



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

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

**THE ARBITRATION COUNCIL**

**Case number and name: 55/07-Siu Quinh**

**Date of Award: 17 July 2007**

### **ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

#### **ARBITRATION PANEL**

Arbitrator chosen by the employer party: **OUK RY**

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

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

#### **DISPUTING PARTIES**

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

Name: **Siu Quinh Company (MFG) Ltd.**

Address: Kwa Village, Sangkat Dangkor, Khann Dangkor, Phnom Penh

Telephone: 012 859 632 Fax: 023 362 233

Representative:

- |                        |  |
|------------------------|--|
| 1. Mr. Ho Siv Chhoeung | Company Director                       |
| 2. Mr. O Kam Chang     | Vice-director                          |
| 3. Mr. Bun Leng        | Administration Officer and Interpreter |

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

Name: **Local Khmer Youth Trade Union at Siu Quinh Factory**

Address: Work in the company, Kwa Village, Sangkat Dangkor, Khann Dangkor, Phnom Penh

Telephone: 012 654 395 Fax: N/A

Representative:

- |                    |  |
|--------------------|--|
| 1. Mr. Som Chantha | Coordination Officer of KYFTU                |
| 2. Mr. Peo Bunna   | Coordination Officer of KYFTU                |
| 3. Mr. Soy Piseth  | President of local KYTU at Siu Quinh Factory |

- |                        |  |
|------------------------|--|
| 4. Ms. Kem Oy          | Secretary of local KYTU at Siu Quinh Factory |
| 5. Ms. Kim Leang Sokly | Worker                                       |

### **ISSUES IN DISPUTE**

(In the Non-Conciliation Report)

1. The workers demand the company to provide milk as it did in the past.
2. The workers demand the company to build a canteen for workers to sit and eat.

### **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 hearing was unsuccessful, and the non-conciliation report No.564 KB/AK/VK, dated 25 June 2007 was submitted to the Secretariat of the Arbitration Council on 26 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:** 10 July 2007 (From 2:00 p.m. to 5:00 p.m.)

**Procedural issues:**

On 10 May 2007 the Department of Labour Disputes received a complaint from KYFTU to demand Siu Quinh Company to improve working conditions on 7 points. After that the Department of Labour Dispute assigned officers to resolve this dispute and the last conciliation was held on 19 June 2007 with a result that 5 of 7 issues were conciliated. The 2 non-conciliated issues were sent to the Arbitration Council on 26 June 2007 through the non-conciliation report No. 564 KB/AK/VK, dated 25 June 2007.

After receipt of the case, all parties to the dispute were summoned by the Arbitration Council to the hearing on 10 July 2007 at 02:00 p.m.

Both parties were present at the arbitral hearing. The Arbitration Council attempted to ask for information relevant to this dispute and tried to further the conciliation on the 02 non-conciliation points but with a result that no issues were conciliated. Thus, the Arbitration Council will consider and settle this case based on 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:**

- 1- Summary statement of the labour dispute, dated 10 July 2007
- 2- Minute of collective labour dispute conciliation, dated 19 June 2007
- 3- Arbitral Award No. 08/07-Siu Quinh, dated 20 February 2007
- 4- Minute of inquiry for information from representative of Siu Quinh company
- 5- Minute of inquiry for information from representative of worker of Siu Quinh Company
- 6- Internal Work Rules of Siu Quinh company
- 7- Trade registration of Siu Quinh company
- 8- Statute of Siu Quinh company.

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

- 1- Certificate of union registration, dated 04 June 2007
- 2- Statute of local KYTU at Siu Quinh company.

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

- 1- Report of non-conciliation dispute resolution, dated 21 June 2007 by the Department of Labour Dispute
- 2- Minute of collective labour dispute conciliation, dated 19 June 2007

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

- 1- Invitation letter No. 237 KB//AK/VK/LKA, dated 27 June 2007 to invite the worker party to attend the hearing.
- 2- Invitation letter No. 236 KB//AK/VK/LKA, dated 27 June 2007 to invite the employer party to attend the hearing.
- 3- List of names of the worker party and employer party who attended the hearing

## **FACTS**

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

### **The Arbitration Council finds that:**

In Siu Quinh Garment (MFG) Ltd., there is a total number of approximately 480 workers and there are two unions in the company: KYTU and NITUC.

**Issue 1:**

- There are about 30 workers who have babies that need to be breast fed.
- Since 20 March 2007 the company has provided one hour per day for women workers to breast feed their babies, from 11:00 a.m. to 11:30 a.m. and from 4:00 p.m. to 4:30 p.m.
- Agreement between the company and KYTU dated 28 April 2005 states that the employer would provide milk in lieu of an onsite day care center in the factory.
- After the Arbitration Council in case 08/07-Siu Quinh issued Arbitral Award, issue 7, the company built a day care center, the construction has been completed, but no women workers have brought their children to stay there.
- The workers mention that the walls of the day care are zinc which absorbs heat greatly and [the daycare] is not in good condition and there is no room for breast feeding; they provided a picture of the exterior of the day care center but did not show the condition inside that day care. The company party, on the other hand, states that if [the daycare] is not up to standards, it would like to request the Labour Doctor to come for an inspection and provide comments.
- The company party says that it has followed the Arbitral Award.
- The worker party states that in case 08/07 the workers did not demand for the company to build a day care center; they agreed to accept the milk the company used to provide but asked the company to provide one hour of time for women workers who have delivered babies to be able to breast feed.
- The workers assert that they do not want the day care center but they want milk instead because they used to receive it in the past under a conciliated agreement.

**Issue 2:**

- The workers demand the company to build a canteen for them to have a place to eat and to rest during the break time.
- Among approximately 480 workers in the factory, about 100 workers bring food from home and others buy food sold in food stalls located approximately 30 to 100 meters from the factory.
- At break time the factory's door is locked and workers are not allowed to eat inside the factory compound.
- The workers mention that at the meal break they are exposed to dust or heat or sometimes to rain because there is no shelter where they can be protected. Some workers who rest along the road in front of people's houses near the factory are often chased away the home owners.

- The workers also state that there is a drain and garbage near the place where they rest and eat and the drain is not clean (no sanitation).
- The employer states that the drain does not have bad smell because it has proper cover.
- The employer adds that the company has put some chairs for workers to rest outside the gate, in front of the factory. But the workers say that the number of chairs are few and there is no roof.

### **REASONS FOR DECISION**

#### **Issue 1: The demand for the company to provide milk to workers as it previously practiced in the past**

Case 08/07-Siu Quinh and this case have the same parties in dispute and issue 7 of [Arbitral Award] 08/07 reasoned and decided that “as long as the employer can fulfill its obligations listed in Articles 184, 185 and 186, the company is not required to follow the conditions set in the conciliation agreement dated 28 April 2005[“]; the agreement in which the employer agreed to provide milk to breast feeding mothers, and ordered the company to provide one hour per day for breast feeding and to arrange breast feeding room and a day care center for women who had delivered babies. Therefore, the Arbitration Council considers that the Arbitration Panel in case 07/08-Siu Quinh has made a decision which covers issue 1 of this case.

Principle of “res judicata” is a legal principle which provides that a case brought by the same disputing parties regarding the same dispute to the same jurisdiction which has already decided that same [case] cannot bring that same dispute for a decision again.

Based on this principle, the Arbitration Council considers that the issue which the Arbitration Council already decided cannot be re-decided (see case 10/06-North Gaiety, 24/06-Fortune, 106/06-Quick Sew, issue 5; 45/07-Wilson, issue 2).

Thus, the Arbitration Council decides to decline to consider the workers’ demand for the company to re-provide milk to women workers who had delivered babies.

#### **Issue 2: The demand for the company to build a canteen**

The worker party demands the company to build a canteen for them to eat in because in the past there are about 100 workers who bring food from home and at break time they need to eat the food near the drain along the street which is always dusty or under the rain.

Article 229 of the Labour 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 (ministerial order) to monitor the measures for enforcing this article in all establishments subject to the provisions of this Chapter, particularly regarding: the quality of the premises; cleaning; hygienic arrangements for the needs 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.”*

In this case, the Arbitration Council considers that the present conditions around the break time, such as lacking a place to hide from the sun and to stay away from the rain, and requiring workers to sometimes come back to work wet, eat under the sun, the rain and dust, are not good working conditions, lack to sanitation and can affect the health of workers. In previous Award No. 35/04-Jaquesintex, the Arbitration Council determined that “The company does not have a canteen for the workers to put their food, cakes, and provide a place for having meals and taking a rest, this consequently causes disorder, unfavorable working conditions, and bad sanitation in contravention of the working conditions necessary for the health of workers as stated in Article 229 of the Labor Law”. Likewise, in this case, the Arbitration Council considers that the lack of canteen can affect workers’ health thus it is a violation of Article 229 of the Labour Law.

Therefore, the Arbitration Council decides that the employer has to arrange to have a canteen with proper roof for workers to eat and have shade during break time in accordance with Article 229 of the Labour Law.

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

**DECISION**

**Issue 1:**

- Decline to consider the workers’ demand for the company to again provide milk to women workers who had delivered babies.

**Issue 2:**

- Order the employer to arrange to have a canteen with a proper roof for workers to eat and have shade during break time

**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: **OUK RY**

Signature: .....

Arbitrator chosen by the worker party:

Name: **LIV SOVANNA**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **PEN BUNCHHEA**

Signature: .....