



KINGDOM OF CAMBODIA

NATION RELIGION KING

ក្រុមប្រឹក្សាសវនកម្មជាតិ

THE ARBITRATION COUNCIL

Case number and name: 81/08-Global Apparel

Date of Award: 21 July 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: **Sin Kim Sean**

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

DISPUTING PARTIES

Employer party:

Name: **Global Apparel Limited**

Address: Tror Pang Tuol Village, Kombol Commune, Angsnuol District, Kandal Province

Telephone: 012 946 045 or 012 515 096 Fax: N/A

Representative:

- | | |
|---------------------|----------------------------------|
| 1. Mr. Ry Vanlo | Temporary Head of Administration |
| 2. Mr. Voeurn Vanra | Assistant to Administration |

Worker party:

Name: **Khmer Youth Trade Union Federation (KYFTU) and Khmer Youth Trade Union at Global Apparel Factory (KYTU)**

Address: Tror Pang Tuol Village, Kombol Commune, Angsnuol District, Kandal Province

Telephone: 012 539 115 or 092 875 340 Fax: N/A

Representative:

- | | |
|----------------------|--|
| 1. Mr. Huy Sopharith | Officer of KYFTU |
| 2. Mr. Our Phoeurn | Officer of KYFTU |
| 3. Mr. Vey Vattana | President of KYTU at Global Apparel Factory |
| 4. Mr. Uy Channarith | Vice-president of KYTU at Global Apparel Factory |

5. Mr. Chhoeung Sothea	Secretary of KYTU at Global Apparel Factory
6. Mr. Luot Sichoy	President of Cambodian Women Union at Global Apparel Factory
7. Mr. Chea Bunthoeun	Vice-president of Cambodian Women Union at Global Apparel Factory
8. Mr. Sim Toch	Secretary of Cambodian Women Union at Global Apparel Factory
9. Mr. Horm Chantha	President of Cambodian Workers' Right at the Factory
10. Mr. Seng Hoeun	Vice-president of Cambodian Workers' Right at the Factory
11. Mr. Soum They	Secretary of Cambodian Workers' Right at the Factory
12. Mr. Keut Men	Worker
13. Mr. Hay Lieng Heng	Worker
14. Ros Vannorn	Worker
15. Loy Sinath	Worker
16. Yem Sam Ang	Worker
17. Vong Pheakdey	Worker

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- The workers demand that the company should not deduct 1.5 days of wage on the days that they were on strike. The Company does not agree to the demand.
- 2- The workers demand that the company should not deduct the monthly bonus from workers in different groups when they were on strike. The Company does not agree to the demand.
- 3- Workers in the Quality Control ("QC") section demand that the company should not deduct 20% of their bonus each time a carton is opened. The company party does not agree to the demand if the opening is because of the QC's mistake.
- 4- The heads of the ironing and packing sections ask that the company increase their bonus by US\$ 2 and US\$ 3 for Groups who achieve Grade A and by US\$ 1 and US\$ 1.5 for Groups who achieve Grade B. The Company does not agree to the demand.
- 5- The heads of the carton, scanning and packing sections and the head of the final product warehouse ask for an increase of their bonus to be [consistent] with the heads of other groups. The Company does not agree to the demand.
- 6- The heads of the QC, ironing and packing sections in Building A3 request to receive a bonus and functioning bonus like heads of other groups. The Company states that it has not appointed heads in these sections yet.

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 was unsuccessful, and the non-conciliation report No.329/08 KB/KN, dated 30 June 2008 was submitted to the Secretariat of the Arbitration Council on 30 June 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: 3 July 2008 (From 8:00 a.m. to 12:00 p.m.)

Procedural issues:

On 21 June 2008, the Department of Labour and Vocational Training at Kandal Province assigned an officer to conduct conciliation of a collective labour dispute involving 7 issues with the result that one issue was conciliated. The 6 non-conciliation issues were referred to the Arbitration Council on 30 June 2008 through a non-conciliation report of collective labour dispute No. 329/08 KB/KN, dated 30 June 2008.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer party and the worker party to the hearing and conciliation on the 6 non-conciliation issues on 3 July 2008 at 8:00 a.m.

Both parties were present at the arbitral hearing. The Arbitration Council attempted to ask for relevant information related to this dispute and tried to further the conciliation with the result that two issues - issue 3 and issue 6 - were conciliated. Thus the Arbitration Council will consider the non-conciliation issues 1, 2, 4, and 5 based on the evidence and findings of fact 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 Global Apparel Limited Company, dated 17 May 2007;
2. Internal Work Rules of Jusca Garment (Cambodia) Ltd., dated 1 December 2004;
3. Statute of Global Apparel Limited, dated 10 April 2007;
4. Authorization letter by the director of Global Apparel Limited to Mr. Ry Vanlo, head of administration, dated 2 July 2008;
5. Principle for providing bonus and function bonus for QC section, packing section, scanning section, and final product warehouse section, dated 6 June 2008;
6. List of bonus for workers other than in sewing section;
7. List of incentive bonus for Grade A and Groups who achieved Grade B s;
8. Detailed list of workers in each group;
9. Collective Bargaining Agreement between Khmer Youth Trade Union, Cambodian Union, Democratic Union Federation, Independent and Democratic Trade Union, Cambodian Worker's Rights Trade Union, Cambodian Women Union of Global Apparel Company and the manager of Global Apparel Company, dated 14 June 2008.

Provided by the worker party:

1. Name list of members of KYTU at Global Apparel Limited Company who volunteer to have deduction of 1000 riels from their wages to pay for monthly union contribution fee for KYTU;
2. Request letter by workers, dated 5 June 2008;
3. Certificate of union registration of KYTU at Jusca Company, dated 29 September 2004;
4. Letter by the Department of Labour Dispute regarding recognition of the new leadership of Jusca Company, dated 3 November 2006;
5. Certificate of union registration of Cambodian Women Union at Global Apparel Company, dated 8 October 2007;
6. Certificate of union registration of Cambodian Workers' Right Trade Union at Global Apparel Company, dated 3 October 2007.

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

1. Report of collective labour dispute resolution at Global Apparel Company No. 329/08 KB/KN, dated 30 June 2008;
2. Minutes of collective labour dispute resolution at Global Apparel Company, dated 21 June 2008.

Provided by the Secretariat of the Arbitration Council:

1. Invitation letter No. 414 K.B.V/AK/VK/LKA dated 1 July 2008 to invite the workers to attend the hearing.

2. Invitation letter No. 413 K.B.V/AK/VK/LKA dated 1 July 2008 to invite the employer to attend the hearing.

FACTS

- Having reviewed the report of the collective labour dispute conciliation
- Having listened to statements by representatives of the workers and the employer
- Having examined the additional documents

The Arbitration Council finds that:

- Global Apparel Company employs approximately 2,450 workers.
- There are three unions in this company: 1. Khmer Youth Trade Union, 2. Cambodian Women Union and 3. Cambodian Workers' Right Union.
- The Khmer Youth Trade Union at Global Apparel Company is the claimant in this case. KYTU does not have most representative status.

Issue 1 & 2: The workers demand that the company should not deduct their wages and monthly attendance bonus for the one and a half day strike.

- Approximately 300 workers in the QC, Packing, Carton, Scan and Pack and Final Product Warehouse Sections went on strike on the afternoon of Saturday, 14 June 2008 and on Monday, 16 June 2008 (one and a half days in total) to demand that the company provide bonuses to the head of their group like the head of group in the sewing section.
- In the hearing, the workers state that the reason they went on strike was because in mid-May 2008 the company established a policy to provide bonuses according to [the level of] productivity to all heads of group in the sewing section which includes the head of group, vice head of group and workers in the sewing section as well as workers in the QC, Ironing and Packing Sections. The policy sets out a target range for Grades A and B which is called the IE target; on a normal day of 10 hours if Grade A can achieve greater or equal to 80 percent of the target they will receive a bonus amount of US\$ 20 per month, while if Grade B can achieve greater or equal to 60 percent of the target will receive a bonus amount of US\$ 10 per month. However, this policy for provision of the monthly bonus is not implemented consistently by the company toward the heads of the QC, Ironing, Packing, Carton, Scanning & Packing and Final Product Warehouse Sections. (See the findings of fact in issues 4 and 5 below).
- After setting the target, representatives of workers went to meet with the company director on 19 May 2009 to demand that the company apply the policy equally to the

heads of the QC, Ironing, Packing, Carton, Scanning & Packing and Final Product Warehouse Sections and the company asked for one week for discussion among themselves.

- One week later on 26 May 2008, representatives of workers went to meet the company again and the company director asked for one more week to consider [the issue].
- After the second week was over, the representatives of workers went to see the company party again but the company director told the representatives of workers to go to meet [the head of] the production section. The head of production section said that s/he was not aware of the issue so s/he asked for two days to discuss but then the person went away to Malaysia.
- The company party states in the hearing that the company issued the policy to provide a bonus to workers in the factory because it wanted to increase productivity. Thus, the company does not agree to provide wages and attendance bonus to workers during the strike.

Issue 4: Heads of the ironing and packing sections ask that the company increase their bonus by US\$ 2 and US\$ 3 for Groups who achieved Grade A and by US\$ 1 and US\$ 1.5 for Groups who achieved Grade B

- The company established a policy to provide different incentive bonuses to workers who are heads of groups:

Sewing Section:

- There are 12 groups in Building A, 21 groups in Building B and 3 groups in Building A3
- In each group, there is one head of group, one vice-head of group, 44 sewing workers, 3 QC workers, 2 ironing workers and 2 packing workers. In total there are 53 workers in one group.
- The policy provides for an incentive bonus depending on the target range achieved, which is divided into Grade A and Grade B. If Grade A is achieved, US\$ 20 per month will be provided while US\$ 10 per month will be provided if Grade B is achieved. This means that if a group can achieve target A, the head of group, vice-head of group and members of the group will receive the same US\$ 20 bonus per month and if a group achieves target B, the head of group, vice-head of group, and members of the group will receive the same amount of US\$ 10 per month.
- However, the company established a bonus policy which was different to the Sewing Section for the heads of groups in the Ironing and Packing Sections :

Ironing Section

- In Building A, there is one head of group who looks after 12 groups (24 ironing workers).
- In Building B, there are two heads of group - one looks after 10 groups and another one looks after 11 groups (42 ironing workers).
- There is no head of group in Building A3
- The policy provides for an incentive bonus depending on the target range achieved, which is divided into Grade A and Grade B. The company will provide a US\$ 2 bonus if a group achieves the target in Grade A and US\$ 1 if a group achieves the target in Grade B. This means that a head of group may be able to receive a maximum of bonus US\$ 2 x 10 groups = US\$ 20 per month or US\$ 2 x 12 = US\$ 24 per month.

Packing Section

- In Building A, there is one head of group who looks after 12 groups (24 packing workers).
- In Building B, there are two heads of group - one looks after 10 groups and another one looks after 11 groups (42 packing workers).
- There is no head of group in Building A3
- The policy provides for an incentive bonus depending on the target range achieved, which is divided into Grade A and Grade B. The company will provide a US\$ 2 bonus if a group achieves the target in Grade A and US\$ 1 if a group achieves the target in Grade B. This means that a head of group may be able to receive a maximum of bonus US\$ 2 x 10 groups = US\$ 20 per month or US\$ 2 x 12 = US\$ 24 per month like the head of the ironing section.
- In the hearing, the workers state that the company provides an incentive bonus to the head of the Sewing Section in a different way from the head of groups in the Ironing and Packing Sections; this is because [the amount of the monthly bonus] for the [heads of the] Ironing and Packing Sections depends on the amount of groups, under the supervision of the head of group, that can reach the target. Thus, the heads of groups in the Ironing and Packing Sections demand an increase in the bonus by S\$ 2 to US\$ 3 for those groups who achieve Grade A and by US\$ 1.50 for those groups who achieved Grade B.
- In the hearing, the company party states that the company established the policy to provide an incentive bonus based on the number of workers in each group and based on the number of groups the head of group in each section has look after.
- The Arbitration Council found that the company established different bonus policies for the heads of groups in the Sewing, Ironing and Packing Sections. However, the

head of groups in each section may receive a bonus of at least equal to US\$ 20 per month if [all] their groups could achieve the Grade A target.

Issue 5: Heads of scanning and packing sections and head of final product warehouse ask for an increase of their bonus to be consistent with the other heads of groups.

- The company established a policy to provide an incentive bonus to the heads of groups in the Scanning and Packing and the Final Product Warehouse Sections as follows:

Scanning and Packing Sections:

- There are 8 heads of groups to look after 36 groups.
- The policy provides for an incentive bonus depending on the target range achieved, which is divided into Grade A and Grade B. The company will provide US\$ 1 as bonus if the group achieves the target in Grade A and US\$ 3.5 if the group achieves the target in Grade B. This means that a worker may be able to receive a maximum of bonus $US\$ 1 \times 36 \text{ groups} / 8 \text{ people} = US\$ 4.5$ and the head of group receives a bonus amount double that what each worker receives, thus equal to US\$ 9.

Final Product Warehouse Section:

- There are 28 head of groups to look after 36 groups.
 - The policy provides for an incentive bonus depending on the target range achieved, which is divided into Grade A and Grade B. The company will provide a US\$ 4 bonus if the group achieves the target in Grade A and US\$ 2 if the group achieves the target in Grade B. This means that a worker may be able to receive a maximum of bonus $US\$ 4 \times 36 \text{ groups} / 28 \text{ people} = US\$ 5.14$ and the head of group receives a bonus double that what each worker receives, thus equal to US\$ 10.29.
- The worker party mentions in the hearing that the heads of groups in the Scanning and Packing and the Final Product Warehouse Sections demand an increase in their bonus so that it is the same as the head of groups in other sections because the company policies provide different bonus payments to the heads of groups of different sections.
 - The company party states in the hearing that the company established policies to provide an incentive bonus in order to increase productivity in each section. Therefore, the company cannot provide the same bonus to each section.
 - The company party claims that the provision of a bonus depends on each section because the work [performed by] each section is not the same and some of them have skills other companies want; for instance, in the Sewing Section [people] are skillful and usually it is very easy for them to find work at another company, especially

those companies who face difficulties in looking for skillful sewing workers who can start work immediately after recruitment. For this reason, the company decided to introduce this bonus policy to retain skillful workers. Moreover, although the list shows that the rate of bonuses for Grade A and Grade B for the head of the QC, Packing, and Ironing Sections are different from the Sewing Section, the total amount of money received is not very different. The Company party also states that the method for determining the rate is new and it is testing the implementation in order to find out if the determination is correct and then it will make an adjustment if it is not appropriate.

REASONS FOR DECISION

Issue 1 & 2: The workers demand that the company should not deduct their wage and monthly attendance bonus for the one and a half day strike.

In this case, the workers demand that the company should not deduct their wages and attendance bonus for the one and a half day strike. Thus, the Arbitration Council will consider whether the workers are entitled to their wages and attendance bonus for the period of the strike according to the Labour Law.

Article 332 of the Labour Law states, *“A strike suspends the labour contract. During strike, the allowance for work is not provided and the salary is not paid...”*

In previous cases, the Arbitration Council held that according to Article 332 of the Labour Law, the content of the Article means that those workers who are on strike are not entitled to their wages during the strike whether the strike is in accordance with the Labour Law or not (see Arbitral Award 22/04-Raffles le Royal, issue 2).

Article 72(1) of the Labour Law states, *“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 above interpretation and in accordance with the contents of Article 332 and 72(1) above, the Arbitration Council considers that on the day or month workers are on strike, whether it is a legal or illegal strike, the employer is not required to provide wages or attendance bonus to the workers during the day or month they are on strike because on the day or the month of the strike the workers do not perform work for the employer.

Point 3 of Notification 017 SKBY, dated 18 July 2000 states that *“Workers who come to work regularly on regular working days of a month shall receive a bonus of at least \$ 5.00 per month.”*

In previous cases, the Arbitration Council decided that any workers whose strike is not in accordance with the Labour Law do not come to work regularly, thus are not entitled to

wages and attendance bonus. (See Arbitral Awards 04/03-Lida, issue 1; 03/05-Flying Dragon, issue 3; 63/07-Phnom Penh, issue 1 and 110/07-Now Corp, issue 3).

In this case, the workers went on strike (half a day on 14 [June] and one day on 16 June 2008)] and the strike was not in accordance with the procedures set out in Chapter 13 of the Labour Law, of Article 324 and 332 and they demand that the company provide US\$ 5 attendance bonus and one and a half days of wages (half a day on 14 [June] and one day on 16 June 2008). In this case, the Arbitration Council considers that on these one and a half days, the workers went on strike and did not perform work for the employer. Hence, the Arbitration Council considers that the fact that the employer deducted one and a half days wages and attendance bonus in June 2008 from those workers who went on strike did not violate the contents of Article 332 and 72(1) and Notification 017 SKBY, dated 18 July 2008.

Therefore, the Arbitration Council decides to reject the workers' demand for the company to pay a US\$ 5 monthly attendance bonus and one and a half days wages (half a day on 14 [June] and one day one 16 June 2008) for the period the workers went on strike.

Issue 4: Heads of ironing and packing sections ask that the company increase their bonus by US\$ 2 to US\$ 3 for Groups who achieve Grade A and by US\$ 1 and US\$ 1.5 for Groups who achieve Grade B

The company established a policy to provide different incentive bonuses to workers who are heads of groups in order to increase productivity in each section. The company established the policy to provide an incentive bonus based on the number of workers in each group and based on the number of groups under the supervision of each head of group. Thus, the company is unable to provide equal incentive bonuses to each section. The Arbitration Council found that there is no provision in the Labour Law which states anything about an incentive bonus but in the company in this case there is a clear policy regarding the incentive bonus. Thus, the Arbitration Council will consider whether the company has the right to establish a policy to provide different incentive bonuses to workers who are heads of groups in different sections.

Article 2 of the Labour Law states, “... *Every enterprise may consist of several establishments, each employing a group of people working together in a defined place such as in factory, workshop, work site, etc., under supervision and direction of the employer.*”

Based on the contents of Article 2 above, in previous Arbitral Awards the Arbitration Council considers that “*employer has the right to manage and direct human resource in the company so long as the management is in accordance with the law and reasonable.*” (See Arbitral Awards 24/05 - [Wear Well]; 18/[06] – GHG; 20/06 – New Star, Issue 1; 108/06 – Trinungal Komara, Issue 1; and 116/07 – Grace Sun, Issue 2).

In previous cases, the Arbitration Council found that the employer's right to manage and direct may include:

1. Control and manage the production process and manage human resources in the factory including management of workers and determining leave request procedures provided the leave request [procedure] is in accordance with the law and is reasonable. (See Arbitral Award 54/07-Yung Wah I, issue 9).
2. Determine if the workers should work on a piece rate basis or on a monthly [salary] basis as long it is implemented in accordance with the law and is reasonable. (See Arbitral Award 39/07-San San, issue 3).
3. Determine workers' working schedule. (See Arbitral Award 62/06-Quick Sew, issue 5).

In this case, the Arbitration Council considers that the employer's right to manage and control includes the right to determine incentive bonuses.

According to the company's policy, the amount of the incentive bonus differs depending on the size of each group, i.e., how many members in each group and on the size of the final work produced. The Arbitration Council considers that the policy to provide different incentive bonuses to heads of groups in the Sewing Section from head of groups in the Ironing and Packing Sections, as described in the above findings of fact, is reasonable; this is because the bonus is only provided to any Ironing or Packing group that can achieve the target, hence the amount of the incentive bonus will only be different in those months that the groups in the Ironing or Packing Sections, under supervision of the heads of group, are unable to achieve the target. Moreover, the Arbitration Council finds that the Sewing Group, Ironing Group and Packing Groups are all entitled to a maximum incentive bonus of US\$ 20 per month if they can reach the target.

Therefore, the Arbitration Council decides to reject the workers' demand for the company to increase the bonus for heads of groups in the Ironing and Packing Sections by US\$ 2 to US\$ 3 for those groups who can achieve Grade A and by US\$ 1 to US\$ 1.50 for those groups who can achieve Grade B.

Issue 5: Heads of scanning and packing sections and head of final product warehouse ask for an increase of their bonus to be consistent with the heads of other groups.

In relation to the demand in this issue, the Arbitration Council agrees with the interpretation in the Reasons for Decisions in issue 4 above that the determination of the incentive bonus is [within] the employer's right to manage and control. Therefore, the Arbitration Council decides to reject the workers' demand for the company to increase the incentive bonus for heads of groups in the Scanning and Packing Sections and the head of the Final Product Warehouse Section to be the same as heads of other groups.

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

DECISION

Issue 1 & 2:

Reject the workers' demand for the company to provide a US\$ 5 monthly attendance bonus and one and a half day wages (half a day on 14 [June] and one day on 16 June 2008) for the period the workers went on strike.

Issue 4:

Reject the workers' demand for the company to increase the bonus for heads of groups in the Ironing and Packing Sections by US\$ 2 to US\$ 3 for those groups who can achieve Grade A and by US\$ 1 to US\$ 1.50 for those groups who can achieve Grade B.

Issue 5:

Reject the workers' demand for the company to increase the incentive bonus for heads of groups in the Scanning and Packing Sections and the head of the Final Product Warehouse Section so that it is the same as the heads of other groups.

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: **Sin Kim Sean**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: