



**KINGDOM OF CAMBODIA**

**NATION RELIGION KING**

**ក្រុមប្រឹក្សាអន្តរាគមន៍**

**THE ARBITRATION COUNCIL**

**Case number and name: 73/08-Yung Wah I**

**Date of Award: 20 June 2008**

### **ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

#### **ARBITRATION PANEL**

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

Arbitrator chosen by the worker party: **Tuon Siphann**

Chair Arbitrator (chosen by the two Arbitrators): **Pen Bunchhea**

#### **DISPUTING PARTIES**

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

Name: **Yung Wah I Company**

Address: Prek Samrong Village, Ta Khmao Commune, Ta Khmao District, Kandal Province

Telephone: 012 510 966 / 023 425 389 Fax: N/A

Representative:

- |                      |                         |
|----------------------|-------------------------|
| 1. Mr. Ng Min Chuan  | General Affairs Manager |
| 2. Mr. Som Uy Pisey  | Administration Officer  |
| 3. Ms. Ly Muy Chheng | Administration Officer  |

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

Name: **Khmer Youth Federation Trade Union (KYFTU) and local Khmer Youth Trade Union (KYTU) at Yung Wah I**

Address: Prek Samrong Village, Ta Khmao Commune, Ta Khmao District, Kandal Province

Telephone: 012 906 811 Fax: N/A

Representative:

- |                      |   |
|----------------------|---|
| 1. Mr. Huy Sopharith | Officer of KYFTU                            |
| 2. Mr. Our Phoeurn   | Officer of KYFTU                            |
| 3. Mr. Pov Sithorn   | President of KYTU at Yung Wah I (day shift) |

5. Mr. Pea Phearun	President of KYTU at Yung Wah I (night shift)
6. Mr. Bang Koeurn	Committee member of KYTU at Yung Wah I
7. Mrs. Sem Kosal	Secretary of KYTU at Yung Wah I (day shift)
8. Mrs. Pov Chenday	Committee member of KYTU at Yung Wah I

### **ISSUES IN DISPUTE**

(In the Non-Conciliation Report)

- 1- The workers demand that the Company set the piece rate at the same amount practiced in the past. The Company party does not agree, because the price is set according to activity of MI, style and order.
- 2- The workers demand that the Company increase the wages of workers who have three or more skills by US\$ 10 or more. The Company party does not agree but will follow the Labour Law.
- 3- The workers demand that the Company provide equal wages for Cambodian group leaders. The Company does not agree; it provides wages to Cambodian group leaders according to the individual's skill and capacity.
- 4- The workers demand that the Company increase the seniority bonus by US\$ 1 for workers who have been working for 5 years or more. The Company party does not agree; it follows the Labour Law.
- 5- The workers demand that the Company provide a detailed monthly pay slip. The Company party does not agree but will follow the existing practice.

### **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.273/08 KB/KN, dated 20 May 2008, was submitted to the Secretariat of the Arbitration Council on 21 May 2008.*

### **HEARING AND SUMMARY OF PROCEDURE**

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

**Date of hearing:** 5 June 2008 (From 8:00 a.m. to 12:00 p.m.)

**Procedural issues:**

On 8 May 2008 the Department of Labour and Vocational Training of Kandal Province assigned its official to conciliate a 16 issue collective labour dispute and 11 issues were conciliated. The 5 non-conciliation issues were referred to the Secretariat of the Arbitration Council on 21 May 2008.

Having received the case, the Secretariat of the Arbitration Council summoned both the employer party and the worker party to the hearing and conciliation on the five non-conciliation issues on 5 June 2008 at 8:00 a.m.

