



KINGDOM OF CAMBODIA

NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 62/07

Date of Award: 16 August 2007

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by employer party: **Ing Sothy**

Arbitrator chosen by the worker party: **Ann Vireak**

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

DISPUTING PARTIES

Employer party:

Name: **Hong Mei Company**

Address: Building 29-30, Canadia Park, Sangkat Chorm Chao, Khan Dang Kor, Phnom Penh.

Telephone: 012 850 348

Fax: 023 424 205

Representative:

- Mrs. Chhen Mei Ling Head of Administrative Department
- Mr. Roeun Saram Company Assistant

Worker party:

Name: **Cambodian Workers Labor Federation Trade Union (CWLFU)**

Address: Building No. 398, Street 907, Phum Tuol Sangker, Khan Russey Keo, Phnom Penh.

Telephone: 012 923 838

Fax: N/A

Representative:

- Mr. Noun Sothearith Secretary of CWLFU
- Mr. Sear Sokly Vice president of CWLFU
- Mr. Choun Sovantha President of Cambodian Labour Union
- Mr. Penh Sophal Vice president of Cambodian Labour Union

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

1. Workers demand company to keep [workers'] work position as leaders of the iron group and retain wages and other benefits which the company changed on 24 February 2007.
2. Workers demand to have a medical doctor, sufficient medicine and rooms for workers to rest during their sickness.
3. When the worker has a work related accident, it would be at the burden of the factory for the whole payment of medical expenses.
4. No threatening workers to work overtime until morning; the company has to provide wages by law and allow worker to take leave one day with wages.
5. Every termination of a worker has to be in accordance with the Labour Law; and if workers ask to resign, the company has to provide compensation for annual leave also.
6. To prevent loss [of documents], the company must not keep the personal documents of the workers such as Identification Cards and Family Books.
7. Pregnant workers ask for 10 minute early departure from work.
8. The company pays wage during working hour and before 4:00 pm.
9. The company has to pay medical check fees to every worker (according to the Labour Law and decision of the Arbitration Council executed by other factories.)
10. Women workers who deliver babies should be entitled to 90 days maternity leave and receive 50% wages and other benefits in advance.
11. Retain wages and bonus for those workers who are sick with medical certificate.
12. The company should not engage in union discrimination and allege that members of the union of have committed misconduct.
13. The company must increase wages for worker based on the Labour Law in which the three-month probationary workers are entitled to US\$ 45.00 and when they become [regular] workers they are entitled to US\$ 50.00.
14. Work overtime on a voluntary basis.
15. [Facilitate] permission for leave.
16. No wage deductions when workers lose their cards.
17. Leave work before 2:00 p.m. every Saturday.
18. Worker who has been working for three months shall become a [regular] worker.
19. For working on holidays, wages shall be multiplied by 3.
20. For overtime work past 9:00 p.m., there should be a car to send workers home.
21. Do not force workers to start work before the working hours (when working hours are over, the Company should not stop workers from leaving the factory).
22. No reduction of wages from the past month for the new month.

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B of the Labor Law (1997); the Prakas on the Arbitration Council No. 099 dated 21 April 2004; the Arbitration Council Procedural Rules which form an Annex to the same Prakas 099; and the Prakas on the Appointment of Arbitrators No. 076/07 KKBV dated 10 May 2007 (Fifth Term).

An attempt was made to conciliate the collective dispute that is the subject of this Award, as required by Chapter XII, Section 2A of the Labour Law. The conciliation was unsuccessful, and the non-conciliation report No. 619 KKBV dated 03 July 2007 was sent to the Secretariat of the Arbitration Council on 05 July 2007.

HEARING AND SUMMARY OF PROCEDURE

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

Date of hearing:

- First Hearing : 19 July 2007 ([8]:00 a.m. to 1:00 p.m.)
- Second Hearing : 02 August 2007 (8:00 a.m. to 9:30 a.m.)

Procedural issues:

On 30 April 2007 the Department of Labour Disputes received a letter of complaint No. 113 SSKKK dated 09 April 2007 from CWLFU demanding the employer improve working conditions. Upon receipt of this complaint, the Department of Labour Disputes assigned an officer to handle this labour dispute over consecutive sessions of conciliation and the last conciliation was held on 15 June 2007 but the conciliation was not successful. The 22 non-conciliated issues were sent to the Secretariat of the Arbitration Council on 05 June 2007.

After receiving the case, the Secretariat of the Arbitration Council invited employer and worker party to attend the hearing on 19 July 2007 at 8:00 a.m. and on 02 August 2007 at 8:00 a.m. Both parties were present as requested.

At the first hearing day, the employer stated to the Arbitration Council that they did not want to negotiate with the union as they were not workers of their factory. Later, the Arbitration Council explained to the employer the procedures of dispute resolution but the employer refused to conciliate with the workers. So the Arbitration Council conducted the hearing and raised one issue at a time in the non-conciliation report of the Labour Dispute Department to discuss and question the employer about the actual practices.

In the hearing, regarding issues 2, 3, 4, 5, 6, 7, 8, 11 (regarding wages), 12, 13, 14, 15, 16, 20 and 21, the employer gave promise and claimed to follow the Labour Law and other related regulations. (Please read the details of each issue in the finding fact section)

In the hearing, worker party withdrew their demands regarding issues 10, 17, 18, 19 and 22. (Please read details of each issue in the fact finding section)

Therefore, in this Award, the Arbitration Council will arbitrate only issues 1, 9 and 11 (regarding attendance bonus) based on the witnesses, testimony and findings of fact as follows:

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by employer party:

- Authorized letter delegated full right and power to Mrs. Chhen Mei Ling, Head of Administrative Section to act on behalf of the company including right to decide on agreement making.
- Internal Work Rules of company dated 05 October 2006.
- Monthly attendance record.
- Monthly wage chart.
- Letter notified to the Arbitration Council dated July 2007.
- Resignation letter of Mr. Nuth Sophorn and Mr. Earm Samuth dated 14 March 2007.

Provided by the worker party:

- Statute of local Cambodian Workers Labour Union at the Hong Mei Garment dated 04 February 2007.
- Registration Certification of Cambodian Workers Labour Union at the Hong Mei Garment dated 15 March 2007.
- Certified letter from the Ministry of Labour and Vocational Training dated 15 March 2007.
- Complaint on the person who committed the attempted murder dated 09 March 2007.
- Minute on conciliation of collective labour dispute dated 13 June 2007.
- Court ruling No. 058 KKBV/VK dated 24 April 2007.
- Certified letter from Dr. Tout Nara to Earm Mary dated 08 March 2007.
- Request for action to enable court and authority to arrest criminal dated 10 March 2007.
- Request for action to Hong Mei dated 09 April 2007.
- Complaint against Hong Mei Garment dated 26 February 2007.
- Report of inquiry on workers at Hong Mei dated 13 March 2007.
- Court ruling No. 96 SSKKK dated 04 February 2007.

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

- Report No. 619 KB/GK/VK dated 03 July 2007 on collective dispute of Hong Mei Garment.
- Minute on collective labour dispute conciliation of Hong Mei Garment dated 15 June 2007.

Provided by the Secretariat of the Arbitration Council:

- Invitation No. 267 to the workers for the first hearing dated 12 July 2007.
- Invitation No. 266 to the employer for the first hearing dated 12 July 2007.
- Invitation No. 313 to the workers for the second hearing dated 30 July 2007.
- Invitation No. 312 to the employer for the second hearing dated 30 July 2007.

FACTS

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

The Arbitration Council finds that:

- Hong Mei Garment is located at Building No. 29-30, Canadia Park, Sangkat Chorm Chao, Khan Dangkor, Phnom Penh with workers about 530 workers.
- The Cambodian Workers Labour Union received its union registration on 15 March 2007.

At the hearing employer party promised and stated that it would follow the Labour Law and other related regulations on the issues as below, and the Arbitration Council will not [analyse] those issues.

Issue 2 : The company will organise doctors, sufficient medicine and a room for workers who are sick, within 4 months.

Issue 3 : The company will pay for medical expenses when worker have a work-related accident.

Issue 4 & 14 : Regarding overtime work until morning, the company must provide wages according to the law and allow workers to take leave one day with wages.

Issue 5 : Every termination of a worker must be in accordance with the Labour Law.

Issue 6 : The company agrees to provide the personal document in original paper such as Identification Card, Family Book to workers after the copying.

- Issue 7** : The company agrees to allow female workers to leave 10 minutes early to avoid accidents.
- Issue 8** : The company agrees to provide wages for workers during working hour and leave office at 16:00pm. If there is overtime work, it should be on voluntary basis.
- Issue 11** : For workers who are sick and have medical certification the company will retain basic wages.
- Issue 12** : The company agrees not to discriminate union and chase for mistake who are the members to the union.
- Issue 13** : The company agrees to monthly provide USD 45.00 wages for probation workers and USD 50.00 per month for full right workers.
- Issue 15** : The company enable easiness for workers in taking leave.
- Issue 16** : When losing card, the company cut USD 3.50 wage.
- Issue 20** : Work overtime from 8:00pm to 10:00pm, the company has car for house as currently executed.
- Issue 21** : The company does not force workers to work before or after the set hour which means that starting work when the working hour start and leave when working hours ends.

Issue 1: Workers demand Mr. Earm Samuth and Mr. Nuth Sophorn return to work with the same work post as group leaders, and retain their wages and other benefits from 24 February 2007 until the company reinstates them.

a) Employer's position regarding case of Mr. Earm Samuth and Mr. Nuth Sophorn

In the hearing, the employer argued that Mr. Earm Samuth and Mr. Nuth Sophorn are no longer workers of Hong Mei Garment. Therefore, neither worker has a right to bring this dispute for resolution with the employer. This means that the employer does not have an obligation to deal with these issues regarding the two workers.

b) Complaint of Workers

Regarding this issue 1, there are two complaints brought to the Arbitration Council:

- The first complaint dated 26 February 2007 demands the company to reinstate Mr. Earm Samuth, keep his work post as group leader and retain wage and other benefits from the date 24 February 2007 until the company reinstates him.
- The second complaint dated 09 April 2007 demands the company to reinstate Mr. Earm Samuth, Mr. Nuth Sophorn, M. Sun Pharath, Ms. Sol Theary and Mearm Mary.

- At the hearing, worker party stated their claim was that they demand the company to reinstate Mr. Earm Samuth and Mr. Nuth Sophorn as the company has committed union discrimination against them.
- c) Claim of workers that dismissal of Mr. Earm Samuth and Mr. Nuth Sophorn is based on union discrimination; and rejection by the company.**
- At the hearing the company rejected to discuss the case of Mr. Earm Samuth and Mr. Nuth Sophorn as they are no longer employees of the company because they resigned from the company 14 March 2007. [Moreover], the company was not aware that these two workers were union leaders. But Mr. Earm Samuth and Mr. Nuth Sophorn alleged that they did not print their thumbs and the company had falsified the resignation letter. The Arbitration Council finds that those letters are problematic as Mr. Earm Samuth is a male but his resignation letter used the term Ms. Earm Samuth, likewise in Mr. Nuth Sophorn's case the letter used the term Ms. Nuth Sophorn. Due to this anomaly in the letters, the Arbitration Council declined to consider those two resignation letters.
- Worker party claimed that dismissal of Mr. Earm Samuth and Mr. Nuth Sophorn was based on union discrimination. But the company stressed that Mr. Earm Samuth and Mr. Nuth Sophorn requested the resignation themselves as they violated the internal work rule of taking 7 days of unauthorized leave. These two workers accepted that they did not work but the reason was that the company prohibited them from entering the factory. The company did not respond to this point.
- Company provided the internal work rules of company to the Arbitration Council to support the allegation that Mr. Earm Samuth and Mr. Nuth Sophorn took 7 days of unauthorized leave. The Arbitration Council found that the internal work rules were not signed by the worker delegate or union, nor registered at the Ministry of Labour. So the Arbitration Council declined to consider the internal work rules submitted by the employer.
- At the hearing, union indicated that it had previously notified the company about their union's establishment by Letter No. 96 dated 04 February 2007 which includes Mr. Earm Samuth as union leader and Mr. Nuth Sophorn as vice union leader, with the signature of Ven Pov, security guard, who received the letter. The worker party provided accompanying letter to the notification in support of their claim, but did not provide the detailed notification which was attached to the accompanying letter.
- The employer alleged that the company never received any notification and company also never employed a security guard named Ven Pov. The union party does not provide any evidence to support their testimony, only raising that the security guard

was already fired by the company. The Arbitration Council finds that evidence and statement made by the employer is more reliable.

- Worker party claim that workers voted to select their union leaders but the unions could not prove and did not submit any evidence to the Arbitration Council regarding when such election occurred or how many workers joined in the election. The Arbitration Council received the certificate of union registration on 15 March 2007.

Case of Mr. Earm Samuth

- Mr. Earm Samuth said that he has been working for the company for one year with a wage of US\$ 50.00 per month. His work position was as a group leader in the ironing section and received an additional US\$ 25.00 on the above US\$ 50.00. He did not recall the month or year he started work, nor the type of labour contract.
- Mr. Earm Samuth testified that on 24 February 2007, the company transferred him to the warehouse section as a normal worker. The employer indicated in the hearing that this transfer was because the company saw that Mr. Earm Samuth had done a good job in the ironing section so it believed that he also could handle the warehouse section. If he worked very well at the warehouse section, he would be promoted with a wage increase more than at the ironing section. Mr. Earm Samuth did not agree with this transfer because he did not have the skills to work at the warehouse section as he was not computer-literate and he could not speak foreign languages so it was unreasonable for company to transfer him. Mr. Earm Samuth demanded to work at the same section and the same position of group leader. The company did not agree with this request.
- At the warehouse section, Mr. Earm Samuth received a basic wage of US\$ 50.00 but not an additional US\$ 25.00.
- On 26 February 2007, the CWLUF brought a complaint to the Labour Dispute Department in demanding the company to retain work post of Mr. Earm Samuth including other issues which in total is 22 issues.
- Mr. Earm Samuth came to work on 26 February 2007 as usual but he did not go to work at the warehouse section so the company asked him to go back home with 50% wage for an unlimited term. The worker alleged that on that same day Mr. Samuth met with the company director; and the company director told him that if he resigned from his union position, he would be returned to the same [work] position.
- Worker party claimed that beginning 27 February 2007, company told the security guard to post a declaration in front of the factory that Mr. Earm Samuth was not allowed in the factory. The employer objected to the above statement. The Arbitration

Council finds that there was a prohibition of Mr. Earm Samuth to work in the factory from 27 February 2007.

- In the hearing, the company agreed that Mr. Earm Samuth performed well at work but he did not follow the company's guidance or assignment transferring him to the warehouse section. The company stated that it never gave any warnings Mr. Earm Samuth before.
- On 05 March 2007, the local union prepared a written letter to request CWLUF to intervene in their demand including the fact that the employer prohibited Mr. Earm Samuth from coming to work.
- On the 6th, 7th and 8th of March 2007, all the workers gathered to go on strike demanding the company resolve the complaint by reinstating Mr. Earm Samuth.
- On 10 March 2007, CWLUF submitted a complaint to H.E. Ith Sam Heng, Minister of the Ministry Social Affairs Veteran and Youth Rehabilitation who is also head of the Commission to Resolve Strikes and Demonstrations in Phnom Penh.
- On 11 March 2007, Labour Dispute Department called the worker party to inquire about improving working conditions under the presence of Mr. Houn Soeur, representative of the Ministry of Labour.
- On 13 March 2007, Labour Dispute Department called the worker party to inquire about the strike, actual working conditions and union freedom under the presence of Mr. Sok Bora, representative of the Ministry of Labour.
- Mr. Earm Samuth indicated that he received wages for the final month already and the company confirmed this.

Case Mr. Nuth Sophorn

- Workers demand the company to reinstate Mr. Nuth Sophorn because [the employer committed] union discrimination as the worker's position was Vice President of the union.
- Mr. Nuth Sophorn indicated that he had worked at the cutting table with a US\$ 50.00 wage and a work position wage of US\$ 25.00.
- The company transferred him to [the product hauling section] after it transferred Mr. Earm Samuth. This work transfer caused him to lose US\$ 25.00. Mr. Nuth Sophorn did not agree with this work transfer. At the hearing, the company did not provide any reason for changing the work of Mr. Nuth Sophorn.
- At the hearing, the company accepted that Mr. Nuth Sophorn performed his work well but he did not follow the guidance and direction of the company. The company indicated that it never warned Mr. Nuth Sophorn before.

- Mr. Nuth Sophorn has already received the wage of his final month and the company confirmed this.

Issue 9: Workers demand the medical check fee of 10,100 riels which the company deducted from the wages of workers.

- The worker party and employer stated that in 2006, the company invited an officer of the Ministry of Labour and the Labour Doctors to [provide] employment books and medical checks at the factory and company deducted USD 6.00 for the cost of the employment book and the medical check fee from all workers.
- The worker party and employer do not remember the number of employment books or the cost of the medical check fees. The employer promised to provide this document by 20 July 2007. But the Arbitration Council did not receive this document.
- Workers stated that they were not asking the employer to reimburse them for the cost of the employment books, only the cost of the medical check fees as this is the obligation of the employer set forth by the Labour Law. But since both the worker and employer parties did not remember the actual cost of the medical check fee and the workers only demanded 10,100 riels, which was the cost of medical check fees generally at that time, [then it can be found that] the medical check fee was 10,100 riels.
- Employer did not agree with this because, based on their Internal Work Rules, this is the obligation of the workers.
- Clause 3 of the Internal Work Rules that was submitted by the company to the Arbitration Council requires all workers to have their health checked before they start work but does not require worker to pay the medical check fee. The Arbitration Council did not consider this evidence as these Internal Work Rules were not signed by the worker delegate and not properly registered at the Ministry.
- At the hearing, the union promised to provide all related documents, including the name list of workers who made this demand for medical check fees on 20 July 2007. But the Arbitration Council did not receive the name list.

Issue 11: Workers demand the company to retain bonus in case that workers are sick and have no proper medical certificate.

- In the past, when workers took sick leave, whether for one or many days, and although they had a medical certificate, the company deducted the US\$ 5 attendance bonus. The company stated that this was the company's practice in the past.
- Workers demand the company to retain the US\$ 5 attendance bonus in case workers are ill with proper medical certificates.

- The Arbitration Council did not receive any evidence on how many workers used to be sick with proper medical certificates in the past and whether their attendance bonuses were deducted.

REASONS FOR DECISION

Issue 1: Workers demand Mr. Earm Samuth and Mr. Nuth Sophorn to work at the same work position as group leaders, and for wages and other benefits be retained from 24 February 2007 until the company reinstates them.

a- Position of Employer in the cases of Mr. Earm Samuth and Mr. Nuth Sophorn

At the hearing, the employer claimed that Mr. Earm Samuth and Mr. Nuth Sophorn are no longer workers of Hong Mei Garment so both workers do not have the right to bring the dispute for resolution. Therefore, the Arbitration Council considers the argument of the employers as follows:

Clause 3 of Prakas 305 SKBY dated 22 November 2001 on The Representative Status of Professional Organisations of the Workers in Enterprises and Establishments and the Right of Collective Negotiation and to Conclude Collective Bargaining Agreements for Enterprises and Establishments states that *'The term of enterprise or establishment union leaders shall end by termination of the employment contract only when this issue is set out in the union statute.*

All union leaders that have been temporarily or permanently dismissed because of economic or other reasons, still have the right of access to the enterprise in order to fulfill their responsibilities in accordance with his/her union term. Any union leader that has made a mistake and been legally dismissed shall resign from the union.'

Mr. Earm Samuth and Nuth Sophon were formally dismissed by the company on 14 March 2007. These dismissals arose before the union registration. However, the company recognized that Mr. Earm Samuth and Mr. Nuth Sophon were President and Vice President at the Hong Mei Garment after having received the certificate of union registration dated 15 March 2007.

Statute of the union at Hong Mei Garment does not stated that term of union leaders will end upon the loss of employment [].

Therefore, the Arbitration Council finds that Mr. Earm Samuth and Mr. Nuth Sophorn still have rights and responsibilities as union leaders based on their terms which are recognised by the Ministry of Labour and to represent the workers-members for resolution of this collective dispute.

b- Dismissal of Mr. Earm Samuth and Mr. Nuth Sophon

In this case, at the hearing employer raised that dismissal of Mr. Earm Samuth and Mr. Nuth Sophorn is because of union discrimination. So the Arbitration Council considers whether dismissal of Mr. Earm Samuth is by union discrimination or not?

Article 12 of the Labour Law stated that '*...no employer shall consider on the account of: ...membership of worker union or the exercise of union activities...to be the invocation in order to make decision on...discipline or termination of employment contract...*'

Clause 3 of Prakas 305 SKBY dated 22 November 2001 on The Representative Status of Professional Organisations of the Workers in Enterprises and Establishments and the Right of Collective Negotiation and to Conclude Collective Bargaining Agreements for Enterprises and Establishments states that '*...All employees who are candidates for election as union leader shall also receive protection from work dismissal like worker delegates. This protection lasts for 45 days prior to the election and ends 45 days after the election if these candidates are not selected. The union shall notify the employers about this candidacy through all reliable means. Employers shall apply this provision once only at every election of union leaders. ...*'

Worker-party claims that workers elected the union leaders at Hong Mei Garment, in which the result was that Mr. Earm Samuth was elected as union President and Mr. Nuth Sophorn as the Vice President. Moreover, the union notified the employer about the union's establishment along with an attached minute of the election day and the names of candidates who won the election by letter dated 04 February 2007; and Mr. Ven Pov, a security guard at the company, signed receipt of such documents. The employer objected to these allegation.

In the first and second hearing, the worker party promised to send the minute of election day and the name list of workers who joined the election. But the Arbitration Council has not received evidence of when the election was held or how many workers participated. So the Arbitration Council finds that workers do not have sufficient evidence to support their testimony regarding Mr. Earm Samuth and Mr. Nuth Sophorn as union leaders before or after the certification of union registration dated 15 March 2007, which means that Mr. Earm Samuth and Mr. Nuth Sophorn were dismissed on the ground of their status as workers not at as union leaders.

Moreover, the worker party did not provide sufficient evidence that they really gave notice of their union or the name list of their union leaders to the company. According to these facts, the Arbitration Council finds that the argument made by the employer is more reliable.

According to the facts and evidence, the Arbitration Council determines that the termination of Mr. Earm Samuth and Mr. Nuth Sophorn is not related to union discrimination so the Arbitration Council decides to reject the demand for reinstatement both workers.

Issue 9: Workers demand for reimbursement of medical check fees of 10,100 riels which the company deducted from their wages.

Article 247 (c) (4) provides for '*medical exams of workers as stipulated in point (a) of this Article.*'

Article 247 (a) of the Labour Law states that '*Ministry in Charge of Labour shall issue a Prakas to determine the conditions under which pre employment, re employment, periodical, and special physical exams are given.*'

Concerning demands for medical check fees in the previous Arbitral Awards, the Arbitration Council notes that '*Article 247 (c) of the 1997 Labour Law provides sufficient legal basis to require the employer to pay pre-employment medical check fees.*' (Please read Arbitral Awards 63/04-Shine Well, issue 1; 64/04-Mercury Garment, issue 1; 78/04-AIA, issue 1; 98/04-Great Union, issue 2; 106/04-Suitway, issue 1; 107/04-Jacqsintex, issue 3; 05/05-GHG, issue 1 and 05/06-W & D, issue 1.)

In past Arbitral Awards, the Arbitration Council has found that '*the employer has to bear such expense and reimburse workers.*' (As an example please see Arbitral Award 02/03-Chu Hsing; 21/03-Loyal Cambodia, issue 7; 19/04-Kbal Koh 2, issue 2; 53/04-Kong Hong, issue 3; 60/04-United Art, issue 2; 63/04-Shine Well, issue 1 and 05/06-W & D, issue 1.)

Therefore, the Arbitration Council also finds that the employer party has to bear the expense and reimburse workers for the 10,100 riels medical check fee.

In this case, the union sent documents to the Arbitration Council but does not provide a name list of workers who demand to the company for medical check fee 10,100 riels. Documents which the unions sent is not at sufficient basis for the Arbitration Council to consider and decide, for the Arbitration Council does not know if there are any workers demand for this issue or not .

In the past cases, the Arbitration Council has decided to reject demands made by workers if they do not provide specific evidence supporting their demand. (Please read the Arbitral Award 47/07-Chun Fai, issue 2)

In this case the Arbitration Council also agrees with the past Arbitral Awards. Thus, the Arbitration Council rejects the demand made by the workers to pay medical check fees to the workers.

Issue 11: For workers who are sick and have medical certification the company must retain basic wages.

In this case the employer does not agree to maintain the attendance bonus when workers ask for sick leave. So the Arbitration Council will consider as below:

Notification No. 017 dated 18 July 2000 of the Ministry of Social Affairs, Vocational Training and Youth Rehabilitation, clause 3 states that '*Workers who work regularly according to the number of days per month shall have an attendance bonus of at least US\$ 5.00 per month.*' But this Notification does not specifically mention cases where workers take days off because of illness and cannot come to work; also there is no provision in the Labour Law providing for the right of workers to receive the regular attendance bonus when they take sick leave.

In the past cases, regarding attendance bonus the Arbitration Council notes that the workers who are absent with permission still has right to receive attendance bonus in proportion to the number of day that workers come to work. (Please see arbitral award 63/04-Shine Well, issue 5)

The Arbitration Council finds that '*Attendance Bonus*' is the allowance to encourage and praise the workers who had come to work regularly for the full month without absent by unauthorized reason.

In principle, neither the legal provisions [] which provide for attendance bonus and which are stated in the Notification 017 dated 18 July 2000 of the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation nor the Labour Law intend to impose discipline on workers who take sick leave with permission.

The Arbitration Council finds that if workers will lose the entire attendance bonus when taking sick leave with proper authorization from the employer during the month, then it would be unfair to the workers because it is not their fault to be unable to come to work regularly. Conversely, if the employer is required to pay workers [the entire attendance bonus even though workers have taken sick leave], it would not be fair either as the employer [lose the benefit of the worker's work during] that period. (Please see Arbitral Award 15/05-Wing Tai, issue 1, 48/05-Manhattan, issue 1.)

In this case, the Arbitration Council also agrees on the above interpretation of the arbitration panel in the past cases. So the company has to provide the attendance bonus in proportion to the number of days that workers [were not on] authorized [sick] leave [].

However in this case the workers demand the company maintain the \$5 attendance bonus, but the company does not agree; instead [the company] will deduct the entire \$5 even though the workers took leave with permission with proper medical certificates, because they did not come to work for the required number of working days in a month.

Based on the above interpretation, the Arbitration Council understands that this practice of the company is not correct. So the company must immediately stop this practice and only withhold the attendance bonus in proportion to the number of day which workers take sick leave per month.

In this case, the workers demand to retain the entire attendance bonus and this is a demand for interests that are above the law. This means that this issue relates to an interest dispute. Therefore, the Arbitration Council finds that this issue is an interest dispute.

Generally, the Arbitration Council will consider an interests dispute if the union which brings this labour dispute is the union with the most representative status in the factory. Most representative status provides the legal capacity to negotiate a collective bargaining agreement in an establishment (please see [Labour Law] Article 96 paragraph 2(b) and Prakas 305, clause 9 paragraph 1) and the legal right to bring an interests dispute to the Arbitration Council for resolution. To receive most representative status, Article 277 of the Labour Law 1997 provides that the union must be registered and satisfy other conditions as stated in this Article. (Please see Arbitral Award 57/04-Evergreen, 60/04-United Art, issue 3, 08/07-Siu Quinh, issue 3 and 33/07-Gold Fame, issue 2). In this case, the Cambodian Labour Union at the Hong Mei Garment does not have most representative status. So the Arbitration Council declines to consider this demand of the union.

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

DECISION

Issue 1:

Reject demand for reinstatement Mr. Earm Samuth and Mr. Nuth Sophorn.

Issue 2:

Order the employer to prepare sufficient medicine, doctors and a room for workers rest when they are sick, within 4 months.

Issue 3:

Order the employer to pay medical expenses when a worker has work related accident.

Issue 4 and 14:

- a. Order the employer practice overtime on voluntary basis and calculate wage based on wage rate specified in article 139.
- b. Order the employer, based on the statement by the employer in the hearing, to allow workers to take one paid day off if the workers work until dawn.

Issue 5:

Order workers to follow the provisions of the Labour Law when dismissing any worker from work and provide proper termination payments as provided by the Law.

Issue 6:

Order the employer to return personal document such as identification cards and family books, to the workers after making copies.

Issue 7:

To avoid accidents, order the employer to allow for pregnant workers to leave 10 minutes early.

Issue 8:

Order the employer to pay wage to workers during working hours and allow workers to leave at 4:00 p.m.; and if there is overtime work, it should be done on a voluntary basis.

Issue 9:

- a) Order the company to immediately stop the practice of requiring workers to pay 10,100 riels for the medical check fee.
- b) Reject the demand of workers for reimbursement of 10,100 riels in medical check fees that employer deducted from workers' wages.

Issue 11:

- a) Order the employer to immediately stop the practice of deducting the entire US\$ 5.00 attendance bonus in cases where workers take authorized leave.
- b) Reject the demand of workers asking for US\$ 5.00 attendance bonus when workers take authorized sick leave with proper medical certificates.

Issue 12:

Order the employer to follow the Labour Law by not discriminating against the union and not hounding union members for mistakes.

Issue 13:

Order the employer to provide US\$ 45.00 wages per month for probationary workers and US\$ 50.00 wage for full right workers.

Issue 15:

Order the employer to arrange procedures for workers to easily ask for leave.

Issue 16:

Order the employer to collect US\$ 3.50 from workers when they lose their cards.

Issue 20:

Order the employer to prepare transportation to send workers home when they work overtime from 8:00 p.m. to 10:00 p.m.

Issue 21:

Order the employer to schedule workers to come to work and leave work by the set time of the company, which means that no early starts or early departures.

Type of Award: Non binding awards

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

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by employer party:

Name: **Ing Sothy**

Signature:

Arbitrator chosen by the worker party:

Name: **Ann Vireak**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: