



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 70/07 – LA Garment

Date of Award: 21 August 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: **Tuon Siphann**

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

DISPUTING PARTIES

Employer party:

Name: **LA Garment**

Address: Russian Federation Blvd, Sangkat Toeuk Thla, Khan Russey Keo, Phnom Penh

Telephone: 012 928 966 Fax: N/A

Representative:

1. Mr. Poav Arun The Company's Administrative Assistant

Worker party:

Name: **Khmer Youth Trade Union (KYTU) at LA Garment**

Address: No. 34, Street 265, Sangkat Toeuk Laak III, Khan Toul Kork, Phnom Penh

Telephone: 012 514 948, 016 686 144 Fax: N/A

Representatives:

1. Mr. Hing Bunthoeun KYFTU Official;
2. Mr. Poeun Sam Oeun KYFTU Official;
3. Mr. Sea Sokly KYFTU Official;
4. Mr. Mum Sampos President of KYTU at LA Garment;
5. Mr. Chea Saly Vice-President of KYTU at LA Garment;
6. Ms. Oeun Phal Secretary of KYTU at LA Garment;

7. Ms. May Nan Committee Member of KYTU at LA Garment;
8. Ms. Kong Sreykeo Committee Member of KYTU at LA Garment.

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

1. Members of Khmer Youth Trade Union still demanded that the company provide an increase of US\$5 in addition to the US\$50 of minimum wage. The company claimed that it would provide an increase of US\$4 for those workers who had received minimum wage of US\$50, but the company would not provide an increase for workers whose minimum wage already exceeded US\$50.
2. Members of Khmer Youth Trade Union demanded that the company provide workers the annual bonus of US\$50 at the end of each year. The employer party claimed that the company could not afford to do so.
3. Members of Khmer Youth Trade Union demanded that the company increase the attendance bonus by another US\$5 to each worker. The company claimed that it could not afford it.
4. Members of Khmer Youth Trade Union demanded that the company not deduct wage and attendance bonus when a worker is absent without permission for one day. The employer party claimed that the company to follow the Internal Work Rules of the company and the Labour Law.
5. Members of Khmer Youth Trade Union demanded that the company provide transport service to workers when they work overtime for two hours or provide each worker with a travel allowance of 5,000 riels. The employer party claimed that the company can provide transport service occasionally, but not the travel allowance.
6. Members of Khmer Youth Trade Union still demanded that the company allow workers to leave work at 3:00 p.m. on Saturday. The company allows workers to leave work at 4:00 p.m.
7. Members of Khmer Youth Trade Union still demanded that the company pay the workers within 48 hours after their resignation. The company could not pay workers within 48 hours but would pay on the monthly pay day.
8. Members of Khmer Youth Trade Union still demanded that the company pay three-month wages to workers who take maternity leave. The company claimed to comply with the Law by paying 50 percent each month.
9. Members of Khmer Youth Trade Union demanded that the company compensate appropriate termination payment to 50 workers and reinstate the seven specialized tailors. The employer party claimed that the company had already compensated

severance pay to workers. Regarding the reinstatement of the seven tailors, the employer party claimed that there is no vacancy in the company.

10. Members of Khmer Youth Trade Union demanded that the company provide each worker with additional US\$20 of overtime allowance per month.

11. Members of Khmer Youth Trade Union demanded that the company establish day care center or provide an exchange of three cans of milk powder (1 can is equal to 1 kg of milk powder) and US\$30 to female workers in place of the establishment of the day care centre. The company could not afford that, but the company would provide US\$5 per month for a period of three years.

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 which took place on 30 July 2007 was unsuccessful, and the non-conciliation report No. 731 was submitted to the Secretariat of the Arbitration Council on 31 July 2007.

HEARING AND SUMMARY OF PROCEDURE

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

Date of hearing: 3 August 2007 (from 8:00 a.m. to 12:00 p.m.)

Procedural issues:

Having received the complaint from the workers on 20 June 2007 from Khmer Youth Trade Union at LA Garment which demanded the company improve certain working conditions, the Department of Labour Disputes designated its expert official to settle and conciliate the dispute. Five out of a total of 16 issues were successfully conciliated, and the last conciliation session was held on 11 July 2007. The 11 remaining non-conciliated issues were submitted to the Secretariat of the Arbitration Council on 31 July 2007.

Having received the case, the Secretariat of the Arbitration Council summoned the disputing parties to attend a hearing to conciliate the remaining 11 issues on 3 August 2007 at 8:00 a.m. Both parties were present at the hearing summoned by the Arbitration Council.

The Arbitration Council made a further attempt to conciliate the dispute and three (Issues 5, 10 and 11) out of the 11 non-conciliated issues were conciliated. Therefore, the

Arbitration Council considers only the non-conciliated issues --1, 2, 3, 4, 6, 7, 8 and 9 based on the evidence and the fact findings as follows:

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party:

1. Minute of the meeting on Wage Increase dated 27 January 2007;
2. Minute of the collective labour dispute conciliation dated 11 July 2007;
3. A collective Memorandum of Understanding (MoU) between the employer and C.CAWDU, Cambodia Workers Labour Trade Union (CWLU) and Free Trade Union of Workers of Kingdom of Cambodia (FTUWKC) at L.A Garment dated 10 June 2005;
4. Notification 745/06 of the Ministry of Labour and Vocational Training;
5. Procedures for taking leave dated 17 May 2007;
6. Authorization letter No. 070807-01 L.A of the Director of L.A Garment Company to Mr. Pov Arun dated 7 September 2007;
7. Letter requesting for a discussion of Khmer Youth Trade Union dated 13 June 2007;
8. Minute of the labour discussion meeting dated 21 May 2007;
9. Table of Wage for May 2007;
10. Minute of the collective labour dispute conciliation at L.A Garment Company dated 21 May 2007;
11. Internal Work Rules of the Company No. 072 dated 17 September 2004;
12. Internal Work Rules of the Company No. 045 dated 7 May 1999;
13. Business License registration dated 29 April 2004;
14. Statute of the Company.

Provided by the worker party:

1. Letter No. 495 dated 13 June 2007 requesting for the collective labour dispute conciliation at L.A Garment Company;
2. Minute of the collective labour dispute conciliation dated 21 May 2007.

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

1. Letter No. 1026 dated 8 August 2007 on the collective labour dispute conciliation at L.A Garment Company of the Minister of Labour and Vocational Training;

2. Report No. 731 dated 30 July 2007 on the collective labour dispute conciliation at L.A Garment Company of the Director of the Department of Labour Disputes;
3. Minute of the collective labour dispute conciliation dated 11 July 2007.

Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 317 dated 1 August 2007 to the worker party to attend the hearing;
2. Invitation No. 316 dated 1 August 2007 to the employer party to attend the hearing.

FACTS

- Having examined the report on the collective labour dispute conciliation
- Having listened to the testimonies from both the employer party and the worker party
- Having reviewed other supplementary documents

The Arbitration Council finds that:

- L.A Garment Factory employs approximately 4,500 workers in total. The factory is divided into two buildings named LA 1 and LA 2. Each LA Building consists of approximately 2,000 workers.
- Based on the minute of the collective labour conciliation dated 26 June 2007, 1,900 out of 4,500 workers were directly involved in the dispute.
- There are six unions within the factory: 1) Khmer Youth Trade Union, 2) Free Trade Union of Workers of Kingdom of Cambodia (FTUWKC), 3) Trade Union for Promoting Workers' Rights (TUPWR), 4) C.CAWDU, 5) National Industrial Trade Union of Cambodia (NITUC) and 6) Cambodia Workers Labour Trade Union (CWLU). Both parties asserted that none of the unions has the most representative status.
- Khmer Youth Trade Union, the claimant, has about 1,500 members; 570 of them work in LA 1 and 900 members work in LA 2.

Issue 1: The workers demanded that the company give an additional US\$5 to workers whose wages are more than US\$50

- The company provided an additional US\$5 to workers who had received US\$45 per month based on the Notification 745/06. The company also provided an additional US\$4 to workers who received US\$50. However, the company did not increase the wages for those who already received more than US\$50.
- The workers demanded that the company increased US\$5 for those who already received more than US\$50 claiming that it was not fair that the company did not increase their wages because they are all Unit Chiefs and highly specialised. The worker party did not provide further statements or evidence.

- The employer party claimed that it could not afford the increase and it would not give an increase because the company has already complied with Notification 745/06.
- The worker party claimed that there are only few workers who received more than US\$50 and have not received the increase but they could not remember their names and promised to provide the name list to the Arbitration Council by 7 August 2007. Up until the due date, the Arbitration Council did not receive the name list of workers who were making the demand from the union.

Issue 2: The worker party demanded that the company provide the annual bonus of US\$50 at each year end

- The worker party demanded that the company provide the annual bonus of US\$50 at the end of each year claiming that workers have worked for the company for many years and have helped the company make a lot of profit.
- The worker party claimed that the company has never provided the annual bonus to workers at the end of each year since the company started its operation in 2004.
- The workers claimed that the demand was not stated in any law or agreement.
- The employer party claimed that the company could not afford such provision claiming that the company has lost a lot because the workers went on strike very often.
- The workers did not refute the claim raised by the employer party.
- The worker party did not provide other evidence to support its claim.