Both parties were present as invited by the Arbitration Council. The Arbitration Council tried to seek more information relevant to this dispute and attempted to further the conciliation on the five non-conciliation issues and issue 2 was conciliated as the worker party withdrew the issue. Therefore, in this case the Arbitration Council considers only issues 1, 3, 4 and 5 based on the evidence and statements of the parties in the hearing as follows:

**EVIDENCE**

**Witnesses and experts:** *N/A*

**Documents, Exhibits and other evidence considered by the Arbitration Council****Provided by the employer party:**

1. Certificate of commercial registration of the Company No. 981 PN.NTK, dated 27 March 1998;
2. Internal Work Rules of Yung Wah Company No. 047 SKBY, dated 19 February 2002;
3. Memorandum and statute of Yung Wah Company, dated 2 April 2002;
4. Power of attorney by Fan Shiao Fen to Mr. Ng Min Chuan, dated 5 June 2008;
5. Letter by the chief of Department of Labour and Vocational Training of Kandal Province No. 001/07 KBV/PrT, dated 9 January 2007;
6. Minutes of the election of worker delegate and assistant worker delegate, dated 06 January 2007.

**Provided by the worker party:**

1. Notification letter No. 235 SSK, dated 31 March 2008 regarding election to change leadership of local KYTU at Yung Wah I (night shift)
2. Certificate of union registration of local KYTU at Yung Wah I Company, dated 09 January 2008.

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

1. Report No. 273/08 KB/KN, dated 20 May 2008 on the collective labour dispute settlement at Yung Wah I Company;
2. Minutes of the collective labour dispute conciliation at Yung Wah I Company, dated 8 May 2008.

Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 365 KB/AK/LKA dated 2 June 2008 to invite the worker party to attend the hearing;
2. Invitation No. 365 KB/AK/LKA dated 2 June 2008 to invite the worker party to attend the hearing;

**FACTS**

- Having reviewed report of collective labour dispute conciliation;
- Having listened to the testimonies from both the worker party and the employer party;
- Having reviewed additional documents.

**The Arbitration Council finds that:**

- Yung Wah I Industrial (Cambodia) Co., Ltd. employs approximately 3,000 workers.
- There are three unions at Yung Wah I Company: (1) C.CAWDU, (2) CLUF and (3) KYTU. None of these unions has most representative status.
- KYTU at Yung Wah I is the claimant in this case. KYTU has approximately 1,101 members at Yung Wah I Company.

**Issue 1: The workers demand that the Company set the piece rates as high as they were set in the past**

- The company sets the piece rate according to the activities of MI, style , purchase orders and by discussing it with the buyer and production department before issuing the piece rate list for workers.
- The company clarifies in the hearing that the company gives the piece rate list to each team to work on at least before they start sewing or when they start sewing. If the rate for an (MI) style has already been set, it cannot be changed. Nevertheless, if there is a new mode, the company sets the rates before giving it to the workers. The workers don't disagree with the company's clarification of how the piece rate is set; however, they claim that before setting the rates the company arranges for a group of workers, comprised of 10 to 15 workers, to do a sewing test working on a new mode for 5 to 6 days before deciding on the rates. Moreover, the workers did give details about the skills of those workers who did the sewing test and how many hours the sewing test took. The company says that it doesn't know about this.

- The company further claims that when setting the piece rates there are some workers who can't earn the minimum daily wage and the company pays them the minimum daily wage. This means that if a worker can't earn US\$1.92 in an eight hour day the company 'tops up' their pay to US\$1.92 per day; however, if the worker can earn more than the minimum wage per day, the Company pays them for the work they have done. The workers agree with the company's claims, but clarify that there are not many workers who can't meet the minimum daily wage and most of them are mobile workers who move from one place to another.
- The company also claims that the Labour Law doesn't clearly stipulate how the piece rate should be set. Nevertheless, states that the company set the piece rates at least equal the minimum wage and when the workers can't meet the minimum daily wage the company still pays them the minimum wage.
- The workers claim that since the company commenced operation in 1998 the company set high piece rates . For instance, the company pays the sewing section US\$ 0.5 to US\$ 0.6 per dozen and in the ironing section if [a worker irons] 350 shirts [s/he] will be paid 350 x US\$ 0.04, for 400 shirts [s/he] will be paid 400 x US\$ 0.05 and for 450 shirts [s/he] will be paid 450 x US\$ 0.06 and so on. But from 2006 the company set lower rates, paying only US\$ 0.2 for sewing a dozen shirts. For the ironing section, the company pays 350 x US\$ 0.01 for 350 shirts ironed, 400 x US\$ 0.02 for 400 shirts and 450 x US\$ 0.03 for 450 shirts. The employer claims that the piece rate varies depending on the style [of clothing] and discussions with the buyer.
- The Arbitration Council asks for documents and evidence from the workers such as what are the MI modes that have low rates compared to the previous rates. What are the MI modes that the workers demand the company to pay higher rates? What are the rates? Which sections of the workers will this affect? How many of them? How many workers can't work to meet the minimum wage payment? The employer and workers agree to provide evidence and related documents to the Arbitration Council on the 9 of June 2008 to support the consideration and decision of the Arbitration Council. The employer provided documents to the Arbitration Council on that date, but the worker didn't.

**Issue 3: The workers demand that the Company provide equal wages for Cambodian group leaders**

- The worker party demand that the Company provide equal wages for Cambodian group leaders regardless of the differences in their seniority, skill and commencement date with the Company because these Cambodian group heads were selected by the Company to work as group heads and the Company already evaluated the workers before selecting them.

- In the hearing the Company states that it cannot provide equal wages to Cambodian group leaders as the wage is based on the skill and capability of each individual.
- The worker party mentions in the hearing that the Labour Law does not prohibit the Company providing more wages to workers.
- The worker party adds that Cambodian group heads receive a monthly wage and perquisites of around US\$ 60 or US\$ 70 to US\$ 80 per month.
- The Arbitration Council asked the worker party to provide document and evidence to support the claim such as what wages should be paid to Cambodian group heads to ensure equal pay; what wages are the Cambodian group heads receiving; in which sections do they work and how many of them are there. In the hearing the workers agreed to provide documents and evidence to the Arbitration Council on 9 June 2008 so as to form the basis for consideration and decision. However the worker party did not provide the documents and evidence to support their demand according to the law by the deadline.
- The worker party claims that the amount is different because the Chinese group head recommended a different amount to the manger.

**Issue 4: The workers demand that the Company increase the seniority bonus by US\$ 1 for those workers who have been working for five years or more.**

- The worker party mentions in the hearing that the Labour Law determine [a worker's' seniority bonus according to the number of years the worker has worked for the Company. If they work for more than one year, they will receive a US\$ 2 seniority bonus and an additional US\$ 1 is added at the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> years. However, the Labour Law does not prohibit the Company providing a higher bonus to workers.
- The worker party request that the Company implement the seniority bonus as follows:

Year of employment	Employer's practice in providing seniority bonus	The workers' demand
One year	US\$ 2 per month	Agree with the practice
Two years	US\$ 3 per month	Agree with the practice
Three years	US\$ 4 per month	Agree with the practice
Four years	US\$ 5 per month	Agree with the practice
Five years or more	No more increase	Demand for additional US\$ 1 every year

- The Company party states in the hearing that the Company's practice of providing the seniority bonus is in accordance with the Labour Law and Notification 017 of the Ministry of Labour and if the law requires that the Company should add US\$ 1 more to workers who have been working for more than five years it will follow the law.

**Issue 5: The workers demand that the Company make a detailed monthly pay slip like other workers**

- In the factory, workers are divided into two types: **type one** who are normal workers and **type two** who are staff working in offices including the translation section [and] around 22 people in the mechanic section, finishing section, cleaning section, security section and cooking section.
- The Company makes a detailed monthly pay slip for workers in type one. However, it does not make this for type two workers. The Company does not make a detailed pay slip for type two workers because they are highly skilled and their salary is already higher than the minimum wage.
- The worker party mentions in the hearing that at each pay period the Company distributes a payroll slip to normal workers, type one workers, with a description which sets out the wage the workers received, their bonus, how much overtime work, how many days the worker worked for the month etc. However, for type two workers, the Company calculates and pays the total wage without description. Workers in type two request that the Company make a detailed pay slip for them like type one workers so that they know how much wage they receive, their bonus, how much overtime work, how many days they worked in the month etc.
- In the hearing the Company states that it has engaged a specialist from Singapore and is in the process of making a new pay slip but the Company does not know how many years this will take; it began in May 2008. However, the specialist informed the Company that it may take 6 months to make and will need to be tested before put into practice.

### **REASONS FOR DECISION**

#### **Issue 1: The workers demand that the Company set the piece rates as high as they were set in the past.**

Article 108 of Labour law states, *“For task-work or piecework whether it is done in the workshop or at home, the wage must be calculated in a manner that permits the worker of mediocre ability working normally to earn, for the same amount of time worked, a wage at least equal to the guaranteed minimum wage as determined for a worker.”*

Article 137 of Labour law states, *“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.”*

Point 1 of the notice No. 745 K.K.B.V dated 23 October 2006 stated, *“Minimum wage of workers in the textile and shoes production is US\$ 45 per month for those in the probation period from one month to three months. After finishing the probation period, the minimum wage is US\$ 50 per month.”*

Based on the legal provisions above, for piecework the employer has to set the rate at a level that will allow a worker of medium skill who works 8 hours per day to earn the minimum wage of US\$ 50 per month.

The Arbitration Council thinks that in order to consider and decide on the relevant demand, the Arbitration Council shall refer to the specific documents and evidence. This includes [evidence about] whether the process of testing in order to determine the piece rate ensures that a worker of medium skill can earn US\$ 1.92 per day and which workers do the test. What are the MI modes that have low rates compared to the previous rates? What are the MI modes that the workers demand to increase rates? What are the rates? This would affect what section of workers, group, and how many of them? How many workers can't earn the minimum wage? In this case, the workers and employer fail to submit sufficient explicit documents and evidence to the Arbitration Council in order to make its consideration and decision. (Please refer to the findings of fact)

In the previous cases, the Arbitration Council rejects the demands of the workers when they fail to provide sufficient evidence for their claims. (Please refer to the Arbitral Award 94/07-Fortune Garment, Issues 6 and 8, case no. 74/07-Global Apparel, Issue 2, and case no. 41/07-M&V III, Issue 1).

In this case, the Arbitration Council finds that the workers who are the claimants shall provide sufficient information or evidence; however, the employer shall also provide evidence to the Arbitration Council in making its consideration. The employer, in this case, provides evidence which could not be considered as it is in a foreign language.

Therefore, the Arbitration Council decides to reject the workers' demand that the Company increase the piece rates as high as it used to practice in the past, because, the workers and employers fail to provide sufficient evidence to the Arbitration Council.

**Issue 3: The workers demand that the Company provide the same wage to Cambodian group leaders**

The workers demand that the Company provide the same wage to Cambodian group leaders regardless of differences in their seniority, skill and employment commencement date at the Company. The Company does not agree because the Company determines the wage to be paid to Cambodian group leaders based on their skill and the capability of each individual. Thus, the Arbitration Council will consider [this issue] as follows:

Article 106 of the Labour Law states, *“For work of equal conditions, professional skill and output, the wage shall be equal for all workers subject to this law, regardless of their origin, sex or age.”*

In this case, the worker party demand that the Company provides equal wages to all Cambodian group heads regardless of differences in their seniority, skill, and date they commenced employment.

Based on the content of Article 106 of the Labour Law, equal wages should be provided only when working conditions, professional skill and output are the same. However, the workers demand equal [wages] for all Cambodian group leaders even though they have different skills. Thus, this demand provides greater benefit than what is provided by the law because the law stipulates that equal wages are paid when workers have the same skill, working conditions, capacity and output. Thus it means that this is an interests dispute.

To date, for an interests dispute the Arbitration Council has always considered whether the union has most representative status because most representative status of a union gives the union legal standing to enter into a CBA with the Company (see Article 96 paragraph 2B of the Labour Law and Prakas 305, Clause 9 paragraph 1) and legal standing to bring an interests dispute to the Arbitration Council for resolution.

In order to receive most representative status, Article 277 of the Labour Law 1997 and Clause 6 of Prakas 305, dated 22 November 2001, require that the number of members of the union is at least more than half the total number of workers in the factory; in addition, it needs to be registered at the Ministry of Labour and fulfill other requirements stated in the Article.

In general, the Arbitration Council declines to consider an interests dispute if the union who brings the labour dispute does not have the most representative status in the factory. (See Arbitral Awards 81/04-Evergreen, Issue 4; 09/05-Kin Tai, Issue 2; 84/07-Yung Wah 2, Issue 1; 108/07-8 Star Sportswear, Issue 3; 135/07-Wilson, Issue 1 and 14/08-Quick Sew, Issue 3).

Based on the above findings of fact, the Arbitration Council finds that KYTU does not have most representative status in Yung Wah I Company. Therefore, the union does not have legal rights to enter into a CBA on behalf of all workers in the Company. (See *Prakas 305, Clause 9, paragraph 1*).

In addition, Clause 43 of Prakas 099, dated 21 April 2004 states that, *“An arbitral award which settles an interest dispute takes the place of a collective bargaining agreement and shall remain in effect for one year from the date on which it becomes final unless the parties agree to make a new collective bargaining agreement replacing the award.”*

Based on Article 43 above, the Arbitration Council finds that if the Arbitration Council issues an Arbitral Award to resolve an interests dispute it will become a CBA for one year. The CBA is applicable to all workers in the Company and the workers' right to strike cannot be exercised to revise the CBA if it has not yet expired. (See *Articles 96 and 321, paragraph 2 of the Labour Law*).

Therefore, the Arbitration Council decides to decline to consider the workers' demand for the Company to provide equal wages to all Cambodian group leaders.

**Issue 4: The workers demand that the Company increase the seniority bonus by US\$ 1 every year after worker's have worked for five years or more**

The Company provides a US\$ 2 seniority bonus to workers who have worked for one year or more and increases it by US\$ 1 at the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> years. After working for five years or more, the Company does not increase the seniority bonus further. The workers demand that the Company increase the bonus by US\$ 1 dollar every year after five years or more of service.

Point 5 of Notification 017 SKBY, dated 18 July 2000 states, *"Workers who have been working for a long time in a factory or an enterprise shall receive a seniority bonus as follows:*

- 5.1 those who have been working more than one year shall receive a seniority bonus of US\$ 2 per month;*
- 5.2 those who have been working more than two years shall receive a seniority bonus of US\$ 3 per month, that is US\$ 2 for the first year plus US\$ 1 for the second year;*
- 5.3 those who have been working more than three years shall receive a seniority bonus of US\$ 4 per month, that is US\$ 2 for the first year plus US\$ 1 for the second year and US\$ 1 for the third year;*
- 5.4 those who have been working more than 4 years shall receive a seniority bonus of US\$ 5 per month, that is US\$ 2 for the first year plus US\$ 1 for the second year, US\$1 for the third year and US\$ 1 for the fourth year..."*

Point 3 of Notification 745 KKBV, dated 23 October 2006 states, *"Benefits workers used to receive from Notification No. 017 SKBY dated 18 July 2000 on points 3, 4, 5 and 6 shall be retained."*

The Notification mentions only that those workers who have been working for more than 4 years shall receive a seniority bonus of US\$ 5 per month but it does not state anything about [workers who have been working for] more than 5 years. In addition, the wording in point 5 of this Notification does not state that that worker is entitled to an increased seniority bonus after the 5<sup>th</sup> year of their employment. Therefore, the Arbitration Council considers that this Notification does not require the Company to increase the seniority bonus by US\$ 1 for every year after the 5<sup>th</sup> year of employment.

In the Company there is no agreement or CBA or past practice which is in accordance with the workers' demand. Thus, the workers' demand for the Company to increase the seniority bonus by US\$ 1 from the 5<sup>th</sup> year of employment is an interests demand which is more than what is provided by the law. This means that this is an interests dispute (*See reasons for decision in issue 3 above regarding interests demand*).

Therefore, the Arbitration Council decides to decline to consider the workers' demand for the Company to increase the seniority bonus by US\$ 1 to those workers who have been working for five years or more.

**Issue 5: The workers demand that the Company makes detailed monthly pay slip like [it provides to] other workers**

The worker party demands that the Company make a detailed monthly pay slip for the second type of worker, which includes staff working in office including the translation section, around 22 people in the mechanic section, finishing section, cleaning section, security section and cooking section in order for them to know what bonus they received, how much overtime work [they did], how many days per month they worked etc. like the first type of workers who are normal workers; the Company makes a detailed pay slip for the first type of worker. Thus, the Arbitration Council will consider [this issue] as follows:

Article 112(b) of the Labour Law stats, *"The employer must take measures to inform the workers in a precise and easily comprehensible fashion of:*

*a. ...*

*b. The items that make up their wage for every pay when there is a change to the items"*

The content of this Article means that when there is any change to workers' wage the employer needs to inform them clearly about their wage. (See *Arbitral Awards 05/06-W&D and 33/07-Goldfame, Issue 10*).

The Arbitration Council notices that there are many factors which can cause changes to workers' wages, for example, absence of workers which can affect their regular attendance bonus, the number of days worked per month and amount of overtime work performed by the workers, etc. Thus, providing details of payment to workers is to inform workers about their wage, bonus and other perquisites they receive in each month.

The Arbitration Council considers that providing details of wages to let workers know about their wage is an arrangement applied generally to all workers and staff in a company to eliminate workers' doubt about their wages and to avoid reoccurrence of complaints.

In this case, the Company provides details to one type of worker (normal workers) as it provides those workers a pay slip on a sheet with detailed information about their wages each month. However, the Company does not make this for the second type of worker, which includes staff working in the office including the translation section, around 22 people in the mechanic section, finishing section, cleaning section, security section and cooking section; as it issues a pay slip which includes only the total amount of wages per month, which is the reason for this complaint. In this case, the Company mentioned in the hearing that at the moment the Company has [engaged] experts from Singapore to make a new monthly pay

slip and the process began in May 2008; it will take 6 months to complete before it can be tested.

The Arbitration Council considers that, although the Company has [engaged] experts from Singapore who are in the process of making new pay slips, in the interim while the experts from Singapore are making the new pay slip, the Company should provide a detailed pay slip to the second type of workers just like the first type of worker; [this is] because the detailed pay slip is a piece of paper with a description giving the workers detailed information about their wages each month in order to inform workers clearly about their wages each month according to Article 112 of the Labour Law as described above; as well as to ensure transparency and eliminate workers' doubt regarding their wage. This will increase effectiveness in the employment and improve the employment relationship between the employer and the workers.

Therefore, in this case, the Arbitration Council decides that the Company should make a detailed pay slip for the second type of worker like the first type of worker.

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

#### **DECISION**

##### **Issue 1:**

- Reject the workers' demand for the Company to set the piece rates as high as they were set in the past.

##### **Issue 3:**

- Decline to consider the workers' demand for the Company to provide equal wages to all Cambodian group leaders.

##### **Issue 4:**

- Decline to consider the workers' demand for the Company to increase the seniority bonus by US\$ 1 every year after the fifth year of service.

##### **Issue 5:**

- Order the Company to make a detailed pay slip for the second type of workers like [that provided to] the first type of workers within one month after this Arbitral Award enters into effect.

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

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

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

Arbitrator chosen by the employer party:

Name: **Ing Sothy**

Signature: .....

Arbitrator chosen by the worker party:

Name: **Tuon Siphann**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: .....