



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

**ក្រុមប្រឹក្សាអន្តរាគ្នា**

**THE ARBITRATION COUNCIL**

**Case number and name: 80/06 – Gawon Apparel**

**Date of Award: 19 October 2006**

### **ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

#### **ARBITRATOR PANEL**

Arbitrator chosen by the employer party: **Seng Vuoch Hun**

Arbitrator chosen by the worker party: **Liv Sovanna**

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

#### **DISPUTING PARTIES**

##### **1- Employer Party**

Name : **Gawon Apparel Co., Ltd.**

Address : Prek Talong Village, Sangkat Chak Angre Kraom, Khan Meanchey,  
Phnom Penh

Telephone : 012 411 002, 023 984 006 Fax: N/A

Employer Representatives:

1. Mr. Koy Sabun General Manager;
2. Mr. Sambath Chetna Administrative Assistant.

##### **2- Worker party**

Name : **Khmer Youth Federation Trade Union (KYFTU) and Khmer Youth Trade Union** in the company

Address : Kraing Krauch Village, Tien Commune, Kandal Stung District, Kandal Province

Telephone : N/A Fax: N/A

Worker Representatives:

1. Mr. Thun Mom President of KYTU in the company;
2. Mr. Chim Sothea Vice-President of KYTU in the company;

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KHMER ORIGINAL.**

- |                       |                   |
|-----------------------|-------------------|
| 3. Mr. Poeun Sam Oeun | Officer of KYFTU; |
| 4. Mr. Sorn Pisith    | Officer of KYFTU; |
| 5. Mr. Tuch Leap      | Officer of KYFTU; |
| 6. Mr. Ly Kim An      | Officer of KYFTU; |
| 7. Mr. Chan Leakhena  | KYFTU Committee.  |

### **ISSUE IN DISPUTE**

(In the non-conciliation report)

The workers demanded that the company maintain the attendance bonus for the month of July, although they did not work on the morning of 12 July 2006 due to the fact that the company had not paid them their wage. The company could not pay the bonus to the workers since they did not work for the company.

### **JURISDICTION OF THE ARBITRATION COUNCIL**

*The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B (Article 309 to 317) of the Labour Law (1997); the Prakas on the Arbitration Council 099; the Arbitration Council Procedural Rules which form an Annex to the same Prakas; and the Prakas on the Appointment of the Arbitration Council 099/ (Fourth Term).*

*An attempt was made to conciliate the collective labour dispute that is the subject of this Award, as required by Chapter XII, Section 2(A) of the Labour Law. However, the conciliation hearing was unsuccessful, and the non-conciliation report No. 1348 dated 19 September 2006 was submitted to the Secretariat of the Arbitration Council on 19 September 2006.*

### **HEARING AND SUMMARY OF PROCEDURE BEFORE THE ARBITRATION COUNCIL:**

**Place of Hearing** : **The Arbitration Council**, Phnom Penh Centre, Building A,  
Sothearos Blvd, Sangkat Tonle Bassac, Khan Chamkarmon,  
Phnom Penh.

**Date of the Hearing** : - 29 September 2006 (from 08:00 a.m. to 12:00 p.m.)  
- 12 October 2006 (from 08:00 a.m. to 12:00 p.m.)

#### **Procedural Issues:**

Having received the complaint from KYFTU on 16 August 2006 which demanded the company to improve working conditions in accordance with the Labour Law, the Department of Labour Disputes designated its expert official to settle and conciliate the collective labour dispute, which resulted in nine out of ten issues resolved. The non-conciliated issue was submitted to the Arbitration Council on 19 September 2006. Having received the case, the



- 4- List of workers in Gawon Apparel Company, who printed their thumbprints demanding that the company maintain the wage and the attendance bonus for July 2006.
- c.** Provided by the Ministry of Labour and Vocational Training:
- 1- Letter No. 1345 dated 9 October 2006 on the request for the collective labour dispute conciliation at Gawon Company;
  - 2- Report No. 1348 dated 19 September 2006 on the collective labour dispute conciliation in Gawon Apparel Company of Mr. Koy Tepdaravuth, the Director of the Department of Labour Disputes;
  - 3- Minute of the collective labour dispute conciliation dated 12 September 2006.
- d.** Provided by the Secretariat of the Arbitration Council:
- 1- Invitation No. 390 dated 26 September 2006 to the worker party to attend the hearing;
  - 2- Invitation No. 389 dated 26 September 2006 to the employer party to attend the hearing,
  - 3- Invitation No. 402 dated 5 October 2006 to the worker party to attend the hearing;
  - 4- Invitation No. 403 dated 5 October 2006 to the employer party to attend the hearing.

## **FACTS**

Gawon Apparel Company, located on Prek Talong Village, Sangkat Chak Angre Kraom, Khan Meanchey, Phnom Penh and employs approximately 450 workers.

- 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 various documents submitted to the Arbitration Council;

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

- The workers demanded that the company maintain the attendance bonus for the month of July 2006, although the workers did not work for half-a-day because the company had not paid them their wage.
- Routinely, the company pays its workers at 4:00 p.m. on the 10<sup>th</sup> of each month – paid by team leaders at workers' workplace.
- At 4:00 p.m. on 10 July 2006, the workers waited to get their wage as usual; however, the company did not make the payment and the company representative announced

to the workers through the speaker that the company would not pay wage to workers on 10 July 2006 since the bank could not transfer the money in time. The company promised that if the bank could transfer the money on time, the company would make payment to the workers on 11 July 2006; if the bank could not transfer the money on time, the company requested to delay the payment till 15 July 2006.

- The workers did not agree that the company delay the payment till 15 July 2006 and assigned a representative to negotiate with the company to shorten the delay. The company agreed to make the payment on 12 July at 4:00 p.m. instead and promised not to deduct bonus for the workers who worked for two hours on 10 July.
- On 11 July 2006, having known that the money arrived at the bank, the Company Director and the General Manager went to the bank to get the money and hoped that payment could be made to the workers on 11 July 2006.
- Ms. Chaot Bopha told all the team leaders and announced to the workers via the speaker that the company would make payment at 4:00 p.m. on 11 July. However, at around 3:00 p.m., Ms. Chaot Bopha received a phone call from the Director and the General Manager of the factory that the company could not make payment because the computer system at the bank did not work and they were waiting for it to be repaired. If the repairs were completed that evening, the payment could be made. Ms. Chaot Bopha then convened a meeting with all team leaders at 3:55 p.m. to disseminate the news and announced through the speaker that the company had yet to receive the money from the bank. If any worker could wait until 6:00 p.m., and the company could get the money from the bank, they would have their payment made immediately. If they did not choose to wait, the company would make the payment the following day on 12 July 2006 perhaps at noon. At that time, no single worker waited to get the wage.
- On 12 July 2006, the workers came to work as usual – from morning until lunch time. After lunch, at about 12:30 p.m., the workers came to the workplace but they did not work because they were waiting for their wages. At around 1:00 p.m., the company invited all the team leaders and the union representatives to discuss the issue and requested the team leaders to announce to the workers in their respective teams that the company had not yet received the money from the bank because the bank had not finished the repairs and that the workers should continue their work. The majority of the workers had known about this news from their team leaders, while some others received this news from their peers. However, the workers did not resume work and accused the company of lying to them several times and stated that they would wait until the company made the payment.

- At 2:00 p.m. on 12 July 2006, since the workers did not return to work, the company switched off the lights in the factory. However, at 4:00 p.m., the company paid the July wage to all workers by deducting half a day wage and the five-dollar bonus.
- Ms. Thoeun Sam Oeurn, Sewing Team Leader (witness), asserted at the hearing that on 11 July 2006, the company convened two meetings with the team leaders from all units, the workers and the union representatives at 12:00 p.m. and at 3:00 p.m. respectively. After the meeting at 12:00 p.m., she told the workers to wait until the company could get the money from the bank and after the meeting at 3:00 p.m., she told the workers that the payment could not be made since there was a problem with computers in the bank; hence they should wait another day.
- Ms. Thoen Sam Oeun added that on the morning of 12 July 2006, the workers worked as usual until lunch time. At that time, she told them that the payment would be made at 4:00 p.m.; however, they did not believe her and they stopped working.
- Ms. Chorn Sinan, a Sewing Team Leader (witness) asserted at the hearing that at 4:00 p.m. on 11 July 2006, the company convened a meeting. After the meeting, she told the workers that if there were no problems with computers at the bank, the company would make the payment on 12 July 2006.
- Ms. Chorn Sinan added that at around 9:00 or 10:00 a.m. on 12 July 2006, the company invited her to a meeting. After the meeting at 11:00 a.m., she told the workers that the payment would be made at 6:00 p.m. and the company also made an announcement through the speaker, but the workers did not believe it and they stopped working.
- Ms. Sok Somaly, a worker in the Seventh Team of the Inspection Unit (Witness), claimed that the company had lied to her that the payment would be made at 4:00 p.m. on 11 July 2006.
- Ms. Sok Somaly added that on 11 July 2006, Ms. Chaot Bopha announced through the speaker that the payment would be made on 12 July 2006 at noon, but at the promised time, the company failed to make the payment. Consequently, she lost her trust and continued to wait for delivery of the wages.
- Ms. Nil Samphos, a worker in the Ninth Team of the Sewing Unit (witness), mentioned that on 11 July 2006, the company told her that the payment would be made at 4:00 p.m., but it could not be made because of the computer problems at the bank.
- Ms. Nil Samphos added that at about 1:00 p.m. on 12 July 2006, the team leaders told the workers to resume their work. However, since Ms. Chaot Bopha announced on 11 July 2006 that the payment would be made on 12 July 2006 at noon and the

company failed to do so, she lost her trust and she stopped working in order to continue waiting for the payment.

- All the workers received their wages at 4:00 p.m. on 12 July 2006.
- The employer party asserted at the hearing that on 10 July 2006, the workers came to work at around 10:00 a.m. In this case, the company would not deduct the attendance bonus because of the irregularity of the wage payment. However, for the half a day of 12 July 2006 when the workers did not work for the company, the company would not maintain the bonus for them.

### **REASONS FOR DECISION**

The workers demanded that the company pay them the five-dollar attendance bonus for the month of July, although they did not work for half-a-day because they were waiting for the wage payment as announced by the company. Therefore, the Arbitration Council will consider whether or not the act of not working half-a-day by the workers was a strike and whether or not the workers should be paid the five-dollar attendance bonus.

#### **1- Was the act of not working half a day for the company of the workers a strike?**

Article 318 (1) of the Labour Law stipulates, “A strike is a concerted work stoppage by a group of workers that takes place within an enterprise or establishment for the purpose of obtaining the satisfaction for their demand from the employer as a condition of their return to work.” In this case in dispute, the employer asserted that the company could not pay the workers the five-dollar attendance bonus because the workers did not work for half-a-day specifically on the afternoon of 12 July 2006. The company did not consider the workers’ act as a strike nor a demand. However, the worker party asserted that the ceasing of work for half-a-day (the afternoon of 12 July 2006) was because the workers lost their trust in the announcement of the company declaring that the company would make payment as they had promised since the company had announced to the workers and asked each team leader to tell the workers that on 11 July 2006 at 4:00 p.m. the payment would be made for the workers. However, the payment was not made because there were problems with computers at the bank. On 11 July 2006, the company announced that the company might make the payment on 11 July 2006 at noon but when the deadline came, the company failed to make the payment and used the same reason. As a result, the workers lost their trust and ceased to work and they declared that if on 13 July 2006, the company still could not make the payment, the workers would no longer work for the company.

In the previous cases, the Arbitration Council determined an act is a strike only if the act consists of the elements as stipulated in Article 318 of Labour Law, in which there are

significant factors: (1) a group of workers – in this case, there were 450 workers; (2) cease to work – in this case, the workers stopped working for half a day, 12 July 2006; and (3) the purpose of obtaining the satisfaction for their demand – in this case, the workers sat idly and waited until the company pay their wages so that they would resume work. They did this in order to demand that the company make the payment soon.

Based on the above facts, the Arbitration Council therefore considers the above act of the workers as a strike (See Award 33/06 – Mondotex).

## **2- Are the workers entitled to the five-dollar regular attendance bonus?**

Article 332 (1) of the Labour Law provides, “A strike suspends the labour contract. During a strike, the allowance for work is not provided and the wage is not paid.” However, based on Article 334 of the Labour Law, if during a strike the employer recruits new workers for the replacement for the strikers, the employer is obligated to pay the wages of all striking workers for the duration of the strike. In this case, the company did not consider the workers’ act of not working for half-a-day as a strike or demand; hence, the company did not recruit any new workers to replace the strikers.

In the previous cases, the Arbitration Council finds that according to the Labour Law, during a strike, workers are not entitled to wages, even though the strike was conducted in compliance with legal procedures of the Labour Law. However, the workers would be paid full wages for the duration of a strike, if the employer recruits new workers to replace the strikers (See Awards 04/03 - Lida, 03/05 - Flying Dragon, 07/05 - Coca Cola, 33/06 - Mondotex).

Besides, with reference to the previous decisions, the Arbitration Council finds that the workers who went on strike may obtain the regular attendance bonus in proportion to the number of days they had worked in that month if the strike was held in accordance with the legal procedures of the Labour Law. Therefore, if the strike was conducted in conformity with the legal procedures of the Labour Law, workers are entitled to the regular attendance bonus in proportion to the number of days they had worked in that month. On the other hand, if the strike was held in contrary to legal procedures of the Labour Law, workers are not entitled to the attendance bonus (See Awards 22/04 - Raffles Le Royal and 49/05 - Ocean).

According to Article 324 of Labour Law, a strike must be preceded by prior notice of at least seven working days, filed to the employer. Actually, the workers of this company did not deliver a prior notice because they did not consider their act as a strike.

In addition, based on Article 333 of Labour Law, the employer is prohibited from imposing any sanction on a worker because of his or her participation in a strike. This prohibition is fully enforceable only if the strike abides by the legal procedures of the Labour

Law. If the workers do not comply with the Law, they can not expect the benefits of protection from the Law. Consequently, the deduction of the attendance bonus from the strikers by the employer cannot be considered as punishment which is protected by Article 333 of the Labour Law, in such case of non-procedural strike (See Awards 04/03 - Lida Garment Company and 12/05 – P&E Company).

In conclusion, the Arbitration Council finds that the workers' demand for the attendance bonus for the month of July is not an appropriate demand in complied with the Labour Law.

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

**DECISION**

Decline to consider the demand of the workers that the company pay them the five-dollar attendance bonus for the month of July 2006, in which the workers did not work for half a day on 12 July 2006.

**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 with the Secretariat of the Arbitration Council within this time period.*

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

Arbitrator chosen by the employer party:  
Name: **Seng Vuoch Hun**  
Signature: .....

Arbitrator chosen by the worker party:  
Name: **Liv Sovanna**  
Signature: .....

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