Issue 3: The workers demanded that the company provide an increase of US\$5 to the attendance bonus

- The workers demanded that the company increase their attendance bonus by an additional US\$5 claiming that the company deducts the attendance bonus when the workers take a half-day leave with permission and take 20-minute leave without permission.
- The employer party claimed that it could not afford such provision claiming that the company has lost a lot because the workers went on strike very often.
- The employer party claimed that regarding the attendance bonus, the company requested compliance with the collective Memorandum of Understanding signed between C.CAWDU, Cambodia Workers Labour Trade Union and Free Trade Union of Workers of Kingdom of Cambodia on 10 March 2005. The union claimed that the collective Memorandum of Understanding does not apply to Khmer Youth Trade Union. The Memorandum of Understanding No. 023 was registered on 14 March 2005.

Issue 4: Members of Khmer Youth Trade Union demanded that the company not deduct wages or attendance bonus when the workers take one-day leave without permission

- For leave without permission, the company deducts wages in proportion to the number of days of leave. Regarding the attendance bonus, the company deducts the entire the US\$5.
- Members of Khmer Youth Trade Union demanded that the company not deduct wages or attendance bonus when the workers take one-day leave without permission because the wage of the workers is low.
- The company chose to comply with the collective Memorandum of Understanding that it signed with C.CAWDU, Cambodia Workers Labour Trade Union and Free Trade Union of Workers of Kingdom of Cambodia on 10 March 2005.
- The union could not accept the content of Clause 3 of the collective Memorandum of Understanding that the company signed with C.CAWDU, Cambodia Workers Labour Trade Union and Free Trade Union of Workers of Kingdom of Cambodia on 10 March 2005 regarding attendance bonus. The union did not provide the Arbitration Council with any other evidence or reason for consideration.
- Clause 3 of the collective Memorandum of Understanding dated 10 March 2005 provides that, "*Attendance bonus of US\$5 shall be given to those who work a full month of working days (excluding Sundays and National holiday(s)). Even if the worker is absent with a valid reason, his or her attendance bonus of US\$5 will be lost. If the worker takes sick-leave with valid certification, he or she can still receive the attendance bonus as long as the leave does not exceed two days. Coming to work late for 20 minutes per month or leave work early is considered as not coming to work regularly and he or she shall not receive the attendance bonus.*"
- Article 6 of the company's Internal Work Rules provides that, "*...worker who takes leave without permission, the company shall provide him or her with wage in proportion to the day(s) he or she was absent.*"

Issue 6: Members of Khmer Youth Trade Union demanded that the company allow workers to leave work at 3:00 p.m. on Saturday

- Members of Khmer Youth Trade Union demanded that the company allow workers to leave work at 3:00 p.m. on Saturdays because workers volunteer to work overtime on Sundays and other weekdays for too long.
- The company disagreed asking the workers to leave at 4:00 p.m. as stated in the company's Internal Work Rules and the overtime work is voluntary.

- Article 4 of the company's Internal Work Rules provides that, "*Worker needs to work 8 hours per day or 48 hours per week as stated as follows:*
 - *Morning: from 0700 to 1100;*
 - *Afternoon: from 1200 to 1600.*"

Issue 7: Members of Khmer Youth Trade Union demanded that the company pay workers' wages within 48 hours after he or she resigns

- Members of Khmer Youth Trade Union demanded that the company pay worker's wages 48 hours after he or she resigns because the company will have already been notified.
- The employer party disagreed asking the resigned worker to wait to receive payment on the monthly pay day because the company has only one Accountant and many workers resign each month. The company claimed that it has only one Accountant for LA1, LA 2 and Vivatino Company. The office of the Accountant is in LA 1. The company claimed that many workers resigned each month; for example, about 100 to 200 workers resigned in June 2007.

Issue 8: Members of Khmer Youth Trade Union demanded that the company pay the three-month wage to workers who take maternity leave

- The company claimed that there are around 4,000 female workers in the factory.
- Members of Khmer Youth Trade Union demanded that the company pay the three-month wage to workers who take maternity leave because previously the female workers who take maternity leave get paid once per month and it was difficult for them to come and get paid because their wages are too little.
- The union claimed that two of its members took maternity leave in July. The company did not refute the claim.
- The company disagreed and asked to implement the Law.

Issue 9: Members of Khmer Youth Trade Union demanded that the company compensate appropriate termination payment to 50 workers and reinstate the 7 specialized tailors

- On 9 May 2007, the company decided to dismiss the night shift workers because the night shift work could not be operated. In this case, 50 workers were dismissed by the company.
- On 21 May 2007, the company signed an agreement with the union promising to reinstate the 50 workers on 21 May 2007.

- The agreement provides that, *“The company agreed to reinstate the workers who were dismissed on 9 May 2007, but the company could not compensate the wage and the attendance bonus from the day they were dismissed to 21 May 2007.”*
- On 21 May 2007, the company reinstated the 50 workers but the seven tailors did not return to work because the company placed them in a different unit which required different skill. Apparently, the company did not have vacancies for the position of tailors because in the day shift these positions were all filled up. The workers did not refute the claim.
- Members of Khmer Youth Trade Union demanded that the company compensate appropriate termination payment to the dismissed 50 workers because the company only calculated the last wage when they were dismissed. The workers demanded that the company provide them the compensation in lieu of the notice, the compensation for the unused annual leave and the compensation for the termination of their labour contracts before they expired and the medical examination fee of 12,100 riels.
- The company disagreed claiming that those workers were probationary workers. They worked under the two-month probationary labour contracts. The termination of the probationary workers required neither prior notice nor provision of benefits. The workers did not refute the claim raised by the employer and they did not provide any concrete evidence to the Arbitration Council to support their claim for compensation; for example, the labour contract of each worker with the date he or she started work and the amount of the last wage he or she received.
- The worker party demanded that the company reinstate the seven specialised tailors because based on the agreement dated 21 May 2007, the company promised to reinstate the 50 dismissed workers but only 43 of them were reinstated.

REASONS FOR DECISION

Issue 1: The workers demanded that the company give an additional US\$5 to workers whose wages are more than US\$50

In this case, the workers demanded that the company increase US\$5 to workers who received more than US\$50 claiming that it was not fair that the company did not give them an increase because they were all Unit Chiefs and were highly specialised.

Paragraph 1 of Notification 745/06 provides that, *“The minimum wage for the garment factory workers and footwear workers is US\$45 per month for the probationary workers from 1 month to 3 months. When the probationary period ends, the regular workers shall receive a minimum wage of US\$50 per month.”*

Clause 2 of Paragraph 2 of the above Notification provides that, *“Notification on the implementation of the new minimum wage provision of this Notification shall come into effect from 1 January 2007.”*

Regarding the Notification 745, the Ministry of Labour and Vocational Training issued Notification 806/06 on the implementation of the minimum wage of garment factory workers and footwear workers.

The workers in the dispute received at least US\$50 as the wage per month. They had received this amount of wage before the issuance of Notification 745 dated 23 October 2006, which increased the minimum wage of garment factory workers and footwear workers from US\$45 to US\$50 per month.

In previous awards, the Arbitration Council considered that Paragraph 1 of Notification 745/06 states that regular workers shall receive a minimum wage of US\$50 per month. The Arbitration Council considers that this Notification is to ensure the minimum wage of US\$50 per month; it does not mean that another US\$5 has to be increased for all workers. Therefore, those who received more than US\$50 per month are not entitled to the increase as stated in this Notification. (See Arbitral Award 33/07 – Gold Fame, Issue 6)

In this case, the Arbitration Council also agrees with the previous ruling of the Arbitration Council. Because the Arbitration Council finds that no worker receives less than US\$50 and because there is no agreement between the employer and the workers regarding the increase of the minimum wage, the Arbitration Council considers that the workers' demand does not have a legal basis. The workers' demand was an interests demand which is more than what the Law provides.

Generally, the Arbitration Council will consider interests disputes only if the union that brought the dispute has the most representative status in the factory. The Arbitration Council finds that the union does not have the most representative status. The Arbitration Council always considers that the most representative status provides the legal capacity to a union to negotiate the collective bargaining agreement in a company and provides the legal right to bring an interest dispute before the Arbitration Council for settlement. In order to receive the most representative status, Article 277 of the Labour Law 1997 stipulates that union must be registered and meet other requirements in that Article.

Therefore, the union does not have the legal rights to create a collective bargaining agreement on behalf of all workers in the factory (See Article 96, Clause 2B and Prakas No. 305, Rule 9, Clause 1). This right belongs to the registered the union that has the most representative status and meets other requirements as what stated in Article 277 of the Labour Law. Thus, to be consistent with the previous cases, the Arbitration Council considers that the union does not have enough legal qualification to represent the workers to settle any collective interest dispute of all workers within the factory.

Moreover, Article 43 of Prakas 099/04 provides that, “*Arbitral Award that resolves interest dispute will replace the collective bargaining agreement for a period of one year starting from the date that the Award come into effect unless parties negotiate to create a collective bargaining agreement to replace this Award.*”

Previously, the Arbitration Council finds that if the Arbitration Council issues an Award on this dispute, it will become the collective bargaining agreement that will apply to all workers in the company and will remove other workers’ rights to strike demanding for interest dispute in the future. Thus, it creates unfairness among other workers. (See Arbitral Awards 57/04 – Evergreen, 60/04 – United Art, Issue 3; 08/07 – Xiao Kinh, Issue 3; 33/07 – Gold Fame, Issue 2; and 51/07 – Gold Fame, Issue 4)

Furthermore, the Arbitration Council concludes that the union that has not the most representative status has no rights to bring the interest dispute before the Arbitration Council for settlement. (See Arbitral Awards 57/04 – Evergreen, 60/04 – United Art, Issue 3; and 08/07 – Xiao Kinh, Issue 3)

In this case, Khmer Youth Trade Union does not have the most representative status. Therefore, the Arbitration Council rejects to consider the workers’ demand.

Issue 2: The worker party demanded that the company provide the annual bonus of US\$50 at each year end

In this issue, the workers demanded that the company provide the annual bonus of US\$50 at the end of each year because the workers have worked for the company for several years and have helped the company make a lot of profit.

In this case, the Arbitration Council finds that no provision in the Labour Law or agreement between both parties that requires the company to provide each worker the annual bonus of US\$50 at the end of each year. Thus, the employer is not obliged to provide its profit to the workers at the end of each year.

The Arbitration Council considers that the workers’ demand is an interest demand which is more than what the Law provides. Generally, the Arbitration Council will consider the interest dispute only if the union that brought the dispute has the most representative status in the factory.

In this case, Khmer Youth Trade Union does not have the most representative status. Therefore, the Arbitration Council declines to consider the workers’ claim. (See the reasons above for Issue 1)

Issue 3: The workers demanded that the company provide an increase of US\$5 to the attendance bonus

In the hearing, the worker party claimed that the reason for their claim was because the company deducted the whole attendance bonus when a worker takes half-day leave with permission and 20-minute leave without permission each month.

Paragraph 3 of Notification 745/06 provides, *“Other benefits that workers used to receive based on Notification No. 017 dated 18 July in point 3, 4, 5, and 6 shall remain the same.”*

Paragraph 3 of Notification 017/00 states that, *“Workers who regularly work the days required in a month shall receive at least US\$5 per month.”*

In this case, both parties agreed that the employer provides the US\$5 attendance bonus as determined by the Notification. Thus, the Arbitration Council considers that the employer has already complied with its obligation regarding the provision of the attendance bonus.

In this case, the worker party demanded that the company provide additional US\$5 to the current US\$5. In this case, the Arbitration Council finds that no provision in the Labour Law or any agreement requires the company to increase the US\$5 attendance bonus. Thus, the Arbitration Council considers that the demand of workers is an interest demand because this demand is beyond what the law provides. Generally, the Arbitration Council will consider the interest dispute only if the union that brought the dispute has the most representative status in the factory.

In this case, Khmer Youth Trade Union does not have the most representative status. Thus, the Arbitration Council rejects to consider the workers' demand. (See reason for decision related to interest dispute in Issue 1 above)

Issue 4: Members of Khmer Youth Trade Union demanded that the company not deduct wage or attendance bonus when the workers take one-day leave without permission

The Arbitration Council will consider the demand as follows:

1. The demand that the company not deduct wage when a worker takes one-day leave without permission and;
2. The demand that the company not deduct the attendance bonus when a worker takes one-day leave without permission.

1. The demand that the company not deduct wage when a worker takes one-day leave without permission

In this case, the members of Khmer Youth Trade Union demanded that the company not deduct wage when a worker takes one-day leave without permission because his or her wage is too low.

Article 6 of the company's Internal Work Rules states, "...worker who take leaves without permission, the company shall provide him or her with wage in proportion to the day(s) he or she does not work."

Based on the content of the Internal Work Rules, the employer party claimed in the hearing that currently the company deducts worker's wage in proportion to the number of day(s) he or she is absent. The Arbitration Council considers that what the employer did was right because the company just complies with its Internal Work Rules. Moreover, both the Labour Law and the company's Internal Work Rules are not intended to encourage undisciplined workers.

Therefore, the Arbitration Council rejects the demand that the company not deduct worker's wage when he or she takes one-day leave without permission.

2. The demand that the company not deduct attendance bonus when a worker takes one-day leave without permission

Paragraph 3 of Notification 745/06 provides, "Other benefits that workers used to receive based on Notification No. 017 dated 18 July in point 3, 4, 5, and 6 shall remain the same."

Paragraph 3 of Notification 017/00 states that, "Workers regularly work the days required in a month shall receive at least US\$5 per month."

In the previous cases, the Arbitration Council interpreted that Paragraph 3 of Notification 017/00 was not precisely stated regarding the term 'regular work'. (See Awards 44/07 – Winner Knitting, Reason for Decision, Issue 2 and 63/07 – Phnom Penh Garment) In this case, the Arbitration Council also agreed with the previous interpretation.

Moreover, the Arbitration Council finds that the company signed a Collective Memorandum of Understanding with C.CAWDU, Cambodia Workers Labour Trade Union and Free Trade Union of Workers of Kingdom of Cambodia on 10 March 2005 and was registered with No. 023 on 14 March 2005. Article 3 of the Collective Memorandum of Understanding dated 10 March 2005 provides that, "Attendance bonus of US\$5 shall be given to those who work full month of working days (excluding Sundays and National holiday(s)). Even if the worker is absent with valid reason, his or her attendance bonus of US\$5 will be lost. If the worker takes sick-leave with proper prescription, he or she can still receive the attendance bonus as long as the leave does not exceed two days. Coming to work late for 20 minutes per month or leave work early is considered as not coming to work regularly and he or she shall not receive the attendance bonus."

Based on Article 3 of the Collective Memorandum of Understanding, the Arbitration Council finds that the term 'work regularly' used within this company is: "1) work full month of working days (excluding Sundays and National holidays and 2) coming work 20 minutes late or leaving work early is considered not working regularly."

However, in this case, the members of Khmer Youth Trade Union claimed that they could not accept the content of Article 3 of the Collective Memorandum of Understanding and demanded that the company not deduct the US\$5 attendance bonus when the worker takes one-day leave without permission because the wage is already low. Moreover, they disagreed with Article 3 of the Collective Memorandum of Understanding that the company signed with C.CAWDU, Cambodia Workers Labour Trade Union and Free Trade Union of Workers of Kingdom of Cambodia on 10 March 2005, which states that for any worker who comes to work 20 minutes late per month (without permission), the company will not provide the US\$5 attendance bonus.

The Arbitration Council considers that what was mentioned by Khmer Youth Trade Union was not right because Paragraph 3 of Notification 017/00 and Article 3 of the Collective Memorandum of Understanding dated 10 March 2005 are intended as motivation for the workers who come to work regularly, but not the workers who take leave without permission. The Arbitration Council considers that '*absence without permission*' means that a worker does not come to work for the employer regularly. Taking leave without permission can jeopardize the production line of an enterprise because the employer is not able to organize human resource in time; for example, transferring the workers from other units to replace those who are absent without permission. Thus, the workers' demand for this issue was not right because both the Labour Law and the company's Internal Work Rules are not intended to encourage undisciplined workers.

In conclusion, the Arbitration Council declines to consider the workers' demand that the company not deduct attendance bonus when a worker takes one-day leave without permission.

Issue 6: Members of Khmer Youth Trade Union demanded that the company allow workers to leave work at 3:00 p.m. on Saturday

Article 137 of the Labour Law provides that, "*In all establishments of any nature, whether they provide vocational training, or they are of a charitable nature or liberal profession, the number of hours worked by workers of either sex cannot exceed eight hours per day, or 48 hours per week.*"

Article 138 of the Labour Law provides that, "*The work schedule is set by each enterprise for different jobs based on the nature of their activities and organisation of work.*"

Article 4 of the company's Internal Work Rules states that, "*worker needs to work 8 hours per day or 48 hours per week as stated as follows:*

- *Morning: from 0700 to 1100;*
- *Afternoon: from 1200 to 1600."*

In the previous cases, the Arbitration Council determined that, “The organization of working hours is an absolute right of the employer. (See Awards 11/05 – South Bay, Issue 5; 62/06 – Quick Sew, Issue 5; and 63/06 – FY, Issue 3)

In this case, the Arbitration Council also agrees with the previous determination of the Arbitration Council that the organisation of the working hours for workers is the absolute right of the employer as long as the supervision and direction are not beyond the Director’s rights.

In this case, the employer schedules 8 working hours per day or 48 working hours per week. The Arbitration Council considers that the employer has already complied with the Labour Law. However, the members of Khmer Youth Trade Union demanded that the company allow workers to leave work at 3:00 p.m. on Saturday because workers volunteer to work overtime on Sundays and on week days.

The Arbitration Council considers that the workers’ demand is an interest demand which is more than what the Law provides. Generally, the Arbitration Council will consider the interest dispute only if the union that brought the dispute has the most representative status in the factory.

In this case, Khmer Youth Trade Union does not have the most representative status. Thus, the Arbitration Council decides not to consider the workers’ demand. (See reasons regarding interest dispute in Issue 1 above)

Issue 7: Members of Khmer Youth Trade Union demanded that the company pay workers’ wages within 48 hours after he or she resigns

Paragraph 5 of Article 116 of the Labour Law provides that, “...*In the event of termination of a labour contract, wage and indemnity of any kind must be paid within forty-eight hours following the date of termination of work.*”

In this case, the members of Khmer Youth Trade Union demanded that the company pay the workers wage within 48 hours after he or she resigns, but the employer disagreed and asked the resigning worker to wait until the [regular] pay day because the company has only one Accountant and many workers resign each month.

The Arbitration Council considers that what the company did was not consistent with the content of the Labour Law because the Law requires the employer to pay the worker’s wage and all termination payment within 48 hours after he or she resigns.

Therefore, the Arbitration Council considers that the employer needs to stop the current practice and pay the wages and all termination payment to the worker within 48 hours after he or she resigns.

Issue 8: Members of Khmer Youth Trade Union demanded that the company pay the three-month wage to workers who take maternity leave

The workers demanded that the company provide the three-month wage to workers who take maternity leave.

Article 183 of the Labour Law states that, *“During the maternity leave as stipulated in the preceding article, women are entitled to half of their wage, including their perquisites, paid by the employer.*

Women fully reserve their rights to other benefits in kind, if any.

Any collective agreement to the contrary shall be null and void.

However, the wage benefits specified in the first paragraph of this article shall be granted only to women having a minimum of one year of uninterrupted service in the enterprise.”

The Arbitration Council considers that this Article does not provide any instruction regarding the timing when payment should be made.

Moreover, the Arbitration Council finds that Article 115 (3) of the Labour Law provides that, *“Payment shall not be made on a day-off. If payday falls on such a day-off, the payment of wages shall be made a day earlier.”*

Regarding this Article, in the previous awards the Arbitration Council considers that allowance for the maternity leave shall be made to the relevant worker before the maternity leave starts. (See Arbitral Awards 57/06 – Evergreen, Issue 6 and 97/06 – New Max, Issue 1)

In this case, the Arbitration Council agrees with the above interpretation because the worker is entitled to this allowance as stated in Article 115 (3) of the Labour Law. Therefore, to be consistent with the previous Arbitral Awards, the Arbitration Council decides to order the employer to pay the maternity payment to 15 workers before their maternity leaves start.

Issue 9: Members of Khmer Youth Trade Union demanded that the company compensate appropriate termination payment to 50 workers and reinstate the 7 specialized tailors

In this case, the members of Khmer Youth Trade Union demanded that the company compensate an appropriate termination payment to 50 workers and reinstate the seven specialised tailors. Thus, the Arbitration Council considers this issue as follows:

1. The demand that the company compensate an appropriate severance pay to 50 workers.
2. The demand that the company reinstate the seven specialised tailors.

1. The demand that the company compensate an appropriate severance pay to 50 workers

In the hearing, the worker party demanded that the company provide them with the compensation in place of prior notice, the compensation for the unused annual leave and the

compensation for the termination of their labour contracts before they expired and the medical examination fee of 12,100 riels. The company disagreed because they were all probationary workers with two-month contracts and claimed that the termination of probationary workers does not require the company to give prior notice or provide any benefit.

A. Regarding the demand for compensation in place of prior notice

Article 82 of the Labour Law provides that, *“The contracting parties are released from the obligation of giving prior notice under the following cases:*

1. For a probation or an internship specified in the contract.”

In this case, the 50 workers worked under the two month-probationary contracts. Based on the above Article, the Labour Law does not require the employer to give prior notice in case workers' labour contracts are probationary labour contracts. Thus, the Arbitration Council decides to reject the workers' demand that the company provide compensation in place of prior notice.

B. Regarding the demand for compensation for unused annual leave and compensation for termination of their labour contracts prior to expiration

Article 123 of the Code of Civil Procedure, promulgated on 6 July 2006 and coming into effect in Phnom Penh on 17 July 2007 and throughout the country on 27 July 2007, provides for Decision-Making Principles Based on Evidence. Paragraph 1 of Article 123 provides that, *“The Court shall acknowledge the fact based on the evidence. However, the Court may consider the overall situation which arises when the reasons are verbally given.”*

The Arbitration Council considers that this Article requires the Court to make decisions based on the evidence and empowers the Court to consider other evidence that arises during the hearing. The Code of Civil Procedure is a basic law; thus, this provision regarding evidence has supremacy over all other laws in civil cases including cases in the labour sector.

Clause 25 of Prakas 099/04 on the Arbitration Council provides that, *“The Arbitration Council shall be free to determine the admissibility, relevance, materiality and weight of evidence as well as the allocation of the burden of proof.”*

The Arbitration Council considers that the provisions relevant to evidence as stated in Article 25 of Prakas 099/04 on the Arbitration Council also requires the Arbitration Council to make its decision based on the evidence and empower the Arbitration Council to consider other evidence that arisen during the hearing as what stated in Article 124 (1) of the Code of Civil Procedure. It means that the content of Clause 25 of this Prakas gives the Arbitration

Council freedom to determine the admissibility, relevance, materiality and weight of evidence as well as the freedom to determine which party shall provide the evidence to prove.

In the previous cases, the Arbitration Council rejected the workers' demand because the lack of the evidence. (See Arbitral Awards 63/04 – Shine Well, Issue 4; 99/06 – South Bay, Issue 5; and 33/07 – Gold Fame, Issue 4)

In this case, the Arbitration Council also agrees with the Arbitration Council's interpretation in the previous cases.

In this case, the members of Khmer Youth Trade Union did not provide any evidence as the basis for the Arbitration Council to consider; for example, the labour contract of each worker, the date on which each worker started work, the duration each worker worked and the last wage each of them received. The Arbitration Council did not see other evidence arise during the hearing. Thus, the Arbitration Council has no evidence to consider this case.

Therefore, the Arbitration Council decides to reject the demand.

C. For the demand that the company reimburse the medical examination fee

In the hearing, the worker party demanded that the company reimburse the 50 workers their medical examination fee claiming that it was part of the termination payment of the night-shift workers. The Arbitration Council considers that severance pay means the money that shall be given when the labour contract is terminated. Severance pay includes:

- Indemnity for the premature termination of a contract by the will of the worker or the employer alone as stated in Article 73 of the Labour Law.
- Compensation for the termination of a labour contract without prior notice as stated in Article 75 and 77 of the Labour Law.
- Indemnity for the dismissal as stated in Article 89 of the Labour Law.
- Indemnity for the annual leave as stated in Article 167 of the Labour Law.
- Compensation for the termination of the labour contract without valid reasons as stated in Article 91 of the Labour Law (For more discussion on severance pay, see Award 66/07 – Chea Fong)

Therefore, the Arbitration Council considers that the medical examination fee does not fall in package of the termination payment or related to the termination of the workers.

Article 312 of the Labour Law provides that, *“The Council of Arbitration has no duty to examine issues other than those specified in the non-conciliation report or matters, which arise from events subsequent to the report, are the direct consequence of the current dispute...”*

The dispute regarding the demand for the medical examination fee was not stated in the non-conciliation report submitted to the Arbitration Council by the Ministry of Labour. Moreover, this dispute did not arise from the events subsequent to the report, which is a

direct consequence of the current dispute. Thus, the Arbitration Council declines to consider the workers' demand that the company reimburse the medical examination fee to workers.

2. The demand that the company reinstate the seven specialised tailors

In the hearing, the worker party demanded that the company reinstate the seven specialised tailors based on the agreement dated 21 May 2007. On 21 May 2007, the employer agreed to reinstate the seven workers as ordinary workers. The employer agreed to reinstate the 50 workers, but the seven tailors refused to come to work because the company placed them in a different unit for which they are not skilled. The company did not have vacancies for the positions of tailors because these positions in the day-shift were all filled up.

The agreement between Khmer Youth Trade Union and LA Company dated 21 May 2007 states that, *"The company agreed to **reinstate** the dismissed workers on 9 May 2007, but the company could not compensate the wages and the attendance bonus from the day they were dismissed to 21 May 2007."*

The above agreement states precisely that the company agreed to reinstate the dismissed workers. The Arbitration Council notes that the term "**reinstate**" means the employer is obliged to re-employ the dismissed workers to the same position they were working. According to the facts, the employer party agreed to reinstate the seven tailors as ordinary workers but not as the tailors. Thus, the employer did not fully comply with the above agreement signed with the worker party. The Arbitration Council notices that even though the employer does not have the vacancies for the seven tailors, the above agreement requires the employer to reinstate the seven workers to the same positions.

Therefore, the Arbitration Council decides that the employer has to reinstate the seven tailors to the same positions as stated in the agreement signed by both parties.

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

DECISIONS AND ORDERS

- Issue 1:** Decline to consider the workers' demand that the company provide an increase of US\$5 to workers who received more than US\$50.
- Issue 2:** Decline to consider the workers' demand that the company provide each worker the annual bonus of US\$50 at every year end.
- Issue 3:** Decline to consider the workers' demand that the company provide an additional US\$5 to the attendance bonus for each worker.

Issue 4: Rejects the demand that the company not deduct the wage and the attendance bonus when a worker takes one-day leave without permission.

Issue 6: Decline to consider the demand of the members of Khmer Youth Trade Union that the company allow workers to leave work at 3:00 a.m. on Saturdays.

Issue 7: Orders the employer to stop the current practice and pay the wage and all indemnities within 48 hours after he or she resigns.

Issue 8: Orders the employer to pay the three-month maternity wage to workers before their maternity leaves start.

Issue 9:

- A. Rejects the demand of the members of Khmer Youth Trade Union that the company provide the compensation in place of prior notice.
- B. Rejects the demand of the members of Khmer Youth Trade Union that the company provide the compensation for the premature termination of their labour contracts and their unused annual leave.
- C. Decline to consider the workers' demand that the company pay them the medical examination fee of 12,100 riels.
- D. Order the employer to reinstate the seven tailors to the same positions as stated in the agreement signed by both parties.

Type of Award: Binding Award

This Award is immediately binding upon the parties after the notification of the award.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Chhiv Phyum**

Signature:

Arbitrator chosen by the worker party:

Name: **Tuon Siphann**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: