Awards 27/03-Standard Garment, reason for decision, issue 1 and 23/05-Jung Min, reason for decision, issue 4).

Notification 745 KKBV dated on 23 October 2006 of the Ministry of Labor and Vocational Training sets the minimum wage for the workers in garment and shoe making industries on a monthly [rate] (US\$50 dollars for permanent workers and US\$45 dollars for probationary workers).

Based on the meaning of this Notification the Arbitration Council finds that the method to pay wages for workers in garment and shoe making industries is on a monthly basis.

The Arbitration Council considers that previous arbitral awards state that garment workers are specialized workers and Notification 745 mentions garment workers are paid monthly. The Arbitration Council finds that in real practice garment factories generally pay wages monthly.

Article 116 paragraph 1 of Labor Law stated that *“wage of workers shall be paid at least 2 times per month which has space at least 15 days.”*

Based on the above interpretation the Arbitration Council considers that the provision of Article 116 for wages of workers to be paid two times per month [does not] apply for workers in garment and shoe making section.

**Issue 5: The workers demand the company not to deduct \$5 dollars of attendance bonus for the workers who are absent without permission a half day:**

The workers demand the company retain the attendance bonus when they are absent without permission a half day even if the workers acknowledge that the US\$5 of attendance bonus is a payment to encourage the workers to come to work regularly in a month as stated in Notification 017 SKBY dated on 18 July 2000.

Clause 3 of Notification 745 KKBV dated on 23 October stated that *“any interests which the workers used to receive based on Notification 017 SKBY dated on 18 July 2000 point 3,5 and 6 are similarly retained.”*

Clause 3 of Notification 017 SKBY dated on July 2000 states that *“the workers who come to work regularly on the number of days they have come to work in a month shall receive at least US\$5 of attendance bonus per month.”*

The Arbitration Council considers that the US\$ 5 attendance bonus in this Notification means that the attendance bonus is a payment to encourage the workers to come to work regularly during a month without any taking non-permitted leave (absence without permission). (See Arbitral Awards 62/04-E-Shin, reason for decision, issue 1; 63/04-Shine Well, reason for decision, issue 5; 15/015-Wing Tai, reason for decision, issue 1; 48/06-Build Up, reason for decision, issue 1.)

The Arbitration Council considers that if the workers absent a half day without permission, it means that the workers do not come to work regularly as stated in Notification 017 SKBY dated on 18 July 2000. So the workers do not have the right to receive the US\$5 attendance bonus.

The Arbitration Council decides to reject the demand for the company to retain US\$5 of attendance bonus for the workers who are absent a half-day without permission.

**Issue 6: The workers demand the company to set 1 week not 3 days for the workers who are absent without permission [as the time period for being] regarded as having abandoned their job:**

The workers demand the company to set 1 week for absences without permission [as the time period] for determining those absent workers have abandoned their job. As stated above in findings of fact, the Internal Work Rules of the company states that “leave without permission is regarded as misconducts as follows:

- *absent two days considered as a slight mistake*
- *absent two day to three days considered as a medium mistake*
- *absent more than three days considered as this workers abandon their work without prior notice.”*

The workers did not submit any arguments or evidence to support their demand to change the company’s practice.

The Arbitration Council determines that the Arbitration Council can issue an arbitral award when the parties provide sufficient reasons for the demand, like evidence (real facts, official documents and verbal evidence) to the Arbitration Council for making a decision. Due to the lack of the reasons, arguments and evidence the Arbitration Council shall reject the demand.

The Arbitration Council rejects the demand for the company to give 1 week for the absent workers without permission regarded as those absent workers abandon their job.

**Issue 7: Night Shift workers demand the company to install enough lamps:**

The workers mention in the hearing that in the past the company allowed the workers to leave through the front gate which is next to the National Road and which already has lights, but now the company [directs] the workers to leave through the gate at the back of the company which a is distance is approximately 50 meters away, is dark and does not have lighting until it reaches the National Road; this causes difficulty regarding the security for night shift workers because at midnight workers have to break to eat and some workers need to go outside and at 5:00 a.m. workers need to go home.

Prakas 484 on Lighting dated on 23 December 2003, Clause 1 states “ *employer of the enterprise as mentioned in Article 1 of the Labor Law shall prepare the repairing building work place to have natural light and artificial light suitable for working meaning that [the employer] shall ensure that workers can see clearly and their eyes do not have to strain. Illumination generally shall be added by separate illumination in the work zone.* “ Based on the content of this Prakas, it means that the employer has an obligation to ensure that the workplace has enough light.

Article 229 of the Labor Law states “*All establishments and work places must always be kept clean and must maintain standards of hygiene and sanitation or generally must maintain the working conditions necessary for the health of the workers.*”

*The Ministry in charge of Labor and other relevant ministries shall prepare a Prakas to monitor the measures for enforcing this article in all establishments subject to the provisions of this Chapter, particularly regarding the quality of premises, cleaning, hygienic arrangements for the need of personnel, beverages and meals, lodging of the personnel if applicable, work stations and the seating arrangements, ventilation and sanitation, individual protective instruments and work clothes, lighting and noise levels in the workplace.*”

This Article which focuses on the condition of the premises does not mention about the obligation of the employer with respect to outside the workplace.

The Arbitration Council considers that, furthermore, Article 229 and Prakas 484 mean the employer must ensure good working condition for workers only inside the workplace. So the demand to install the lamps outside workplace is a demand above the law which we consider to be an interests dispute.

*“Generally the Arbitration Council shall consider interests dispute only if the union who brings the dispute has the most representative status in the factory. The most representative status for the union provides legal qualification to negotiate to establish a collective bargaining agreement in the company (See Article 96, paragraph 2-B of the Labour Law and Prakas 305 Clause 9, paragraph 1) and a legal rights to bring an interests dispute to the Arbitration Council for resolution. In order to obtain most representative status Article 277 of the Labor Law (1997) provides that the union shall register and complete other conditions which are mentioned in this Article. “ (See Arbitral Award 57/04-Evergreen; 60/04-United Art, reason for decision, issue 3; 08/07- Siu Quinh, reason for decision, issue 3; 33/07-Gold Fame, reason for decision, issue 2; and 51/07-Gold Fame, reason for decision, issue 4.)*

In this case KYFTU does not have the most representative status, thus the Arbitration Council decides not to consider the demand.

**Issue 8: The demand for the company to build toilets in proportion to number of workers:**

The employer and workers agree that presently there are 1,866 of day shift workers and 1,769 of night shift workers. The company has 40 toilets, 8 of which are broken or closed and can not be used. The company mentions in the hearing that the company will repair 8 toilets.

Article 229 of the Labor Law states “ *All establishments and work places must always be kept clean and must maintain standards of hygiene and sanitation or generally must maintain the working conditions necessary for the health of the workers.*”

Clause 1 of Prakas 052 on the Arrangement of Toilets (dated on 10 February 2000) states “*The employer of enterprises as mentioned in Article 1 of the Labor Law shall arrange proper and sanitary toilets in enterprises for workers to use.*”

Clause 2 of Prakas 052 on the arrangement of toilets (dated on 10 February 200) states “*the number of toilets shall be arranged for male workers and female workers separately in accordance with the number of worker as below:*

<b><i>Number of workers (Male and Female)</i></b>	<b><i>Number of toilets</i></b>
<i>1-15 workers</i>	<i>1</i>
<i>16-35 workers</i>	<i>2</i>
<i>36-55 workers</i>	<i>3</i>
<i>56-80 workers</i>	<i>4</i>
<i>81-110 workers</i>	<i>5</i>
<i>111-150 workers</i>	<i>6</i>
<i>151-1000 workers</i>	<i>Add 1 for 50 workers</i>
<i>More than 1000 workers</i>	<i>Add 1 for 70 workers</i>

Base on the meaning of Article 229 of the Labor Law and Prakas 052 dated 10 February 2000, the employer shall arrange proper and clean toilets for the workers to use.

In this case the Arbitration Council considers that the company has 40 toilets, 8 of which are broken, and the company mentioned in the hearing that the company will repair the 8 broken toilets for use. The Arbitration Council considers that when the company repairs all 8 broken toilets then the company will have implemented their obligation to manage the toilet arrangement for workers as stated in Article 229 of the Labour Law and Prakas 052 date on 10 February 2000.

The Arbitration Council orders the employer to repair the 8 broken toilets and rejects the demand to build more toilets.

**Issue 9: The workers demand the company allow day shift workers to ask permission [for leave] from the administrative office.**

The workers demand the company to implement the same system of asking permission for leave for day shift workers as for night shift workers and allow day shift workers to obtain permission for leave from the administrative office.

Article 2 paragraph 2 of the Labor Law states “ *Every enterprise may consists 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.*”

The Arbitration Council considers that meaning of this Article provides the right to employer to manage and supervise the process of production and manage the resources of the enterprise, including the supervision of workers and setting procedure to give permission to the workers if the permission is legal and reasonable. (See Arbitral Award 28/04-Raffle Grand Angkor, reason for decision, issue 1.)

The Arbitration Council considers that above implementation of the company as mentioned in fact finding is part of the [employer’s] lawful right to supervision and direction in Article 2 of the Labor Law.

The Arbitration Council decides to reject the demand.

Base on fact finding and rules and reasoning as explained above the Arbitration Council decides as following:

### **DECISION AND ORDER**

**Issue 1:**

- Order the company to pay termination [compensation] to the workers as stated in the Labor Law within 48 hours after the company terminates workers.

**Issue 2:**

- Order the company to reimburse the medical check fee in the amount of 10, 100 riel in person to the workers who pay for medical check fees by themselves from 11 August 2004 as mentioned in the agreement.

**Issue 3:**

- Decline to consider the demand to reinstate Mr. Huy Sopharith.
- Decline to consider the demand to reinstate Ms.Tan Channy.

**Issue 4:**

- Reject the demand to pay wages two times per month.

**Issue 5:**

- Reject the demand to retain \$5 of attendance bonus for workers who are absent a half day without permission.

**Issue 6:**

- Decline to consider the demand to set 1 week [as the time period] for absent workers to be considered as having abandoned their job.

**Issue 7:**

- Decline to consider the demand to install lamps outside the company.

**Issue 8:**

- Order the employer to repair the 8 broken toilets.
- Reject the demand to build more toilets.

**Issue 9:**

- Reject the demand for the company to implement the same system [of leave] for day shift workers as night shift workers.

**Type of Award: Non binding awards**

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

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

Arbitrator chosen by the employer party:

Name: **CHHIV PRYRUM**

Signature: .....

Arbitrator chosen by the worker party:

Name: **LIV SOVANNA**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **PEN BUNCHHEA**

Signature: .....