



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 94/07- Fortune Garment

Date of Award: 3 October 2007

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **Ouk Ry**

Arbitrator chosen by the worker party: **Sin Kim Sean**

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

DISPUTING PARTIES

Employer party:

Name: **Fortune Garment & Woolen Knitting Factory Ltd.**

Address: Prek Kseo Village, Rokar Kpous Commune, Sa-Ang District, Kandal Province

Telephone: 012 846 475 Fax: N/A

Employer Representatives:

- | | |
|-----------------|-------------------------------|
| 1. Sok Hak | Factory Deputy Director; |
| 2. Kong Kim Chi | Legal Advisor of the Company; |
| 3. Ly Leang | Assistant; |
| 4. Lim Khun | Labour Dispute Coordinator; |
| 5. Long Heang | GMAC Representative. |

Worker party:

Name: **Coalition of Cambodian Apparel Workers of Democratic Union (C.CAWDU) and
Cambodian Apparel Workers of Democratic Union (CAWDU)**

Address: Prek Kseo Village, Rokar Kpous Commune, Sa-Ang District, Kandal Province

Telephone: 012 632 400

Worker Representatives:

- | | |
|-------------------|-------------------------------|
| 1. Ek Pheakdey | Secretary General of C.CAWDU; |
| 2. Lon Simet | President of CAWDU; |
| 3. Yan Sarann | Vice-President of CAWDU; |
| 4. John Vantha | Union Secretary; |
| 5. Phea Sokhon | Worker Delegate; |
| 6. Mak Samnang | Worker Delegate; |
| 7. Thann Sorphoan | Worker Delegate. |

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

1. The workers demanded that the company deduct their attendance bonus in proportion to the number of days they were absent. The employer disagreed but [would] implement Notification No. 017 of the Ministry.
2. The workers demanded that the company calculate their annual bonus based on their previous 12 months wages. The employer disagreed and will provide only the minimum wage, attendance bonus, and seniority bonus.
3. The workers demanded that the company stop using fixed duration labour contracts. The employer disagreed but [would] implement the Labour Law.
4. The workers demanded that the company pay workers in the Wrapping and Checking Unit by piece [rate]. The employer disagreed but [said it would] implement the previous practice.
5. The workers demanded that the company pay the worker delegates, who attended various meetings, based on a piece rate. The employer disagreed but [said it would] implement the previous practice.
6. The workers demanded that the company dismiss Mr. Kim Khun. The employer disagreed but will give him time to change.
7. The workers demanded that the company reinstate Nhim Srey Noeun and Lon Bora. The employer disagreed claiming that their labour contracts had expired.
8. The workers demanded that the company dismiss Chen Ping Hua (Chinese), Chief of Weaving. The employer disagreed but asked for time to guide her.

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B of the Labor Law (1997); the Prakas on the Arbitration Council No. 099 dated 21 April 2004; the Arbitration Council Procedural Rules which form an Annex to the same

Prakas; and the Prakas on the Appointment of Arbitrators No. 076 dated 10 May 2007 (Fifth Term).

An attempt was made to conciliate the collective dispute that is the subject of this Award, as required by Chapter XII, Section 2A of the Labour Law. The conciliation hearing which took place on 6 September 2007 was unsuccessful, and the non-conciliation report No. 142 was submitted to the Secretariat of the Arbitration Council on 10 September 2007.

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: 19 September 2007 (from 2:00pm to 5:00pm)

Procedural issues:

On 10 August 2007, the Kandal Provincial Department of Labour and Vocational Training received a complaint from **C.CAWDU** demanding that the company improve some working conditions. On 16 August 2007, the Kandal Provincial Department of Labour and Vocational Training received another complaint from **C.CAWDU** demanding that the company dismiss Chen Ping Hua, the Chinese Chief of the Weaving Unit. Having received the complaint, the Kandal Provincial Department of Labour and Vocational Training designated its officials to resolve the dispute at the factory; as a result, four out of 12 issues were conciliated. The eight remaining non-conciliated issues were submitted to the Secretariat of the Arbitration Council on 10 September 2007.

Having received the case, the Secretariat of the Arbitration Council summoned the employer and worker parties to a hearing on 19 September 2007 at 2:00pm to conciliate the eight remaining non-conciliated issues. Both parties were present as summoned by the Arbitration Council.

On the hearing date, the Arbitration Council attempted to conciliate the eight remaining non-conciliated issues stated in the non-conciliation report of the Department of Labour Disputes, but was not able to resolve the issues. Thus, in this case, the Arbitration Council will consider this dispute based on the evidence and parties' testimonies as follows:

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party:

1. Notification on the conciliation of Issues 5 and 7 of the labour dispute at Fortune Company dated 25 September 2007;
2. Report on the incident in the factory dated 17 September 2007;
3. Minutes of the collective labour dispute conciliation dated 24 August 2007;
4. Letter certifying the address of Nhim Sinoeun dated 18 March 2007;
5. Curriculum Vitae of Nhim Sinoeun;
6. Probationary labour contract of Nhim Sinoeun dated 5 March 2007;
7. Fixed duration labour contract of Nhim Sinoeun dated 5 April 2007;
8. Notification on the expiry of the labour contract of Nhim Sinoeun dated 23 July 2007;
9. Letter certifying the address of Lon Bora dated 23 March 2007;
10. Curriculum Vitae of Lon Bora;
11. Probationary labour contract of Lon Bora dated 15 March 2007;
12. Fixed duration labour contract of Lon Bora dated 5 April 2007;
13. Notification on the expiry of the labour contract of Lon Bora dated 23 July 2007;
14. Minutes of the collective labour dispute conciliation dated 13 November 2006;
15. List of workers whose fixed duration contracts expired and were not renewed, dated 31 July 2007;
16. Internal Work Rules of Fortune Garment dated 2 June 2003;
17. Request for a collective labour dispute settlement between workers and Fortune Garment dated 6 August 2007;
18. Complaint in addition to case 043/07 dated 10 August 2007;
19. Pay roll of July 2007 of Fortune Garment;
20. Authorization letter of the Director of Fortune Garment dated 10 September 2007.

Provided by the worker party:

1. Brief thesis on the demand of CAWDU at Fortune Garment dated 25 September 2007;
2. Petition of workers at Fortune Garment demanding that the company dismiss Mr.Lim Khun and Chen Ping Hua.

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

1. Letter No. 1305 of the Minister of Labour and Vocational Training on the request for the collective labour dispute settlement at Fortune Garment dated 19 September 2007;
2. Letter No. 182 dated 6 September 2007 on the report of the collective labour dispute settlement at Fortune Garment;
3. Minutes of the collective labour dispute conciliation dated 24 August 2007.

Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 409 to the worker party to attend the hearing dated 12 September 2007;
2. Invitation No. 408 to the employer party to attend the hearing dated 12 September 2007.

FACTS

- Having examined the documents submitted to the Arbitration Council;
- Having examined the collective labour dispute conciliation report;
- Having listened to the statements of employer and worker parties;

The Arbitration Council finds that:

- Fortune Factory employs around 2,050 workers in total;
- **C.CAWDU**, the claimant, has around 1,200 members;
- Both parties claimed that none of the unions has most representative status including C.CAWDU.

Issue 1: The workers demand that the company deduct their attendance bonus in proportion to the numbers of days they were absent

The worker party claimed that previously the company deducted their entire US\$5 attendance bonus, even when the workers took authorized leave. The company did not refute the workers' claim.

The workers demanded that the company deduct their attendance bonus in proportion to the number of days they were absent for simple personal obligations when they had permission from the company. The workers said that simple personal obligations included [attending a] religious ceremony in their hometown, attending a wedding ceremony of friends, or when they are not feeling well; for example, feeling dizzy which does not require medical attention.

The employer party disagreed with the demand arguing that the company did not deduct the bonus if [the worker's took] sick leave or wedding leave and during the months that the [workers] worked 27 days. The company party added that if the company deducted the bonus in proportion to the number of days workers were absent, workers would ask for more leave for personal reasons and it would disrupt the production line.

The worker party said that there are only two months per year that they have to work 27 days – July and August because these two months do not have a holiday. The company party did not refute this claim.

The Arbitration Council finds that no clause of the Internal Work Rules provides for the deduction of the attendance bonus in proportion to the number of days workers take leave for simple personal obligations with permission. However, Clause 5 (5) of the Internal Work Rules of the company states that, “every month, if worker works 26 days and regularly, he or she shall receive the attendance bonus of US\$5 per month.”

Issue 2: The workers demand that the company calculate payment in lieu of annual leave based on their total 12 months wages

The workers demanded that the company calculate payment in lieu of annual leave by adding their 12 month wages divided by 12 and divided by 26 days in accordance with Article 168 of the Labour [Law] and ILO’s document titled Annual Leave.

The employer party disagreed with the demand of workers arguing that the company would follow the previous practice by adding the daily minimum wage US\$1.92 x the number [of days] of leave (+ attendance bonus + seniority bonus + performance bonus).

Issue 3: The workers demand that the company stop using fixed duration labour contracts

The workers demanded that the company change their labour contracts to undetermined duration claiming that the company signed only short-term fixed duration contracts of 2, 3, and 6 months and the company would not renew the contract when workers were sick or did not agree to work overtime or when workers were pregnant; that was the reason why workers who were on maternity leave did not receive their wages. Workers added that by signing a short-term fixed duration contract, workers lost their seniority status and workers did not dare to protest or to join the union because they were afraid that their labour contract would not be renewed.

The employer party said that the company has never caused any trouble to the union and has never had any intention not to renew the labour contract of any worker including a pregnant worker. Labour contract renewal depends on the company’s production line. Over 300 workers have fixed duration contracts and 1000 workers have undetermined duration contracts. Workers did not refute the claim of the employer.

The workers added that the company did not renew the labour contract of a pregnant worker with ID SU10, but the worker party did not provide evidence to prove that the company tried to avoid paying her maternity wages by not renewing her contract.

Issue 4: The workers demand that the company pay workers in the Wrapping and Checking Unit by piece rate

The worker party claimed that the company pays workers in the Wrapping and Checking Unit a monthly wage and requested that the company pay them a piece rate saying that the company asked workers to count by piece.

The employer party disagreed with the demand. The company counted the product by piece but did not require workers to work based on a piece rate. The company just wanted to know the number of clothes produced. The company said that the buyers required them to pay workers in the Wrapping and Checking Unit on a monthly basis because the type of work required high quality work. The company was concerned that if workers were paid a piece rate, their quality of work would be affected.

The worker party said that workers in the Wrapping and Checking Unit were paid the minimum wage, attendance bonus, seniority bonus, and performance bonus by the company. The workers did not object to the calculation but requested to be paid based on a piece rate.

Issue 5: The workers demand that the company pay the worker delegates, who attended various meeting, based on a piece rate

On 24 September 2007, the Arbitration Council received an agreement between workers and the company conciliating Issue 5 and requested the Arbitration Council to withdraw this Issue from the Award.

Issue 6 and Issue 8: The workers demand that the company dismiss Mr. Kim Khun and Ms. Chen Ping Hua

The Workers demanded that the company dismiss Mr. Lim Khun, Labour Dispute Coordinator in the company and Ms. Chen Ping Hua, Chief of Weaving Unit for the following reasons:

- Mr. Lim Khun has always refused to resolve [issues] and did not listen to the protest of workers when there was a request for discussion about wage calculation such as seniority bonus. For example, on 17 September 2007 the worker delegates brought disputes for discussion and resolution to Mr. Lim Khun, but he did not agree to meet.
- Ms. Chen Ping Hua has always used harsh words and shouted at workers. For instance, on 6 August 2007, Ms. Chen Ping Hua shouted at a female worker in the Weaving Unit and locked the machine which caused the scale to fall down scaring the worker and making her cry.

The company did not agree to dismiss Mr. Lim Khun, Labour Dispute Coordinator in the company and Ms. Chen Ping Hua, Chief of Weaving Unit for the following reasons:

- the company has never received any complaint from workers regarding Mr. Lim Khun before. If there is evidence proving that Mr. Lim Khun did commit misconduct, the company will warn him. The employer party said that Mr. Lim Khun can only coordinate the labour dispute between workers and the company; he does not have the right to [make decisions] regarding payment.
- Regarding Ms. Chen Ping Hua, the company admitted that she did cause the scale to fall down but the company warned her on 11 August 2007.

Mr. Lim Khun, who was present at the hearing, said that when workers get paid less than their wages, they sometime looked for him or the Chief of Unit to help but he does not have the right to make decisions on money issues. He added that if workers asked him to help, he would explain the law to them and whether or not they had a right to make a claim. Generally, if workers asked him to help, the request must be in writing. For instance, on 17 September 2007, the worker delegate, who met him, did not have a written request. The worker party acknowledged that on 17 September 2007 they did not submit a written request.

Issue 7: The workers demand that the company reinstate Nhim Srey Noeun and Lon Bora

On 24 September 2007, the Arbitration Council received an agreement between workers and the company conciliating Issue 7 and requested the Arbitration Council to withdraw this Issue from the Award.

REASONS FOR DECISION

Issue 1: The workers demand that the company deduct their attendance bonus in proportion to the numbers of day they were absent

Point 3 of Notification 017/00 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.*”

Based on the content of point 3 of Notification 017 dated 18 July 2000, the Arbitration Council considers that this notification neither states whether or not workers are entitled to this bonus when they are on special leave nor states how many days workers need to work in a month to be considered regular in order to receive the bonus.

In previous cases which related to the attendance bonus, the Arbitration Council considered that “*attendance bonus*” is an incentive for workers who come to work regularly in one month and are not absent without a valid reason. However, the provisions on attendance bonus stated in Notification 017 of the Ministry of Social Affairs, Labour, Vocational Training, and Youth Rehabilitation as well as the Labour Law are not intended to punish workers who

are on sick leave with permission. The Arbitration Council considers that if workers had to lose the whole US\$5 bonus because they were on sick leave with permission during any month, it would be unfair for workers because it is not their fault that they could not come to work regularly. (see Arbitral Awards 62/04 – Ecent, Issue 1; 63/07 – Shine Well, Issue 5; and 15/05 – Ving Tay, Issue 1)

Moreover, in case 60/06 – New Max, the Arbitration Council decided that, “In cases where workers ask for permission to take leave for simple personal obligations such as attending a ceremony or wedding of friends and the leave is group leave, the company has the right to determine the working hours and reject unnecessary leave to ensure it does not affect the production line.” (See Arbitral Award 60/06 – New Max Garment, Issue 2)

In this case, the Arbitration Council also agreed with the previous interpretation of the Arbitration Council that in case workers take leave with permission, they should be paid the attendance bonus proportional to the number of days they come to work. However, in this case, Clause 5 (4) of the Internal Work Rule of the company states that, “Every month, if worker works 26 days and regular, he or she is entitled to the attendance bonus of US\$5 per month.”

Based on Clause 5 (4) of the Internal Work Rules of the company, the Arbitration Council considers that the Internal Work Rules specify only about coming to work 26 days but do not specify whether or not a worker is entitled to the attendance bonus if they take leave with permission from the company. Similarly, when executing the labour contract, a worker, who has worked for more than one year, has the right to use their annual leave. Therefore, if in any month of a year a worker takes leave, they would not be able to work a regular 26 days. The question is where a worker uses their annual leave, are they considered to have worked regularly for 26 days? And are they entitled to the US\$5 monthly attendance bonus? Thus, the Arbitration Council considers that the Internal Work Rules are not clear.

In conclusion, based on the above interpretation, the Arbitration Council considers that if a worker takes leave with permission, they should be paid the attendance bonus based on the number of days they come to work. Therefore, the Arbitration Council considers that where a worker takes leave for simple personal obligations with permission from the employer, the attendance bonus shall be deducted in proportion to the number of days of leave with permission. For example, if a worker takes two days leave with permission, their attendance bonus shall be deducted based on the formula below:

$$\frac{\text{US\$45}}{26 \text{ days}} \times 2 = \text{US\$0.385}$$

$$\text{US\$5} - \text{US\$0.385} = \text{US\$4.615}$$

26 days

That means, if a worker takes two days leave to attend to simple personal obligations, the company shall deduct US\$0.385 and pay the workers only US\$4.615.

Issue 2: The workers demand that the company should calculate payment in lieu of annual leave based on the worker's total 12 months wages

Article 168 of the Labour Law stipulates that, *“Before the worker departs on leave, the employer must pay him an allowance that is at least equal to the average wage, bonuses, benefits, and indemnities, including the value of benefits in kind, but excluding reimbursement for expenses, that the worker earned during the twelve months preceding the date of departure on leave. This allowance shall in no case be less than the allowance that the worker would have received had he actually worked.”*

Based on this article, the Arbitration Council considers that the employer has an obligation to pay a worker an allowance that is at least equal to the average wage, bonuses, benefits, and indemnities, including the value of benefits in kind, but excluding reimbursement for expenses, that the worker earned during the twelve months preceding the date of departure on leave. That means the **allowance must be [at] least equal to the average wage, bonuses, benefits, and indemnities, including the value of benefits in kind, but excluding reimbursement for expenses, that the worker earned during the twelve months preceding the date of departure on leave.**

In previous cases, the Arbitration Council ordered the employer to [calculate] payment in lieu of annual leave by adding the total wages and overtime payment and attendance bonus [received over the] previous 12 months, divided by 12, divided by 26, and multiplied by the number of [days of] annual leave. (See Arbitral Award 27/04 – MS, Issue 3)

In this case, the Arbitration Council also agrees with the [interpretation by] the previous Arbitration Council. Therefore, calculating the payment by adding the daily minimum wage with attendance bonus, seniority bonus, and performance bonus [is not consistent with] the content of Article 168 of the Labour Law. Therefore, the Arbitration Council considers that the company's calculation was not valid because the annual bonus shall be calculated by adding the total wages, overtime payments and attendance bonus [received] over the previous 12 months, divided by 12, divided by 26, and multiplied by the number of [days of] annual leave. It should not be calculated by adding the daily minimum wage and attendance bonus, seniority bonus, and performance bonus as practiced previously.

Therefore, in order to be consistent with the previous order, the Arbitration Council orders the company to [calculate] the annual bonus by adding the total wages, overtime payments and attendance bonus [received] over the previous 12 months, divided by 12, divided by 26, and multiplied by the number of [days of] annual leave.

Issue 3: The workers demand that the company stop using fixed duration labour contracts

Article 65 of the Labour Law states that, *“A labor contract establishes working relations between the worker and the employer. It is subject to common law and can be made in a form that is agreed upon by the contracting parties.”*

Based on this Article, the Arbitration Council considers that a labour contract is an agreement between a worker and an employer and shall comply with the provisions of Contract Law.

Article 22 of Decree No. 38 on Labour Contract and Responsibility outside Contract stipulates that, *“Contract is considered as the law of the contracting parties. A contract can only be amended or terminated when parties agree. Contract shall be implemented honestly and based on the intentions of contracting parties.”*

Based on this Article, the Arbitration Council considers that no party can force another party to accept the format or type and the content of a contract to which they did not agree. If they do this, a party can nullify the contract or the contract shall be nullified by law. Therefore, when signing a contract a party can suggest the format, type, or content of the contract and the other party has the right to accept or not to accept it. However, a contract exists only after parties have agreed upon the content. A labour contract can exist only after there is agreement between a worker and an employer. (see Arbitral Award 79/07 – Teratex, Issue 3)

In this case, the worker party demanded that the company convert their fixed duration labour contract to an undetermined duration contract because the fixed duration contract is too short, workers lose their rights to freedom of association [and] maternity payment and it is difficult for them to find jobs. However, the worker party did not provide any evidence to prove their claim; furthermore, the employer party said in the hearing that there was no union discrimination and so far none of the workers with fixed duration contracts has taken maternity leave. Therefore, the Arbitration Council considers that the workers' demand does not have a valid legal basis.

In previous cases, the Arbitration Council ordered the employer to convert the fixed duration contract to an undetermined duration contract because the use of fixed duration contracts exceeded two years, which was contradictory to Article 67 of the Labour Law. (See Arbitral Awards 10/03 – Jacqsintex, Issue 1; 36/06 – Mondotex, Issue 2). However, in this case the worker party did not provide evidence to show that their fixed duration labour contracts had been renewed for more than two years and the employer said that none of the fixed duration labour contracts exceeded two years. Therefore, the Arbitration Council decides to reject this demand.

Issue 4: The workers demand that the company pay workers in the Wrapping and Checking Unit based on a piece rate

In this case, the worker party demanded that the company pay workers in the Wrapping and Checking Unit based on a piece rate. However, the company requires workers in the Wrapping and Checking Unit to be paid a monthly wage. The Arbitration Council will consider this issue as follows:

Article 2 of the Labour Law provides that, “...*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 the supervision and direction of the employer...*”

In previous cases, the Arbitration Council considered that Article 2 meant that the employer has the right to manage and direct the company as long as the right complies with the law and is valid. The Arbitration Council considers that the right to manage an enterprise of the employer includes the right to determine which worker should be paid a piece rate and which worker should be paid on a monthly basis (monthly wage) as long as this right complies with the law and is valid. (See Arbitral Awards 62/06 – Quick Shoes, Issue 5 and 33/07 – Gold Fame, Issue 3)

In this case, the worker party demanded that the company pay workers in the Wrapping and Checking Unit based on a piece rate. The Arbitration Council considers that the right to determine [whether workers are paid on] a piece rate basis or receive a monthly wage belongs to the employer as stated in Article 2 above. Both parties also agreed that the employer pay at least US\$50 in accordance with the law. The demand of workers is a demand beyond what the law provides. Thus, the Arbitration Council considers that this dispute is an interests dispute.

Generally, the Arbitration Council will decide an interests dispute only if the union who brought the dispute has most representative status. The most representative status provides the union with legal capacity to negotiate a collective bargaining agreement in a company (See Article 69 (2B) and Clause 9 (1) of Prakas No. 305) and legal rights to bring an interests dispute before the Arbitration Council for resolution. In order to achieve most representative status, Article 277 of the 1997 Labour Law states that the union must be registered and meet other requirements as stated in the Article. (See Arbitral Awards 60/04 – United Art, Issue 3; 08/07 – Xiao Kinh, Issue 3; and 33/07 – Gold Fame, Issue 2)

In this case, the Cambodian Apparel Workers of Democratic Union at Fortune Factory does not have most representative status. Therefore, the Arbitration Council declines to consider the demand of the workers that the company pay workers in the Wrapping and Checking [Unit] based on a piece rate.

Issue 6 and Issue 8: The workers demand that the company dismiss Mr. Kim Khun and Ms. Chen Ping Hua

In this case, the worker party demanded that the company dismiss Mr. Kim Khun and Ms. Chen Ping Hua. The Arbitration Council considers as follows:

Article 65 of the Labour Law stipulates that, *“A labor contract establishes working relations between the worker and the employer. It is subject to common law and can be made in a form that is agreed upon by the contracting parties.”*

Because the contract is under the provision of the law; thus, Decree No. 38 on Contracts also covers labour contracts. Article 22 of Decree No. 38 on Contract and Responsibility outside Contract (1988) states that, *“Contract is the law of the contracting parties. Contract can only be amended or terminated when parties agree. Contract shall be applied to only the contracting parties.”* Based on this Article, the Arbitration Council considers that only parties to the labour contract have the right to terminate the contract. Therefore, it clearly means that hiring or dismissing any worker in the company is the exclusive right of the employer who is party to the labour contract.

“Generally, the Arbitration Council considers that worker does not have the right to order or demand the employer party to dismiss any worker unless workers can provide evidence to prove that that worker is a dangerous person that cannot be kept in the company or factory and prove that keeping this type of person would cause insecurity in workplace.” (See Arbitral Awards 04/03 – Lida, Issue 2; 14/03 – Chu Sing, Issue 1; 17/03 and 18/03 – Hu Hing, Issue 4; 15/04 – Lucky Zone, Issue 2; 16/04 – Yada Printing, Issue 1; and 32/04 – Ecent, Issue 1)

In this case, the Arbitration Council also agrees with the previous interpretation that the Arbitration Council has the authority to order the employer to dismiss or transfer any worker if there is evidence to prove that that the worker may cause danger to other workers.

However, in this case the worker party did not provide any concrete evidence to prove that Ms. Chen Ping Hua and Mr. Kim Khun are dangerous people who may cause insecurity in the workplace besides the frustration with the style of the management and the attitude of Ms. Chen Ping Hua and Mr. Lim Khun. Regarding the provision of evidence, in general the Arbitration Council always declines to consider or rejects the demands of workers in cases where workers do not provide enough evidence to the Arbitration Council to support their demand.

In previous Arbitral Awards, the Arbitration Council decided to reject the demand, if the worker party, who made the demand, did not provide enough valid evidence to the Arbitration Council to allow them to make a decision. (See Arbitral Awards 63/04 – Shine Well, Issue 4; 99/06 – South Bay, Issue 5; 74/07 – Global Apparel, Issue 2)

Therefore, in order to be consistent with the previous Arbitral Awards, the Arbitration Council decides to reject the demand that the company dismiss Mr. Lim Khun and Ms. Chen Ping Hua.

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

DECISIONS AND ORDERS

- Issue 1:** Order the company to deduct the attendance bonus in proportion to the number of days that a worker is absent.
- Issue 2:** Order the company to provide payment in lieu of annual leave by adding their total wages, overtime payments and attendance bonus [received over] the previous 12 months, divided by 12, divided by 26, and multiplied by the number of [days of] annual leave.
- Issue 3:** Reject the demand of workers that the company convert their fixed duration labour contracts to undetermined duration labour contracts.
- Issue 4:** Decline to consider the demand of workers that the company pay the workers in the Wrapping and Checking Unit based on a piece rate.
- Issue 6 and 8:** Reject the demand that the company dismiss Mr. Lim Khun and Ms. Chen Ping Hua.

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: **Ouk Ry**

Signature:

Arbitrator chosen by the worker party:

Name: **Sin Kim Sean**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: