



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

**ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល**

**THE ARBITRATION COUNCIL**

**Case number and name: 74/07 – Global Apparels**

**Date of Award: 30 August 2007**

### **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: **Global Apparels Limited**

Address: Tropaing Tuol Village, Kombol Commune, Angk Snuol District, Kandal Province

Telephone: 012 571 528

Fax: N/A

Representatives:

- |                  |                         |
|------------------|-------------------------|
| 1. Vong Vuthy    | Human Resource Manager; |
| 2. Ry Vannlo     | Compliance Officer;     |
| 3. Cheat Khemara | GMAC Officer.           |

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

Name: **Khmer Youth Trade Union (KYTU), Cambodian Apparel Workers of Democratic Union (CAWDU) and Cambodian Union (CU) at Global Apparel Limited Factory**

Address: Tropaing Tuol Village, Kombol Commune, Angk Snuol District, Kandal Province

Telephone: 012 907 902/988 623/853 254 Fax: N/A

Representatives:

##### **Khmer Youth Trade Union (KYTU):**

- |              |                   |
|--------------|-------------------|
| 1. Nov Titha | Officer of KYFTU; |
|--------------|-------------------|

- |                 |   |
|-----------------|---|
| 2. Sem Sam Oeun | Officer of KYFTU;                             |
| 3. Uor Poeun    | Officer of KYFTU;                             |
| 4. Pech Kunthea | Officer of KYFTU;                             |
| 5. Vay Vathnea  | President of KYTU at Global Apparels Limited; |
| 6. Uy Chanarith | Vice-President of KYTU;                       |
| 7. Horm Chantha | Union Committee Member;                       |
| 8. Yeoun Kahna  | Worker;                                       |
| 9. Yim Vandy    | Worker.                                       |

**Cambodian Apparel Workers of Democratic Union (CAWDU):**

- |               |                                  |
|---------------|----------------------------------|
| 1. Meas Vanny | Conciliating Officer of C.CAWDU. |
|---------------|----------------------------------|

**Khmer Union (KU):**

- |             |                                |
|-------------|--------------------------------|
| 1. Mum Thon | Conciliating Officer of KYFTU. |
|-------------|--------------------------------|

**ISSUES IN DISPUTE**

(In the Non-Conciliation Report)

1. The workers demanded that the company pay the wages when the company had no work for workers once in a while. The employer disagreed.
2. The workers demanded that the company pay back union contribution fees of Khmer Youth Trade Union that the company had not deducted from workers. The employer disagreed and will wait for the decision of the Arbitration Council.
3. The workers demanded that the company increase the seniority bonus of workers who have worked for the company for more than 5 years by providing an additional US\$1 per year. The employer disagreed.
4. The workers demanded that the company provide an additional US\$3 to the workers' current attendance bonus of US\$5. The employer disagreed.

**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 31 July 2007 was unsuccessful, and the non-conciliation report No. 132 was submitted to the Secretariat of the Arbitration Council on 9 August 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:** 17 August 2007 (from 8:00 a.m. to 12:00 p.m.)

### **Procedural issues:**

Having received the complaint from workers by telephone on 31 July 2007 demanding that the company improve working conditions, the Kandal Provincial Department of Labour and Vocational Training designated its expert official to settle and conciliate the dispute, ten out of a total of fourteen issues were successfully conciliated on 31 July 2007. The four non-conciliated issues were submitted to the Arbitration Council on 9 August 2007 through the non-conciliation report No. 132 KB/KN dated 1 August 2007.

Having received the case, the Arbitration Council summoned the disputing parties to attend a hearing on 17 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 inquire more information regarding the dispute and to conciliate the non-conciliated issues; as a result, Issue 3 was conciliated. Therefore, the Arbitration Council considers only the non-conciliated Issues 1, 2 and 4 based on the evidence and the fact finding as follows:

## **EVIDENCE**

**Witnesses and experts: N/A**

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

Provided by the employer party:

1. Business License registration of Global Apparel Company Limited dated 17 May 2007;
2. Internal Work Rules of Jusca Garment (Cambodia) Ltd. dated 1 December 2004;
3. Minute of the collective labour dispute conciliation dated 31 July 2007;
4. Statute of Global Apparel Company Limited dated 10 April 2007;
5. Name list of workers who were permitted to take leave dated 19 March 2007;
6. Name list of workers who were permitted to take leave dated 22 February 2007;
7. Name list of workers who were permitted to take leave dated 1 March 2007;
8. Name list of workers who were permitted to take leave dated 2 May 2007;
9. Name list of workers who were permitted to take leave dated 5 February 2007;
10. Name list of workers who were permitted to take leave dated 19 February 2007;
11. Name list of workers who were permitted to take leave dated 31 January 2007;

12. Name list of workers who were permitted to take leave dated 23 February 2007;
13. Name list of workers who were permitted to take leave dated 7 February 2007;
14. Name list of workers who were permitted to take leave dated 27 February 2007;
15. Name list of workers who were permitted to take leave dated 25 February 2007;
16. Authorization Letter of the Company Director dated 22 August 2007.

Provided by the worker party:

1. Name list of members of Khmer Youth Trade Union at Global Apparel Limited, who agreed to have the company deducts 1,000 riels from their monthly wage for paying union dues to Khmer Youth Trade Union;
2. Statute of Khmer Youth Trade Union at Jusca Company dated 5 July 2004;
3. Letter of the Labour Disputes Department recognizing the new union leaders at Jusca dated 3 November 2006.

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

1. Report No. 132/07 dated 6 August 2007 on the collective labour dispute conciliation at the company;
2. Minute of the collective labour dispute conciliation dated 31 July 2007.

Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 335 dated 13 August 2007 to the worker party to attend the hearing;
2. Invitation No. 334 dated 13 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:**

**Issue 1**

- The workers demanded that the company pay wages when the company had no work for workers once in a while.
- The employer did not [legally] suspend workers' labour contracts when the company did not have work for them to do (the factory suspended its operation when there were not enough buyers or the factory was under construction) from February to April 2007; rather, the company called the workers for a meeting at the office according to the list of workers who were scheduled to take leave and told them about the duration of the leave and that they would receive 50 percent of wages, 50 percent of

attendance bonus and 100% of seniority bonus. Based on the name lists of workers who were permitted to take leave, the leave duration ranged from one week to two months-and-a-half (the name lists also states the payment of 50 percent of wage, 50 percent of attendance bonus and 100 percent of seniority bonus).

- The company claimed that it had asked the workers to a meeting at its office to inform them about the suspension of the company's operation and to ask them to take leave. Administrative representatives—Mr. Hoeung Vanara, Mr. Saom Nom and Mr. Non Saroeun told the workers that they would receive 50 percent of wage, 50 percent of attendance bonus and 100 percent of seniority bonus.
- The worker party alleged that the company had informed them about its suspension of operation because the company had to have the factory renovated, but the company had not informed them about the wage, attendance bonus and seniority bonus they would receive.
- The employer party alleged in the hearing that the name list of workers who would be permitted to take leave included Mr. Uy Channarith, Vice-President of Khmer Youth Trade Union, with ID CA044, who signed and agreed to be paid 50 percent of wage, 50 percent of attendance bonus and 100 percent of seniority bonus. Mr. Uy Channarith did not refute this allegation.
- The worker party claimed that most of workers did not understand the legal procedures and they heard a rumor that whoever did not sign would not receive the wage. They all signed on the name list of workers who had been permitted to take leave; therefore, they requested the company to pay 100 percent of wage.
- The worker party claimed that an agreement was made between workers and the company on 5 June 2006 stating that when the company has no work for the workers and workers are not required to come to the factory, the company will provide workers with 50 percent of wage. However, if the company asks workers to come to the factory, the company will provide workers with 100 percent of wage. The worker party promised to provide this agreement to the Arbitration Council on 23 August 2007, but the Arbitration Council has never received the agreement.
- The employer party mentioned that if the company suspended its operation, the company would provide workers with 50 percent of wage, 50 percent of attendance bonus and 100 percent of seniority bonus, and the workers also agreed. However, if the company suspended labour contracts of workers in accordance with the Labour Law, the workers would receive nothing. The company added that it has always followed the agreement.

## **Issue 2**

- The workers demanded that the company compensate Khmer Youth Trade Union's union contribution fees that the company had deducted from workers but had given to other unions. The four other unions did not make the claim regarding this issue.
- The company always deducted the wage of workers for union contribution fees on the twelfth or thirteenth of each month and forwarded it to the unions.
- The employer party alleged that Khmer Youth Trade Union had requested the company to deduct the union dues from its members attached with resignation letters of workers from their former unions (because they had become members of Khmer Youth Trade Union). However, the company could not deduct the union dues from workers' wages and give it to Khmer Youth Trade Union because the company considered that if it deducted workers' wages for union contribution fees and gave them to the new union (Khmer Youth Trade Union), the former unions would have protested because workers' resignation letters did not have the signature of the representative of the former unions or the former unions were not aware of their members' resignations and the former unions would claim that their members had not resigned yet.
- The employer party acknowledged that the submitted resignation letters of Khmer Youth Trade Union were valid. However, the company still claimed that it was not transparent unless the workers appropriately resigned from the former unions so that there would be no protest from the old unions.
- Khmer Youth Trade Union claimed that workers' resignation letters from their former unions were valid for the company to deduct workers' wages for union contribution fees for Khmer Youth Trade Union because when the company previously deducted the union contribution fees for the former union, it also required the workers' letters, but the company did not deduct the union dues for Khmer Youth Trade Union; thus, Khmer Youth Trade Union demanded that the company compensate the union dues the company had not deducted for Khmer Youth Trade Union.
- The workers promised to provide documents relevant to the statute of the union on 23 August 2007.

## **Issue 4**

- The workers demanded that the company provide an additional US\$3 to the workers' current US\$5 attendance bonus.
- The worker party claimed in the hearing that they demanded this raise to improve their living conditions because the price of goods in the market keeps rising; moreover, the Ministry of Labour and Vocational Training has also increased workers'

minimum wage to US\$50 per month so they also requested the company to increase the attendance bonus. The workers did not provide other reasons or evidence to support the claim.

- The employer party claimed that the company has already been lenient to workers by permitting them to take two-days leave per month that means worker may take one-day leave within two weeks and another one-day leave during the next two weeks without their attendance bonuses deducted. Furthermore, the company permitted workers to include their monthly leave into their annual leave or ordinary leave.

### **REASONS FOR DECISION**

#### **Issue1: The workers demanded that the company pay wages when the company has no work for workers**

Suspension of labour contracts shall be made in accordance to the procedures of the Labour Law as stated in Article 71 (11) with the following reasons:

*“1. When the enterprise faces a serious economic or material difficulty or any particularly unusual difficulty, which leads to a suspension of the enterprise operation.*

*2. This suspension shall not exceed two months and be under the control of the Labour Inspector.”*

Article 72 of the Labour Law provides that, *“The suspension of a labour contract affects only the main obligations of the contract, that are, those under which the worker has to work for the employer, and the employer has to pay the worker, unless there are provisions to the contrary that require the employer to pay the worker.”*

In general, the suspension of a labour contract shall be done with prior notice and with the consent of the Labour Inspector. Based on the content of the above article, the Labour Inspector is the person to determine whether or not the company can suspend workers' labour contracts during the period of inspection as requested by the company for suspension.

In this case, the Arbitration Council finds that when the company had no work for the workers from February to April 2007, the company asked workers to a meeting at its office to inform them about taking leave from one week to two months-and-a-half and payment of 50 percent of wage, 50 percent of attendance bonus and 100 percent of seniority bonus. The Arbitration Council finds that even though workers signed the name list of workers permitted to take leave and who accepted the 50 percent of wage, 50 percent of attendance bonus and 100 percent of seniority bonus, the Arbitration Council still considers that the company must comply with Article 71 (11) of the Labour Law by providing notice to the Labour Inspector for the Inspector's inspection when the company had no work for the workers to perform from

February to April so that such Inspector could decide whether or not the suspension of labour contracts could be allowed.

In the previous awards, the Arbitration Council determined that if the suspension of labour contracts is in accordance with the law as stated in Article 71 (11), then workers will not receive any wage during the suspension. The Arbitration Council also determined that in case the company has no work for the workers to do and the company does not suspend workers' labour contracts according to the Labour Law as stated in Article 71 (11), the company is required to provide 100 percent of workers' wage. (See Awards 21/03 – Loyal Cambodia, Issue 8; 46/04 – M & A Cambodia, Issue 1; 01/04 – New Point II, Issue 1 and 60/04 – United Art, Issue 1.)

In this case, workers agreed to sign on the name list of workers who had been permitted to take leave accepting 50 percent of wage, the Arbitration Council considers that the agreement provides less benefits than Article 13 (1) of the Labour Law which provides that, *"The provisions of this law are of the nature of public order, excepting derogations provided expressly. Consequently, all rules resulted from a unilateral decision, a contract or a convention that do not comply with the provisions of this law or any legal text for its enforcement, are null and void."* Thus, the Arbitration Council considers that this agreement is considered as null and void.

Therefore, the Arbitration Council decides that the employer shall provide another 50 percent of workers' wages during the period that the company did not have work for the workers to do from February to April 2007.

**Issue 2: The workers demanded that the company compensate Khmer Youth Trade Union's union dues that the company had not deducted from workers**

Paragraph 2 of Article 129 of the Labour Law provides that, *"...However, the worker can authorise deductions of his wage for dues to the trade union to which he belongs. This authorisation must be in writing and can be revoked at any time."*

In addition to this Article, Clause 5 of Prakas No. 305 dated 22 November 2001 of the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation states that, *"Any worker, who belongs to a union, may make request in writing 15 days in advance to the employer to make the deduction of his wage for dues to the trade union to which he belongs to comply with Article 129 of the Labour Law"*.

However, Article 281 of the Labour Law stipulates that, *"All employers are forbidden to deduct union dues from the wage of their workers and to pay the dues for them."*

In the previous awards, the Arbitration Council decided that, *"The content of Article 281 is stated to protect workers' right and to forbid the acts of interference from the employer to influence the trade union as stated in Article 280."* (See Award 62/05 – Zhen Tai)

In this case, Khmer Youth Trade Union at the factory has duly registered as the four other registered trade unions in the factory and has applied in writing to the company for the deduction of the 1,000 riels union contribution fees from the wages of workers who are new members of Khmer Youth Trade Union attached with written letters and thumb prints of workers. In the hearing, the company accepted that the application of Khmer Youth Trade Union for the deduction of 1,000 riels union contribution fees from its members' wages was valid. However, the resignation letters did not have the signature of the representative of the former union. In the hearing, the worker party promised to provide the Arbitration Council with the union's statute and workers' resignation letters for the Arbitration Council's consideration, but the worker party never provided the resignation letters of workers. Thus, the Arbitration Council has no base to make a decision regarding the resignation letters of workers from the former unions.

The Arbitration Council considers that the Labour Law provides workers the rights to permit the employer to deduct union contribution fees from workers' wages and employers shall deduct the union dues from workers' wages when workers request in writing for the deduction. However, if a worker, who resigns from his/her former union in which he/she has already requested in writing union contribution fee deductions, becomes a member of a new union and requests the company to deduct the union contribution fee from his/her wage, the worker shall make a request in writing to the company to stop deducting the union contribution fee for his/her former union in accordance to Clause 2 of Article 129 of the Labour Law which states that, *"...However, the worker can authorise deductions of his wage for dues to the trade union to which he belongs. This authorisation must be in writing and can be revoked at any time."* In this case, workers had made requests to the company to deduct the union contribution fee for the [old] unions to which they belonged; then later, after becoming members of a new union, they made another request to the company to deduct the union contribution fee for the new union. Therefore, the Arbitration Council considers that workers did not the request to the company to stop deducting union contribution fees for the former unions in which they belonged. This practice did not comply with paragraph 2 of Article 129 of the Labour Law.

Moreover, the worker party also did not provide the Arbitration Council with the name list of the demanding workers who had requested the union deduction nor the date in which the workers had requested the company to deduct the union contribution fees. The Arbitration Council received only the request letter to the company to deduct union contribution fees for Khmer Youth Trade Union and the name list specifying only the date workers became union members, but not the date they requested the union contribution fee deduction, which cannot be used as bases for making a decision. The Arbitration Council considers that the evidence is not sufficient to be considered by the Arbitration Council.

In the previous awards, the Arbitration Council decided to reject the demand if the demanding party did not provide the Arbitration Council with sufficient concrete evidence as the basis for making decision. (See Awards 63/04 – Shine Well, Issue 4; 99/06 – South Bay, Issue 5)

In this case, the Arbitration Council agreed with the Arbitration Council's interpretation in the above cases. Therefore, the Arbitration Council decides to reject the demand.

**Issue [4]: The workers demanded that the company provide an additional US\$3 to the current US\$5 attendance bonus**

Clause 3 of Notification No. 745 dated 23 October 2006 states that, *“Other benefits that workers used to receive based on Notification No. 017 dated 18 July in Clause 3, 4, 5, and 6 shall remain the same.”*

Clause 3 of Notification No. 017 dated 18 July 2000 states that, *“Workers regularly work the days required in a month shall receive at least US\$5 per month.”* The Arbitration Council notices that the USD5 attendance bonus stated in this Notification is an incentive for workers who regularly work in one month.

The above Notification does not state that workers can receive US\$3 in addition to the US\$5 attendance bonus. Thus, the Arbitration Council considers that this Notification does not require employers to provide workers with US\$3 in addition to the existing bonus of US\$5. The Arbitration Council considers that the demand of workers is an interest demand.

In general, the Arbitration Council will consider the interest dispute only if the union that brought the dispute has the most representative status in the factory. The most representative status of a union provides legal capacity to negotiate the collective bargaining agreement within a factory and legal rights to bring a dispute before the Arbitration Council. In order to receive the most representative status, Article 277 of the Labour Law (1997) provides that a union must be registered and meet all requirements stated in this Article. (See Awards 57/06 – Evergreen, 60/04 – United Art, Issue 3 and 08/07 – Siu Quinh, Issue 3)

In this case, none of the [ ] trade unions in the factory has the most representative status. Therefore, the Arbitration Council decides not to consider the union's demand in this issue.

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

**DECISIONS AND ORDER**

- Order the employer party to provide workers with another 50 percent of wage from February to April 2007, the period in which the company did not have work for workers, within 15 days after this Award comes into effect.
- Decline to consider the workers' demand that the company compensate the union contribution fee that it had not deducted for the Khmer Youth Trade Union.
- Reject to consider the workers' demand that the company provide an increase US\$3 in addition to the current US\$5 attendance bonus.

**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: .....