



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 81/07- Supreme Garments

Date of Award: 20 September 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: **Liv Sovanna**

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

DISPUTING PARTIES

Employer party:

Name: **Supreme Garments Pty Ltd**

Address: Doeum Mean Village, Doeum Mean Commune, Takmao District, Kandal
Province

Telephone: 012 241 631 Fax: N/A

Representatives:

1. Su Narith The Company's Administrative Staff;
2. Cheat Khemara GMAC Officer.

Worker party:

Name: **Cambodian Labour Union (CLU), Union of Solidarity and Cambodian Union**

Address: Doeum Mean Village, Doeum Mean Commune, Takmao District, Kandal Province

Telephone: 012 658 129/942 657 Fax: N/A

Representatives:

Cambodian Labour Union (CLU)

1. Seng Meng Hong President of CLU at Supreme Garment Factory;
2. Leang Sunhang Vice-President of CLU at Supreme Garment Factory;
3. Penh Ratha Worker representative;

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|----------------------------|---|
| 4. Ly Chhundeth | Worker representative. |
| Union of Solidarity | |
| 1- Morm Seiha | Vice-President of Union of Solidarity at Supreme Garment Factory; |
| 2- Hun Nhen | Worker representative. |
| Cambodian Union | |
| 1- Mum Thon | Labour Disputes Officer; |
| 2- Chan Sok Long | President of Cambodian Union at Supreme Garment Factory; |
| 3- Thol Bunthoeun | Vice-President of Cambodian Union at Supreme Garment Factory; |
| 4- Chuon Panha | Worker representative; |
| 5- Em Saron | Worker representative. |

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

1. The worker party demanded that the company allow the workers to take annual leave during the Khmer New Year, Pchum Ben, and so on. The employer disagreed.
2. The worker party demanded that the company sign long-term contracts for casual workers. The employer disagreed.
3. The worker party demanded that the company reimburse the medical check fees that had not been paid. The employer disagreed.
4. The worker party demanded that the company provide one [day of] additional annual leave to those [workers] who had been working for three years, and [increase the amount of annual leave] by one [day] for every three years of service. The employer disagreed.
5. The worker party demanded that the company renew the contract of Kai Kim Se holding ID No. 0377, who was the Secretary of Cambodian Labour Union, and that the company pay his unpaid wages. The employer disagreed.
6. The company shall not forbid workers from listening to the radio. The employer disagreed.
7. If the [workers] take leave, other than special leave or sick leave [with a] medical certificate, the company shall not deduct their wages if they take less than 3 days leave [per month]. The employer disagreed.

8. The worker party demanded that the company build an appropriate canteen. The employer disagreed.
9. The worker party demanded that the company follow the agreement dated 17 September 2007 about the Employment Contract. The employer did not agree because the date was not yet 17 September 2007.

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 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. 076/07 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. 171 dated 8 August 2007 was submitted to the Secretariat of the Arbitration Council on 20 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: 29 August 2007 (from 2:00pm to 5:00pm)

Procedural issues:

On 14 July 2007, the Cambodian Labour Union Federation filed a complaint with the Director of Kandal Provincial Department of Labour and Vocational Training based on the complaint by the workers and the Cambodian Labour Union dated 13 July 2007. The Department of Labour and Vocational Training received the complaint on 25 July 2007 and held the conciliation on 7 August 2007; as a result, 20 out of 29 issues were conciliated. On 8 August 2007, the Department of Labour and Vocational Training submitted a non-conciliation report of nine issues to the Ministry of Labour. The Secretariat of the Arbitration Council received the non-conciliation report on 20 August 2007.

Having received the case, the Arbitration Council summoned the disputing parties to attend a hearing on 29 August 2007 at 2:00pm. Both parties were present at the hearing.

The Arbitration Council made an attempt to conciliate the nine non-conciliated issues. Issue 2 was successfully conciliated. Issue 3, 4, and 9 were withdrawn by the worker party. Issue 5 was declared by both parties that it had already been conciliated before the hearing. Therefore, in this case, the Arbitration Council considers only issue 1, 6, 7, and 8 based on the evidence and findings of fact as follow:

EVIDENCE

Witnesses and experts: *N/A*

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party:

1. Letter of Authorization from the Director of the Supreme Garment Company, dated 29 August 2007;
2. Sample Employment Contract of casual workers;
3. Business License registration dated 5 December 2000 of the Supreme Garment Company;
4. Internal Work Rules of the Supreme Garment Company dated 24 July 2002;
5. Company's Report No. 011/07 on the reasons of strike dated 27 August 2007;
6. Request Letter to settle the complaint and the demands of workers dated 24 July 2007;
7. Request letter to settle the demands and a number of working conditions of the workers dated 23 July 2007;
8. Invitation letter dated 27 July 2007 of Kandal Provincial Department of Labour and Vocational Training inviting the company to attend the collective disputes conciliation of Supreme Garment;
9. Letter of the company's director dated 28 July 2007 requesting an adjournment of the collective disputes conciliation to 7 August 2007;
10. Announcement of the company's director dated 3 August 2007;
11. Letter of dismissal of Ms. Mat Sali Fas dated 3 August 2007;
12. Report dated 3 August 2007 on the dispute between security guards and the female workers at B89;
13. Notification letter dated 4 August 2007 on the possible strike by the three unions;
14. Letter of Agreement dated 4 August on the delay of negotiation between the company and the workers;
15. Minutes of the individual dispute conciliation dated 6 August 2007;
16. Letter of Agreement dated 6 August 2007 about the adjournment of labour dispute conciliation;
17. Report on the strike staged by workers in front of Supreme [Garment] Factory dated 6 August 2007;
18. Minutes of the collective labour dispute conciliation dated 7 August 2007;
19. Order of the Kandal Provincial Court dated 7 August 2007;

20. Strike or Peaceful Demonstration Notification dated 14 August 2007 demanding the company implement the 19-issue agreement dated 7 August 2007;
21. Letter to the worker representatives and local unions' committees at the Supreme [Garment] Company about the implementation of the 19-issue agreement dated 7 August 2007;
22. Minutes of the collective dispute conciliation at the Supreme [Garment] Company dated 20 August 2007.

Provided by the worker party:

1. Minutes of the meeting between the employer party and worker delegates – local unions' committees dated 17 September 2006;
2. Letter from the Director of the Department of Labour Disputes to the President of Cambodian Labour Union at Supreme [Garment] Factory about the recognition of the union's new leaders dated 25 December 2006.

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

1. Letter No. 1168 from the Minister of Labour and Vocational Training to the Arbitration Council about the request for collective labour dispute settlement of Supreme Garment Company dated 31 August 2007;
2. Report on the collective labour dispute conciliation at the Supreme Garment Company dated 17 August 2007;
3. Minutes of the collective labour dispute conciliation dated 7 August 2007.

Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 360 dated 22 August 2007 to the worker party to attend the hearing;
2. Invitation No. 359 dated 22 August 2007 to the employer party to attend the hearing;
3. Letter requesting a ten-day delay of the parties of collective dispute case 81/07 dated 5 September 2007.

FACTS

- Having reviewed other supplementary documents provided by both parties;
- Having examined the report on the collective labour dispute conciliation;
- Having listened to the testimonies of both the employer party and the worker party;

The Arbitration Council finds that:

- Supreme Garment Company employs approximately 945 employees.
- In the factory there are three unions 1) Union of Solidarity, 2) Cambodian Union, and 3) Cambodian Labour Union (CLU). These unions are the claimants in this case. According to the unions and the company, none of the unions has the most representative status.
- Based on the minutes of the collective dispute conciliation dated 7 August 2007, 450 out of 945 workers were directly involved in the dispute. However, at the hearing, according to the unions, the involvement included 50 workers from the Union of Solidarity, 270 workers from the Cambodian Union, and 321 workers from CLU. The employer did not refute this claim and said it would check the list of workers who paid union dues and send it to the Arbitration Council;
- The Arbitration Council ordered both parties to submit relevant documents to the Secretariat of the Arbitration Council on 3 September 2007. Both parties failed to provide the documents by the deadline;
- After the hearing, both parties requested that the Arbitration Council give them until 10 September 2007 to continue their negotiation and to delay the date of Award issuance to 20 September 2007. On 11 September 2007, both parties informed the Secretariat of the Arbitration Council that their negotiation was unsuccessful, and requested that the Arbitration Council make its decision on the remaining non-conciliated issues: 1, 6, 7, and 8.

Issue 1: The worker party demanded that the company allow workers to take two days leave before and [two days leave] after festivals like Khmer New Year, Pchum Ben and so on

- The worker party demanded that the company allow them to take leave two days before and after festivals like Khmer New Year and Pchum Ben believing that Article 170 of the Labour Law allows the workers to do so and moreover their hometowns are far, the road is congested, and the transportation fee is expensive.
- The employer did not agree to the demand because during the Khmer New Year and Pchum Ben, the company has several products that need to be made. The company agreed that during the festive times the road is congested and the transportation fee is expensive. However, if the company allows workers to take two days leave before and after the festivals, the company will not be able to deliver the goods to the buyers. The company did not respond to the mention of Article 170 of the Labour Law.

- The employer said that the company's current practice regarding annual leave [is to grant] annual leave for workers if they have worked for up to one year; and the leave is arranged during the quiet period when there is not much work to do. During the quiet period, the workers may also use their annual leave. Generally, the workers may take up to two or three days. The workers did not reject this claim.
- The Arbitration Council requested that the worker party explain why they considered that Article 170 of the Labour Law allowed them to take annual leave during Pchum Ben. The worker party said that even though Article 170 does not mention the leave during Pchum Ben, they consider that Pchum Ben is similar to the Khmer New Year, because it is a traditional festival and it is more important than the Khmer New Year because it is time to dedicate to the dead. The employer party did not respond to this claim.
- Both parties confirmed that there was no agreement on this issue.

Issue 6: The worker party demanded that the company allow them to listen to the radio

- The worker party demanded that the company allow them to listen to the radio at the workplace and during the working hours based on the freedom provided by the Constitution of the Kingdom of Cambodia - right to information.
- The employer party disagreed because listening to the radio would make workers lose concentration on their work, workers would not hear their team leaders, and it may cause danger.
- The worker party said that most workers secretly listened to their radio. If their team leaders saw their radio, they were fined and their radio taken. The worker party said that they learned a lot from listening to the radio; if the company did not allow them to listen to their personal radio, the company may arrange a radio for workers and turn it on for either two hours in the afternoon or in the evening. The employer disagreed.
- The Arbitration Council finds that no provision in the Labour Law or the Constitution provides a right to listen to the radio during working hours at the workplace.
- Both parties claimed that there was no agreement on this issue, and the Internal Work Rules do not make any reference to listening to the radio during working hours either.

Issue 7: The worker party demanded that the company not deduct wages when workers took less than three days leave per month (other than special leave and sick leave with a medical certificate)

- The worker party claimed that special leave and sick leave with a medical certificate were not the subject of the demand. In this case, they demanded that the company

not deduct their wages when they took less than three days leave in a month (other than special leave and sick leave with a medical certificate); the leave would include leave to attend family obligations, weddings, ceremonies, etc. The employer did not agree because it is not stated in the law.

- Both parties claimed that there was no agreement on this issue.
- The employer claimed that the current practice allows the employer to deduct the wage even if the worker takes one day of leave with permission.
- Clause 5(D) of Internal Work Rules of the company states that, *“Every unauthorized leave or leave exceeding days permitted shall result in wage deduction and receive a written warning.”*
- Clause 6(A) of Internal Work Rules states that, *“Leave shall be requested through the team leader and supervisor. Only if there is permission from the Director, worker can take leave, but wage will not be provided.”*

Issue 8: The worker party demanded that the company build a proper canteen

- The worker party demanded that the company build a proper canteen because workers do not have a place to eat. About 60 to 70 percent of the workers buy their meals and eat in the factory premises without a proper eating place and they have to eat in the heat of the sun, rain, wind, and without shelter. The employer did not agree because there was no space to build a canteen.
- Clause 8(C) of the Internal Work Rules dated 24 July 2002 states that, *“During the meal break, workers shall stay and eat at the designated places organized by the company and they can use water and toilets but they have to keep clean.”*

REASONS FOR DECISION

Issue 1: The worker party demanded that the company allow workers to take two days leave before and [two days leave] after festivals like Khmer New Year, Pchum Ben and so on

Article 170 of the Labour Law states that, *“In principle, annual leave is normally given for the Khmer New Year unless there is a different agreement between the employer and the worker. In this case, the employer must inform the Labour Inspector of this arrangement.*

In every case of the paid annual leave exceeding fifteen days, employers have the right to grant the remaining days-off at another time of the year, except for the leave for children and apprentices less than eighteen years of age.”

In Arbitral Award 21/05 – Sinomax, the Arbitration Council held that: *“According to the purpose of this article, the Arbitration Council finds that workers are allowed to use their*

annual leave on the occasion of Khmer New Year. However, Article 170 does not prohibit workers from using their annual leave on other occasions; that is, workers may use their annual leave anytime depending on agreements made between workers and the employer and the employer is obligated to give notice about such an agreement to the Labour Inspector.” (See Award 21/05 – Sinomax – Issue 2)

In this case, the Arbitration Council agrees with the interpretation by the previous Arbitration Panel because this Article requires the employer to permit workers to take their annual leave during the Khmer New Year or at any time when there is agreement by both parties. The employer party has an obligation to inform the Labour Inspector of the approval in advance.

In addition, in Arbitral Award 21/05 – Sinomax, the Arbitration Council interpreted Article 170 [to mean] that: *“the employer does not have an absolute right to determine the time for workers to take their annual leave, but the employer does have some rights to determine when workers can take their annual leave. The employer (1) has the right to limit an employee's leave to 15 days at a time, granting the remaining days at another time (see Art 170 of the Labour Law) and (2) has the right to disallow annual leave to be taken during the worker's first year of service (See Article 167 (1)).¹”* (See Arbitral Award 21/05 – Sinomax – Issue 2)

In this case, the Arbitration Council also agrees with the interpretation of the Arbitration Panel in the above case because Article 170 provides the employer with the right to determine when workers take their annual leave and the right to reject a request for annual during the first year of work.

In this case, the worker party demanded that the company allow them to take annual leave two days before and after the Khmer New Year and Pchum Ben. Therefore, the Arbitration Council will consider the demand in the two cases:

1. The demand for annual leave two days before and after the Khmer New Year;
2. The demand for annual leave two days before and after Pchum Ben.

1. The demand for annual leave two days before and after the Khmer New Year

Based on the interpretation of Article 170 of the Labour Law and cases mentioned above, the Arbitration Council finds that workers have the right to take their annual leave during Khmer New Year as long as they have worked for at least one year.

¹ The Arbitration Council has previously found that Art 2 of the Labour Law grants the employer the right and authority to manage and to lead human resources in the company, as long as it does so according to the law. This would suggest that the employer could impose some limitations on requests for leave, in order to minimize disruptions to production. Such limitations could include, for example, requiring the worker to give advance notice before he wants to take leave. (See case 28/04-Raffles Grand Hotel d'Angkor)

However, in this case the employer does not allow the workers to take their annual leave during the Khmer New Year. Therefore, the Arbitration Council finds that the practice of the employer is not valid and is not consistent with Article 170 of the Labour Law, which provides that, *“In principle, annual leave is normally given for the Khmer New Year unless there is a different agreement between the employer and the worker.”* Therefore, the Arbitration Council finds that the employer shall immediately stop the current practice and allow workers who have worked for one year or more to take their annual leave two days before and after the Khmer New Year.

2. The demand for annual leave two days before and after Pchum Ben

Based on the interpretation of Article 170 of the Labour Law and cases mentioned above, workers have the right to take their annual leave during Khmer New Year as long as they have worked for one year or more. Article 170 of the Labour Law does not mention leave during Pchum Ben. In this case, the worker party seeks to use their annual leave two days before and after Pchum Ben. Thus, the Arbitration Council considers that it is an interests dispute.

Generally, in an interests dispute, the Arbitration Council will always consider whether the union who is bringing the dispute has most representative status. The Arbitration Council finds that none of the three unions has the most representative status. The Arbitration Council has consistently held that a union with most representative status has legal standing to negotiate a collective bargaining agreement within a factory and legal rights to bring a dispute before the Arbitration Council. In order to achieve most representative status, Article 277 of the Labour Law provides that a union must be registered and meet all the requirements stated in this Article.

Furthermore, Clause 43 of Prakas 099/04 on the Arbitration Council states that, *“An Arbitral Award that settles an interests disputes will replace the collective bargaining agreement for one year starting from the date that Award comes into practice unless parties negotiate a new collective bargaining agreement to replace the Award.”*

If the union does not have most representative status, it has no legal standing to make a collective bargaining agreement on behalf of all workers within the factory (See Article 96 (2B) and Clause 9 (1) of Prakas 305). This right belongs to the registered union that has the majority of members and meets all the requirements stipulated in Article 277 of the Labour Law. In previous cases, the Arbitration Council has held that if a union does not have the most representative status it does not have legal standing to represent the workers to resolve an interests dispute within the company.

Previously, the Arbitration Council found that if the Arbitration Council issues an Arbitral Award [that settles an interests dispute] on this issue, it will become a collective

bargaining agreement that applies to all workers in the company and it will mean other workers are prevented from striking when there are interests disputes in the future; it will cause unfairness to other workers (See Arbitral Awards 57/04 – Evergreen; 60/04 – United Art, Issue 3; 08/07 – Siu Quinh , Issue 3; 33/07 – Gold Fame, Issue 2; and 51/07 – Gold Fame, Issue 4).

Furthermore, the Arbitration Council also concluded that any union without most representative status does not have the right to bring an interests dispute before the Arbitration Council. (See Arbitral Awards 57/04 – Evergreen; 60/04 - United Art, Issue 3; and 08/07 – Xiao Kinh, Issue 3).

However, Clause 9(2) of Prakas 305/01 states that, *“In an enterprise or establishment which does not have a union with most representative status, all unions or multiple unions having members in that enterprise or establishment can unite to propose a draft collective agreement. The employer has an obligation to negotiate if those unions represent a majority of employees in the enterprise or establishment or the type of employees covered by that collective agreement. In cases where there is a claim against the representative status for most of the employees of the enterprise or establishment, an election following the procedures set out in the above Clause 6, shall be applied.”*

Based on the content of the Prakas, the Arbitration Council considers that in cases where a company does not have a union with most representative status, all or several unions can unite to create a collective agreement, if their members comprise a majority of the total workers; and the employer must negotiate with those unions. Therefore, the Arbitration Council finds that if there is no union with most representative status in the factory, a combination of unions with a majority of members of the total workers in the factory can jointly bring an interests dispute before the Arbitration Council. Based on the above explanation, when the Arbitration Council settles an interests dispute, the parties are prevented from striking or conducting a lock-out or bringing other interests dispute before the Arbitration Council for a period of one year.

This case is different from the previous cases in which the Arbitration Council has issued Arbitral Awards. In this case, three unions jointly brought the interests dispute before the Arbitration Council. Thus, the Arbitration Council will consider whether or not the combination of the three unions, in which none of them has the most representative status, has legal standing to bring the interests dispute before the Arbitration Council, and whether or not the Arbitration Council should decide the interests dispute brought by them.

In this case, there are three unions who are claimants: 1) Union of Solidarity with 50 members, 2) Cambodian Union with 270 members and 3) CLU with 321 members. None of them has most representative status. In total, they have 641 members which equals 67.83 percent. That means their members make up more than half of the total of 945 workers in the

factory. Based on the interpretation of Clause 9(2) of Prakas 305 dated 22 November 2001, the Arbitration Council finds that the three unions have standing to create a collective bargaining agreement with the employer party and to bring an interests dispute before the Arbitration Council. Therefore, the Arbitration Council considers the demands of the workers as follows:

In the hearing, the worker party agreed that annual leave during Pchum Ben is not provided for in the [Labour] Law; however, they request two days off before and after Pchum Ben because most of the workers' homes are far, the road is congested and the transportation fee is expensive. The employer party did not agree because during this period the company has several goods which need to be made.

As mentioned above, for any leave other than annual leave there shall be an agreement between the workers and the employer party. In this case, both parties had tried to negotiate several times, and had even asked for a delay in issuing the Arbitral Award. However, their negotiation was not successful.

The Arbitration Council considers that the worker party's request was reasonable, but the Labour Law only provides for annual leave during the Khmer New Year, it does not make any reference to Pchum Ben. Meanwhile, the claim of the employer party was also reasonable because if the company failed to deliver the goods to the buyers it would suffer a loss and the buyers would lose their trust in the company. If this scenario occurred, the workers would lose their jobs as well. However, the Arbitration Council considers that Pchum Ben is as important as the New Year; both are traditional festivals that family members need to go back to their hometowns to celebrate and dedicate to their late ancestors. Therefore, based on the tradition, the Arbitration Council considers that the workers should be permitted to take leave during Pchum Ben. Since the demand was not provided in the law and based on the principle of equity, the Arbitration Council decided that workers, who have worked for more than one year, have the right to take one day off before and after Pchum Ben.

Issue 6: The worker party demanded that the company allow them to listen to the radio

In this case, the worker party demanded that the company allow them to listen to their radio at the workplace during working hours based on the freedom of information provided by the Constitution of Kingdom of Cambodia and the fact that workers gain new knowledge from listening to the radio. The employer party disagreed because listening to the radio means workers lose concentration on their work, workers cannot hear their team leaders calling, and it may cause danger.

Regarding this demand, the Arbitration Council finds none of the provisions in the Labour Law or the Constitution makes any reference to listening to the radio during working hours. The Constitution does provide that workers have a right to freedom of information, but

not during working hours. In addition, the Arbitration Council finds that the Internal Work Rules do not specify that workers may listen to the radio during working hours either and there is no agreement on this issue. Thus, in this case, the Arbitration Council finds that the demand is an interests dispute.

In previous cases, the Arbitration Council also determined that a request to listen to the radio at the workplace was an interests dispute (please refer to Arbitral Award 94/04 – Eternity, issue No. 6).

Because this is an interests dispute, the capacity of the claimants needs to be considered before the Arbitration Council may consider the issue. Based on the discussion in issue 1, the Arbitration Council will consider this interests dispute about listening to the radio based on the principle of equity.

Based on the facts, the Arbitration Council finds that the claim of the worker that listening to the radio provides them with more knowledge is valid. However, the claim of the employer party that listening to the radio means workers lose concentration on their work, cannot hear their team leaders calling and may cause danger (which according to the Labour Law, is the responsibility of the employer) is also reasonable. However, if we compare the claims of both parties, the Arbitration Council considers that the claim of the employer was more reasonable because the workplace is not a place to receive information. Workers have time outside of working hours to learn new information. Moreover, during working hours, workers have an obligation to concentrate on their work. Listening to the radio would make workers pay less attention to their work.

In sum, the Arbitration Council rejects the demand of the worker party that the company allow them to listen to the radio during working hours.

Issue 7: The worker party demanded that the company not deduct wages when workers take less than 3 days leave per month (other than special leave and sick leave with a medical certificate)

Article 71 (6) of the Labour Law provides that, “*The Labour contract shall be suspended under the following reasons: 6. Absence of the worker authorised by the employer, based on laws, collective agreements, or individual agreements.*”

Article 72 of the Labour Law states that, “*1. 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.*”

Based on the content of Article 71 and 72, the Arbitration Council considers that in general the request to take leave leads to the suspension of the labour contract. When a contract is suspended, it means the worker does not have to work, and the employer is not

obliged to pay the worker unless there is a contrary provision requiring the employer to pay the worker. Thus, the Arbitration Council will examine whether or not there is any contrary provision requiring the employer to pay the worker when they take leave (other than special leave and sick leave) of less than three days in a month.

Clause 5(D) of Internal Work Rules of the company states that, *“Every unauthorized leave or leave exceeding days permitted shall result in wage deduction and receive a written warning.”*

Moreover, Clause 6 (A) of Internal Work Rules states that, *“Leave shall be requested through the team leader and supervisor. Only if there is permission from the Director, can a worker take leave, but wages will not be provided.”*

Based on these clauses, the Arbitration Council considers that the company may deduct the wages of workers even if their leave was authorized.

Meanwhile, the worker party mentioned that there was no agreement requiring the employer to pay their wages.

Because workers are not entitled to their wage for authorized leave; the demand is an interests dispute.

Similar to issue 6 and based on the discussion in issue 1 above, the Arbitration Council will determine the interests dispute about whether the employer should deduct wages when the leave is less than three days per month based on the principles of equity.

Generally, the claimant is obliged to provide evidence to support their demand even though it is an interests dispute. However, in this case, the worker party failed to provide evidence and enough reasons to support their demand so that the Arbitration Council is not able to agree to their demand.

The employer party mentioned that currently even if the worker takes one day's leave, their wages on the day they were absent will be deducted. The worker party did not refute this claim. The Arbitration Council finds that the company properly applied its Internal Work Rules.

Therefore, the Arbitration Council has decided to reject the demand of the workers to receive full payment when they take authorized leave of less than three days per month.

Issue 8: The worker party demand that the company build a proper canteen

The worker party demanded that the company build a proper canteen because the workers do not have an eating place. About 60 to 70 percent of the workers eat at the factory. The employer did not agree because there was no space to build a canteen. The Arbitration Council considers the issue as follows:

Regarding the demand of the worker, the Arbitration Council finds that there is no law or labour regulation requiring the employer to build a canteen for the workers (please refer to Arbitral Award 24/04 – South Bay, Issue1)

However, in this case the Arbitration Council finds that Clause 8 (C) of the Internal Work Rules dated 24 July 2002 states that, “*During the meal break, workers shall stay and eat at the designated places organized by the company and they can use water and toilets but they have to keep clean.*”

Based on the content of the above Internal Work Rules, the Arbitration Council considers that the company has an obligation to organize a canteen for the workers. To say that there is no space to build a canteen cannot release the employer from the obligation stated in the Internal Work Rule because based on Article 24 of the Labour Law, the Internal Work Rules were created after discussions with the worker representatives and an application for a visa made through the Labour Inspector. In this case, the Internal Work Rules were signed by the employer and the worker representative on 15 July 2002 and were registered for a visa through Letter No. 50 dated 24 July 2007.

In Award 24/04 – South Bay, the Arbitration Council found that the employer planned to build a canteen, but it had not been built. In the South Bay case, the dispute was about the site of the canteen. The Arbitration Council found evidence to show that the proposed site of the canteen would cause serious impact to the health and the safety of the workers. Therefore, in that case the Arbitration Council ordered the employer to build a canteen [inside the factory compound where it was safe for the workers].

In Award 35/04 – Jacqsitex, the Arbitration Council found that the employer agreed to build a canteen. In that case, the main issue was the time limitation to build the canteen. Thus, the Arbitration Council ordered the employer to build a canteen within the time limit.

In this case, the Arbitration Council finds that the company’s Internal Work Rules are a binding agreement on the employer. In sum, the Arbitration Council considers that the company has to build a proper canteen for the workers in compliance with its Internal Work Rules.

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

DECISION

Issue 1:

1. Order the employer to allow workers to take annual leave two days before and after the Khmer New Year.
2. Order the employer to allow workers to take annual leave one day before and after Pchum Ben.

Issue 6:

Reject the workers' demand that the company allow them to listen to the radio during working hours.

Issue 7:

Reject the workers' demand that the employer not deduct wages when the workers take leave (other than special leave and sick leave with a medical certificate) of less than three days per month.

Issue 8:

Order the company to build a proper canteen for the workers in compliance with its Internal Work Rules.

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: **Liv Sovanna**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: