



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

**ក្រុមប្រឹក្សាអន្តរាជ្ញាភាព**  
**THE ARBITRATION COUNCIL**

**Case number and name: 92/08-Hoi Fu**

**Date of Award: 18 August 2008**

**ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

**ARBITRATION PANEL**

Arbitrator chosen by the employer party: **Kol Vathana**

Arbitrator chosen by the worker party: **An Nan**

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

**DISPUTING PARTIES**

**Employer party:**

Name: **Cambodian Hoi Fu Garment & Knitting Factory Company Ltd.**

Address: Sangkat Trapeng Krosang, Khan Dangkor, Phnom Penh

Telephone: 012 973 809 Fax: N/A

Representative:

1. Mr. Chan Rattana Assistant to administration and manager of assembly line
2. Ms. Sok Huong Cashier

**Worker party:**

Name: **Cambodian Labour Union Federation (CLUF) and local union of Cambodian Labour Union at Cambodia Hoi Fu Factory (CLU)**

Address: #788, Street 474, Sangkat Boeung Torbek, Khan Chamkamorn, Phnom Penh

Telephone: 016 657 556 Fax: N/A

Representative:

1. Mr. Huo Pov Assistant of CLUF
2. Mr. Seng Menghong Officer of CLUF
3. Mr. Chun Tuy President of CLU at Hoi Fu factory
4. Ms. Mong Sreynak Vice-president of CLU at Hoi Fu factory

5. Ms. Orn Sereivuth Secretary of CLU at Hoi Fu factory
6. Mr. Vuth Saros Worker representative
7. Mr. Ven Savy Worker
8. Ms. Siem Vannak Worker
9. Ms. Ouk Rathanarithy Worker

### **ISSUES IN DISPUTE**

(In the Non-Conciliation Report)

- 1- The workers demand that the company maintain their wages and attendance bonus when it suspends their work and that the company must provide full wages when it tells them to come to work but does not have work for them to do.
- 2- The workers demand that the company maintain their wages and attendance bonus and pays for medical fees when they take sick leave with a medical certificate from an official doctor.
- 3- The workers demand that the company make a detailed payslip in the Khmer language.
- 4- The workers demand that the company allow pregnant female workers to come to work 15 minutes late and to leave 15 minutes early.
- 5- The workers demand that the company convert all workers who have been working for longer than 3 months to be permanent workers.
- 6- The workers demand that the company increase the wages of Mrs. Chhuon Yorn in the cleaning section and Mr. Phim Phan in the piece recording section to US\$ 1.92 per day because the company has not provided their wages correctly according the Labour Law.
- 7- The workers demand that the company provide payment for meal allowance to mechanics who work overtime.
- 8- The workers demand that the company calculate wages for physician correctly in accordance the Labour Law.
- 9- The workers demand that the company pay wages and payment in lieu of annual leave for six workers in the checking section who have resigned from work: 1) Yun Sreytoch, 2) Sann Davy, 3) Roeun Thon, 4) At Sopha, 5) Khin Khim and 6) Yun Kary.

### **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. 767 KB/AK/VK, dated 16 July 2008 was submitted to the Secretariat of the Arbitration Council on 21 July 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:** 1 August 2008 (from 8:00 a.m. to 12:30 p.m.)

#### **Procedural issues:**

On 4 June 2008, the Department of Labour Disputes received a complaint from the local union of CLU at Hoi Fu factory regarding a demand for the company to improve working conditions. Upon receipt of the complaint, the Department of Labour Dispute assigned an expert officer to conduct conciliation and the last conciliation session was held on 3 July 2008 but none of the 9 issues were conciliated. The 9 non-conciliation issues were referred to the Secretariat of the Arbitration Council on 21 July 2008.

After receiving the case, the Secretariat of the Arbitration Council summoned the employer party and the worker party to the hearing and conciliation on the 9 non-conciliation issues on 1 August 2008 at 8:00 a.m. Both parties were present as invited by the Arbitration Council.

On the hearing day, the Arbitration Council attempted to further the conciliation on the 9 non-conciliation issues mentioned in the non-conciliation report. As a result, issue 1 (regarding wages) and issues 2, 3, 4, 6, 7, 8 and 9 were conciliated. The remaining issues are issue 1 (maintaining attendance bonus) and issue 5. Thus, the Arbitration Council will consider the two non-conciliation issues based on the evidence and clarification by the parties in the hearing as follows:

#### **EVIDENCE**

**Witnesses and experts:** N/A

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

##### **Provided by the employer party:**

1. Authorization letter to Mr. Chan Rattana, dated 11 August 2008.
2. Letter No. 2092 SSKK regarding request to settle complaint and request of workers in Hoi Fu factory, dated 2 June 2008.

##### **Provided by the worker party:**

1. List of names of workers who have not become permanent workers and list of names of workers who request an increase of US\$ 0.5 in addition to their current daily wages.
2. Certificate of registration No. 217 SKBY.AK, dated 10 October 2001.
3. Letter to recognize union leaders No. 566 SKBY/AK, dated 28 March 2003.
4. Letter to recognize new union leaders in the second mandate No. 884 KB/AK/VK, dated 24 August 2007.
5. Letter to recognize new union leaders in the new mandate No. 304 KB/AK/VK, dated 3 March 2008.

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

1. Report of collective labour dispute resolution at Hoi Fu Company No. 767 KB/AK/VK, dated 16 July 2008.
2. Minutes of collective labour dispute conciliation at Hoi Fu Company, dated 3 July 2008.

Provided by the Secretariat of the Arbitration Council:

1. Letter of invitation to invite the company party to attend the hearing No. 461 KB/AK/VK/LKA, dated 23 July 2008.
2. Letter of invitation to invite the worker party to attend the hearing No. 462 KB/AK/VK/LKA, dated 23 July 2008.

**FACTS**

- Having examined documents submitted to the Arbitration Council
- Having reviewed the report of collective labour dispute conciliation
- Having listened to statement by the worker party and the employer party

**The Arbitration Council finds that:**

- Hoi Fu factory employs approximately 400 workers.
- The local union of CLU at Hoi Fu Factory is the claimant in this case.
- According to the workers' claim, the local union of CLU at Hoi Fu Factory has approximately 400 workers as its members. However, it does not have most representative status.

**Issue 1: The workers demand that the company maintain their perquisites (attendance bonus) when they come to work but do not have work to do**

- According to the two parties, this dispute involved piece rate workers. Generally, when workers come to work and there is no work for them to do for two or three hours or they have no work for one to two days, the company does not provide the US\$ 5

attendance bonus to the workers. This means that the company deducts the whole US\$ 5 attendance bonus.

- The employer party states that it does not ask for permission from the Ministry in charge of Labour for such a short period of no work due to interruption in the production line or lack of product to work on.
- The workers demand that the company maintain the US\$ 5 attendance bonus when they come to work but there is no work for them to do for two to three hours or when there is no work for one to two days. In the hearing, the employer party states that it cannot give a response on this issue and would like to take this to discuss with the employer. The Arbitration Council advised the employer party to give an answer by 8 August 2008. On 8 August 2008, the employer party stated that it had not asked for a recommendation from the company director and was unable to provide a commitment as to what date it would be able to give an answer to this.
- The worker party and the employer party state that workers who are involved in this dispute are those in checking section, patching section, and label sewing section.

**Issue 5: The workers demand that the company convert probationary workers who have been working for more than three months to be permanent workers**

- The workers demand that the company convert probationary workers who have been working for more than three months to be permanent workers because they have been working for the company for many years.
- The employer does not agree because after becoming permanent workers, the workers like to go on strike. Thus, the company does it in this way in order to reduce the incident of strikes. Workers have the right not to renew their contract after they finish their probationary contract if they do not agree.
- The employer party states that the company provides US\$ 45 per month to probationary workers regardless of how long the workers have been working for the company. The company states that there are less 100 workers who have been working for more than three months.
- The Arbitration Council ordered both parties to provide the exact number of probationary workers who have been working for more than three months to the Arbitration Council. The worker party provided a name list of workers in each section which equals a total number of 70 workers. The employer party does not object to the list.

**REASONS FOR DECISION**

**Issue 1: The workers demand that the company maintain their perquisites (attendance bonus) when they come to work but there is no work for them to do**

Point 3 of Notification 017, dated 18 July 2000, by the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation states, “*Any workers who regularly work according to number of working days per month shall have a reward at least 5 US dollars per month.*”

Regarding attendance bonus, in previous Arbitral Awards the Arbitration Council held that “*attendance bonus*” is an incentive bonus to ensure praise for workers who attend work regularly within a month without taking leave for unacceptable reasons. (See Arbitral Awards 62/04-Ecent, Issue 1; 63/04-Shine Well, Issue 5; 15/05-Wing Tai, Issue 1; 62/07-Hong Mei, Issue 11 and 106/07-M & V 3, Issue 2).

In this case, the workers come to work but the company does not have work for them to do so it tells them to go back home. This means that the workers are not absent from work without a proper reason as the company tells them to go back home, or it can be said that the company does not have work for the workers to do. Thus, the Arbitration Council considers that the workers come to work regularly according to the contents of Notification 017, dated 18 July 2000.

Moreover, in this case the Arbitration Council considers that such case (the workers come to work but do not have work to do and the company tell them to go back home) does not amount to suspension of employment according to Article 711(11) of the Labour Law because in this case the employer states that it does not ask for permission from the Ministry of Labour for such a short period of no work. When there is a suspension of employment in accordance with Article 71(1) of the Labour Law, the employer is not required to pay full wages to workers. In previous Arbitral Awards, the Arbitration Council held that this Article means that if a [worker's] employment contract is not suspended in accordance with the law, the employer needs to provide wages to the worker (see Arbitral Awards 21/03-Loyal, Issue 8; 46/04-M&A, Issue 1; 60/06-New Max, Issue 2; 74/07-Global Apparel, Issue 1).

Moreover, in previous Arbitral Award the Arbitration Council held that wage includes attendance bonus (see Arbitral Award 106/07-M & V 3, Issue 2).

Based on the above interpretation, the Arbitration Council finds that if a worker's employment contract is not suspended in accordance with the law the employer need to provide full wages to the worker. This means that the employer needs to provide the full US\$ 5 attendance bonus to the workers.

In conclusion, the Arbitration Council orders the company to maintain workers US\$ 5 attendance bonus when they come to work but there is no work for them to do.

**Issue 5: The workers demand that the company convert probationary workers who have been working for more than three months to be permanent workers**

Article 68(1) of the Labour Law states, *“A contract for a probationary period cannot be for longer than the amount of time needed for the employer to judge the professional worth of the worker ... However, the probationary period cannot last longer than three months for regular employee, two months for specialised workers and one month for non-specialised workers.”*

In previous Arbitral Awards the Arbitration Council held that the *worker party and employer party cannot enter into a probationary contract for a period longer than three months and as the majority of workers in garment factories are specialised workers thus their probationary period is two month at most.* (See Arbitral Awards 27/03-Standard, Issue 1; 69/04-Common Way, Issue 1; 53/06-Hong Mei, Issue 1; 62/06-Quick Sew, Issue 1; and 37/07-JRB, Issue 1).

In this case, there are 70 workers who have been working for more than three months but the company has not converted them to be permanent workers. In the hearing, the employer party claims that the reason that these workers remain on probationary contracts for more than three months is because the employer had a concern that when they become permanent workers they will go on strike. Nonetheless, the Arbitration Council considers that the reason provided by the employer is not an acceptable reason for it to maintain workers on probationary contract for more than three months. Regarding the prevention of strikes by the workers, there are sufficient labour regulations that the employer can implement to prevent strikes.

Based on Article 68 of the Labour Law above, the Arbitration Council considers that the purpose of the probationary period is to provide sufficient time for the employer to evaluate the working capacity of the workers. This means that no probationary period can be longer than three months. The employer should determine the duration of the probationary period based on the type of worker and work performed by the workers. In addition, in accordance with previous Arbitral Awards, the Arbitration Council decides that garment workers are considered specialized workers whose probationary period should be only two months.

In Arbitral Awards 55/04-You Chheng, Issue 2 and 03/03-Tonga, Issue 2, the Arbitration Council held that:

*“In no circumstances can probationary periods be for longer than 3 months. At the expiry of the probation period any worker who continues to work for the employer must have their status changed to permanent worker and be placed on either a fixed term duration contract or undetermined duration contract at full pay rates required by law.”*

Point 1 of Notification 745 KKBV, dated 23 October 2006 states, “*The minimum wage for garment, textile workers and shoe making workers is set at US\$45.00 per month for probationary period of 01 month to 03 months. At the end of probationary period, a full-right worker receives the minimum wage of US\$ 50 per month.*”

According to the content of point 1 of Notification 745 KKBV, dated 23 October 2006 above, the Arbitration Council considers that workers are entitled to a minimum wage of US\$ 50 per month after their probationary period. However, in this case, the company provides US\$ 45 per month to 70 probationary workers who have been working for a period longer than the probationary period determined by the Labour Law.

Therefore, in order to be consistent with previous Arbitral Awards of the Arbitration Council, in this case the Arbitration Council orders the employer to convert the workers mentioned in the name list to permanent workers in accordance with their seniority from the end of the first probationary period and provide them with the minimum wage under the law.

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

**DECISIONS AND ORDERS**

**Issue 1:** Order the employer to maintain workers’ US\$ 5 attendance bonus when there is no work for them to do and the employer does not ask for permission from the Labour Inspector.

**Issue 5:** Order the employer to convert the 70 workers mentioned in the name list to permanent workers in accordance with their seniority from the end of the first probationary period and provide them with the minimum wage under the law.

**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 period.

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

Arbitrator chosen by the employer party:

Name: **Kol Vathana**

Signature: .....

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: .....