

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

**THE ARBITRATION COUNCIL**

Case: 99/04

Date of award: 15 December 2004

**ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

**AIA Company**

(Employer party)

**And**

**Khmer Youth Federation of Trade Union and Khmer Youth Union at AIA Company**

(Employee party)

**DETAILED INFORMATION OF EMPLOYER PARTY:**

**Representative:** Mr. Yin Vannak, Administrator

**Address:** #44, Street 265, Sangkat Tek la ak III, Khan Toulkok, Phnom Penh

**Tel:** 012 790 887

**DETAILED INFORMATION OF EMPLOYEE PARTY:**

**Representatives:** 1- Hang Sreymom, Coordinator from KYFTU;

2- Nang Samnang, Coordinator from KYFTU;

3- Ses Sophy, Vice president of KYFTU at AIA Co., Ltd.;

4- Kim Kongkea, President of KYFTU at AIA CO., Ltd.;

5- San Phann, Coordinator from KYFTU

**Address:** Building 12, Sangkat Tek la ak, Khan Toulkor, Phnom Penh

**Tel:** 012 491 579

**ISSUES IN DISPUTE:**

**(In non-conciliation report)**

- 1- The workers demand that the company build a day care center and [provide] a babysitter, as the company cannot afford to pay the workers' demand for three cans of milk per month for one year.
- 2- The workers demand that the company pay for the travel to their home after the company dismissed temporary workers. The company said that it could not pay.
- 3- The workers demand that the company take any measure to reduce heat in the workplace. The company said that it could not afford to reduce the heat.

- 4- The workers demand that the company build a shelter for motorcycles, provide bicycle parking, and build a canteen. The company said that it could not afford to do this.
- 5- The workers demand that the company correctly offer special leave for the workers. The company offers special leave only for marriage.
- 6- The workers demand that the company arrange another election for workers' representatives. The company said that it held elections already, and the term for those elected is not over yet.
- 7- The workers demand that the company maintain attendance bonuses when workers come 15 minutes late per day. The company could not maintain attendance bonuses for those workers who come 15 minutes late per day.
- 8- The workers argue that the company [currently] provides piece rates that are less than the basic wage and should recalculate piece rates in accordance with the Labour Law. The company said that it already paid in accordance with the Law.
- 9- The workers demand that the company negotiate with the workers' representatives and the union before dismissing any workers. The company said that it had negotiated with the workers' representatives.
- 10- The workers demand that the company increase wages for the hard-working employees. The company could not afford this.
- 11- The workers demand that the company inform the Labour Inspector when the company recruits or dismisses any workers. The company could not follow this request.
- 12- The workers demand that the company deduct 1,000 riel per worker each month for union [dues]. The company does not interfere in this matter.
- 13- The workers demand that the company not deduct double their wages for those workers who are absent without permission. The company still deducts double wages as the company does not warn those workers.

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

The Arbitration Council derives its power to make this Award from Section II B Chapter 12 of the Labour Law (1997); the Prakas on the Arbitration Council 99/04; Prakas on the appointment of arbitrators dated 26 April 2004; Prakas 265/04 and the Arbitration Council Procedural Rules.

An attempt to conciliate the collective dispute which is the subject of this Award was made as required by Chapter XII Section 2A of the Labour Law. That conciliation hearing was unsuccessful and non-conciliation report number 2797/MoLVT dated 18 November 2004 was submitted to the Secretariat of the Arbitration Council on 19 November 2004.

## **COMPOSITION OF THE ARBITRATION PANEL:**

Arbitrator chosen by the employer party:	<b>Mr. Kao Thach</b>
Arbitrator chosen by the worker party:	<b>Mr. Ven Pov</b>
Chair arbitrator (chosen by the two arbitrators):	<b>Mr. Kong Phallack</b>

## **HEARING AND EVIDENCE**

**Date and place of hearing:** 6 December 2004 at 8:00 a.m. at the Secretariat of the Arbitration Council.

## **EVIDENCE CONSIDERED BY THE ARBITRATION PANEL:**

### **I. *Documents obtained from employer party:***

- 1- Letter delegating authority dated 15 November 2004;
- 2- Internal Work Rules of AIA company;
- 3- Statute of AIA company dated 31 January 1997; and
- 4- Registration certificate of business license dated 7 May 1997.

### **II. *Documents obtained from employee party:***

1. Certified letter from the Minister of Social Affairs, Labour, Vocational Training and Rehabilitation number 433 dated 15 July 2004; and
2. Registration certificate dated 15 July 2004.

### **III. Documents obtained from the Ministry**

- 1- Report on collective labour dispute at AIA company dated 17 November 2004;
- 2- Ordering letter number 018/MoLVT dated 3 November 2004;
- 3- Minutes of collective labour disputes dated 16 November 2004; and
- 4- Letter to recognize shop stewards number 527/MoSALVY dated 24 March 2003.

### **III. Testimony and answers of witnesses from the workers and the employer at the hearing.**

### **IV. Both parties agreed to a non-binding award.**

## **CASE SUMMARY**

AIA company is located at #44, Street 265, Sankat Tek la ak, Khan Toulkok, Phnom Penh. The company employs a total of 300 workers.

On 27 October 2004 the Labour Inspector received a complaint from the KYFTU asking for help to settle workers' demands in respect of 18 issues. After receiving the complaint, the Labour Inspection Department assigned labour inspectors to Khan Toulkok to

resolve [the issues] at the factory on 3 November 2004. Both parties, however, agreed to extend the conciliation hearing to 16 November 2004 with the result that five of the 18 issues were successfully conciliated. The 13 non-conciliated issues were sent to the Arbitration Council on 19 December 2004. After receiving the case on 6 December 2004, both parties to the dispute were invited to appear in a hearing by the Arbitration Council at 8:00 a.m. Because the union does not have most representative status, the Arbitration Council decides to determine only the rights disputes, and leaves the interest disputes for the parties to negotiate and to make a collective bargaining agreement at a later time.

**FINDINGS OF FACT:**

- Having reviewed the non-conciliation report of the labour dispute,
- Having heard the employee party,
- Having reviewed documents as described above,

The Arbitration Council has considers the facts as below:

**Most representative status:**

In the hearing the union said that it had submitted an application form to certify its most representative status, but the company failed to authorize it. The Arbitration Council asked the union to show evidence related to the application form, but the union said that it had just prepared one to submit. Thus the Arbitration Council finds that the union does not yet have most representative status.

**First Issue: Nursing room and a day care center**

- The factory does not have a day care center and nursing room, but there is a medical room. The company representative recognised that there was a law about this, however the company stated that it is not capable of providing the room and leaves the case for the Arbitration Council to decide. The company did not provide evidence that it is not capable of building a day care center and nursing room.
- The number of women who have children is not clear. And the company also does not have the capacity to provide milk instead of building a day care center and nursing room.

**Second Issue: Cost of transportation for the probationary workers**

- There are a few probationary workers but the company does not know the exact number. The company had dismissed probationary workers, but had never paid for their transportation costs.

- Up to the hearing date, no probationary workers had demanded that the company pay their transportation costs. The union confirmed that they demand the payment for the future.

### **Third Issue: Rule to reduce heat in the factory**

- In the factory there are about ten ventilators, wall fans and about 70 ceiling fans. In addition, because of the high temperature, the company added ten water fans.
- The workers recognised that the above number of fans is enough but it is still hot, so they asked the company to take any measures that could reduce heat such as installing a ceiling, making a window, or putting a water pump on the roof when it is so hot. The company does not agree to do this.

### **Fourth Issue: Build a shelter for bicycles and motorcycles and a canteen**

- The company does not yet have a shelter for bicycles and motorcycles.

### **Fifth Issue: Annual Leave**

- The Company allows [employees] only to take leave on days of weddings. Generally, the company authorizes a one week leave and does not deduct from the 18 days of annual leave, but deducts from normal daily wages.
- The workers demand that the company authorise them to take more leave when they are too busy [for work], such as when their parents or children are sick or their wives give birth.
- The company did not agree to this demand and leaves the issue for the Arbitration Council to decide.
- The Internal Work Rules of the company state that annual leave shall comply with the Prakas of the Ministry of Labour.

### **Sixth Issue: Preparing for a new shop steward election**

- There are three shop stewards in the factory: Mr. Chhoun Seng Chhun, Ms. Kao Sitha, and Ms. Yeun Chanthan. Mr. Chhoun Seng Chhun had resigned his position. The union argued that the election was not lawful. Mr. Yin Vannak, the company's representative, said that he did not know the detail of this issue because he had just started work. However, he did know that there was a notice which informed all workers and at that time there was no union, and that Mr. Ses Sophy, Vice president of the union had known this. Mr. Ses Sophy said that he had known verbally and he joined the election, but the labour inspectors did not take part.

- The union asked the company to show a letter recognizing the three union representatives above, if it has [a letter] they will not present a claim for a new election. Mr. Yin Vannak, the company's representative, said that he is a new staff member, and all documents were taken by the previous staff.

- However, based on the recognized letter number 257/MoSALVY dated 24 March 2003, there are three other shop stewards; Keo Daline, Sem Sarom and Chouk Kunthea, who were elected in an election organised in 2003.

**Seventh Issue: Keeping attendance bonus of US\$5 even when the workers come to work 15 minutes late per day.**

- Clause 4 of the Internal Work Rules of the company state that all workers must work eight hours per day or 48 hours a week as determined by the following:

- Morning work period: 7:30 a.m. to 11:30 a.m
- Afternoon work period: 1:00 p.m to 5:00 p.m.

- There is no clause about coming late to work.

**Eighth Issue: The workers demand that their piece rate payment [was calculated] incorrectly in the past**

- The workers demand that the company pay back their piece rate that has been [calculated] incorrectly since 1997.

- The company said that it does pay properly in accordance with the law, and has provided the piece rate workers who received less than US\$45 with [a make-up payment, so that they receive] US\$45.

- The workers demand their lost wages before the resolution for US\$45. The workers did not give enough evidence and documents with regard to the demand such as how many workers filed a complaint for their demand, and the names of the workers.

**Ninth Issue: The workers demand the company negotiate with the workers' representative and the union before dismissing any worker.**

- No worker has been dismissed up to now.

- [But] the workers [are demanding this] for the future.

**Tenth Issue: The workers demand that the company increase wages for the workers who work hard and do heavy work.**

- This is an interest dispute, so both parties will negotiate at a later time.

**Eleventh Issue: The workers demand that the company inform the labour inspectors when the company recruits or dismisses any worker.**

- In past practice for new recruitment, the company merely posted an announcement in front of the factory, and in relation to dismissals the company also failed to notify [the labour inspectors].

**Twelfth Issue: The workers demand a wage deduction of 1,000 riel per month for the union.**

- The company has not yet applied the deduction because it might be confusing from the workers' perspective, [and they may think] that the company deducts their wages [for some other reason].

**Thirteenth Issue: The workers demand that the company do not deduct double their wages when the workers are absent without permission.**

- When the workers are absent without permission, the company deducts double their wages for the purpose of making the workers cease being late without permission.
- Clause 6 of the Internal Work Rules of the company states that absence without permission is misconduct. Absence less than two days is considered as minor misconduct; absence from two to six consecutive days is medium misconduct, and absence for more than six days is serious misconduct. If workers are absent without permission, their wages are deducted according to the period of absence.

## **REASONS FOR DECISION**

### **First Issue: Nursing room and day care center**

Article 186 of the Labour Law states that "Business owners employing a minimum of one hundred women or girls must install within their establishment, or nearby, a nursing room and child care center for babies. If the company is not able to install a nursery on its premises for children over eighteen months of age, female employees can place their children in any daycare center and the charges there incurred must be covered by the employer." Further, Article 187 states that "A regulation issued by the Minister of Labour shall determine the conditions for setting up and supervising these nurseries and child care centers." So the Arbitration Council finds that the employer has an obligation to organise or build a nursing room and a day care center which is under the supervision of the Ministry of Labour. Alternatively, for children over 18 months, the employer must compensate the cost if a female worker sends her children to an outside day care center. However, giving milk formula or payment instead of providing a nursing room is not allowed under the law (see Arbitration Council 63/04 - Shinewell and 68/04 - City New).

## **Second Issue: The transportation cost for probationary workers**

Article 188 of the Labour Law states that "Any employee who was recruited far from the work place and whose trip to the work place was paid for by the employer is, at the expiration of the contract or period of notice, entitled to a return trip to the place of recruitment at the expense of the employer and under identical conditions to the original trip." Even though Article 188 does not identify whether the workers are casual workers or regular workers, this Article applies to all ordinary workers who are located far from the workplace, which includes casual workers as well. Under this Article, the employer has an obligation to compensate workers who return home under two conditions as follows:

- 1- Those workers who were offered jobs far from the workplace; and
- 2- The employer is responsible for giving them transportation to the workplace.

In this case, the company had terminated the employment contract of some probationary workers a long time ago, but the union did not give names and exact numbers of the probationary workers who were terminated. The union also did not identify how many probationary workers were offered jobs far from the workplace and in addition, were transported to the workplace by the employer. This means that there was no one who [could make a] demand. So, the Arbitration Council finds that the union did not give enough evidence as to how many casual workers terminated in the past, demanded that the company pay their transportation costs back to their original location and whether those workers were selected and transported to the workplace. The company, however, must provide transportation costs from the original location, if the company recruits workers far from [the company] and transports them to the workplace, and [then] those workers are terminated.

In this case up until that date of the hearing, the union said that its demand was for the future. The Arbitration Council is established to resolve [extant] labour disputes, not to settle disputes that do not exist yet. In respect of this issue, the workers did not show real evidence [to support] their demand, thus the Arbitration Council will not issue a decision on this issue. If the workers want the Arbitration Council to settle this dispute, they must clearly state the exact facts.

## **Third Issue: Measures to reduce heat in the factory**

In regard to this issue, the company has done its best, such as installing ten more water fans, but heat still exists in the factory. The workers recognised that there is the correct number of fans in the factory, but it is still hot, which is why the workers request the company take additional measures like installing ceilings, making windows, or installing

water pumps on the roof. The Arbitration Council finds that the employer should consider the workers' request on this issue because it is related to the safety and health of the workers.

Article 229 of the Labour Law states that,

"All establishments and work places must be kept continually clean and must maintain conditions of hygiene and sanitation (or, more generally, the working conditions) necessary for the health of the workers.

The Ministry of Labour and other appropriate ministries shall determine the measures for enforcing the present Article for all establishments subject to the provisions of the present Chapter, particularly regarding:

- the quality of the premises
- cleaning
- sanitary arrangements for the personnel
- beverages and meals
- lodging, if applicable, of the personnel
- work stations and the arrangement of seating
- ventilation and sanitation
- individual protective equipment and work clothes
- lighting and noise levels."

Prakas125/01 and Prakas147/02 state that the employer must ensure a proper temperature in the workplace for the workers. Each worker in the factory must have an area of at least 10 meters cubed above them. The employer has to have a thermometer at the workplace to measure the temperature.

Based on the above interpretation, the employer has a legal obligation to ensure that there are suitable temperatures at the workplace. However, the workers must show evidence about temperatures at the workplace. If the workers have an intention to make a demand in respect of this issue again, the workers must show detailed evidence like temperatures in [the past] few months. Thus, the Arbitration Council rejects any consideration of the workers' demand.

#### **Fourth Issue: Building a shelter and canteen**

The workers demand that the company build a shelter for bicycles and a canteen. The Arbitration Council finds that the Labour Law and other rules related to the labour area do not [contain specifics] on [bicycle] shelters and canteens and also does not obligate the

employer to build a shelter and canteen. In this case the Arbitration Council finds that this demand is above the legal obligations of the employer. Thus, it is an interests demand which is above the law. Hence the Arbitration Council finds that the workers' demand, which require the company to build a shelter and canteen, is an interests dispute. Therefore, the employer and the workers should negotiate on this issue.

The Arbitration Council will not make a decision on this issue because the union does not have most representative status. The Arbitration Council finds that the resolution of an interests dispute may lead to a collective bargaining agreement. Moreover, if the Arbitration Council settles this issue, the arbitral award will replace a collective bargaining agreement in accordance with Article 43 of the Prakas 99/04. Thus the Arbitration Council cannot issue an arbitral award with regard to an interests dispute, unless the parties involved have the right to make a collective bargaining agreement.

To show that a union of workers has the right to negotiate for a collective bargaining agreement, that union must have most representative status in the enterprise or in the company. To receive most representative status, Article 277 of the Labour Law states that the union must register and fulfill other conditions as mentioned in this Article.

The Arbitration Council finds that the Khmer Youth Union of AIA Company does not have most representative status in the factory. Thus the union does not have the legal right to make a collective bargaining agreement on behalf of all workers in the factory. This right is a right of the union that is registered with the majority of workers as members and fulfills all conditions mentioned in Article 277 of the Labour Law. Therefore the Arbitration Council finds that the Khmer Youth Union of AIA does not fulfill the criteria in accordance with the law in order to have authority to resolve an interests dispute of all workers in the AIA Company. See 31/04-Hong Wa, 60/04-United Arts, and 96/04-Sportex.

#### **Fifth Issue: Special leave**

Article 171 of the Labour Law states that "The employer has the option of granting the employee special leave for personal reasons that affect the worker's immediate family. If the worker has not yet taken his annual leave, the employer can deduct the special leave from the worker's annual leave. If the worker has taken all his annual leave, the employer cannot deduct the special leave from the worker's annual leave for the next year. Hours lost because of special leave can be made up under the conditions set by regulations issued by the Minister of Labour."

Clause 1 of Prakas 267/01 states that the employer of the enterprise as mentioned in Article 1 of the Labour Law has the right to authorize its employees to take special leave with payment of wages that does not exceed a period of seven days per year in circumstances where those employees are too busy [with private matters] or in the event that their family members are affected as below:

- A- Employee's own wedding
- B- Wife gives birth
- C- Daughter or son' s wedding
- D- Husband, wife, children, or parents are ill or have passed away.

In addition, clause 4 of the Internal Work Rules states that special leave shall follow the Prakas of the Ministry of Labour. In this case, the company authorises the workers to take leave only on their wedding day, which contradicts Prakas 267. Further, the company does not deduct this special leave from the 18 days [of annual leave], but deducts from normal daily wages.

Even though Article 171 of the Labour Law and Prakas 267 do not bind the employer, the employer cannot deduct workers' wages that relate to special leave. According to the purpose of Article 171 of the Labour Law and Prakas 267, the company can calculate special leave with the workers' annual leave. If the employer allowed the workers to take special leave and the workers had used all their annual leave in that year, the employer cannot calculate the above special leave with the workers' next year's annual leave. Working hours which are lost through the provision of special leave can be made up according to the conditions set out in the Prakas of the Ministry of Labour.

### **Sixth Issue: Organizing new shop steward election**

Before making a decision on this issue, the Arbitration Council will determine whether this issue is a collective dispute and whether therefore, the Arbitration Council has jurisdiction.

Under the Labour Law, the Arbitration Council has jurisdiction only in respect of collective labour disputes that could not be conciliated, Article 312 states that "The Arbitration Panel may not decide any matters outside those in the non-conciliation report or matters that arise from events subsequent to the report and that are the direct consequence of the current conflict."

Article 302 of the Labour Law gives the definition of collective labour dispute as, "A collective labour dispute is any dispute that arises between one or more employers, and a

certain number of their employees, over working conditions, the exercise of the recognized rights of unions, the recognition of professional organizations within the business, and questions regarding relations between employers and workers, when this dispute could compromise the effective operation of the enterprise or labour relations."

Therefore in regard to the workers' demand on this issue, the Arbitration Council finds that it involves a union election, that it is a collective labour dispute as it concerns a right of implementation of a professional organisation.

Otherwise, Article 298 of the Labour Law states that "Disputes concerning the election [of] those eligible to vote or hold office or the fairness of the elections are submitted to the Labour Court or, in its absence, to the local court, which rules as quickly as possible without the possibility of appeal." This Article does not prevent the Arbitration Council from considering this issue before it is sent to the court. Thus the Arbitration Council finds that it has jurisdiction to judge this issue related to an election (see 66/04-Winner Garment and 67/04-Jusca).

In this case the union claimed that it was not legally informed of an election for shop stewards; but at the hearing, Mr. Sek Sophy, Vice president of the union, said that he did hear this information and also took part in the election. Therefore, the Arbitration Council finds that the union representative did hear about this election, so the demand for a new union election is incorrect.

The Arbitration Council had received a letter number 257/MoSALVY dated 24 March 2003 recognizing three shop stewards, Keo Daline, Sem Sarom and Chhok Kunthea, that the company had elected in 2003. The mandate of shop stewards ended in March 2005. Thus, during this time there could not have been other shop stewards [elected in an election] recognized by the Labour Law. Therefore, the Arbitration Council decides to reject the demand for a new election.

### **Seventh Issue: Keeping the US\$5 attendance bonus even though the workers came to work 15 minutes late per day**

Point 3 of the Notification No. 017 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 US\$5 per month." This notice does not identify how to calculate [coming to work at] a regular time. Clause 4 of the Internal Work Rule of the company states that all workers must fulfill their job [by working] eight hours per day or 48 hours per week according to the following:

- Morning working hours 7:30 a.m. to 11:30 a.m.
- Afternoon working hours 1:00 p.m. to 5:00 p.m.

No clause in the Internal Work Rules mentions the late arrival or deduction of an attendance bonus. Because this issue is not mentioned in the Law or Internal Work Rules, this issue is an interests dispute. Thus the Arbitration Council decides not to issue an arbitral award on this issue. See also the reasoning in the fourth issue above.

**Eighth Issue: The workers demand their past compensation**

Because the workers failed to show enough documents and evidence in relation to the demand, such as how many workers filed a complaint and the names of such workers, and because the company has provided US\$45 accurately under the law for the piece rate workers who receive under US\$45 per month, and because the workers failed to provide evidence related to this demand, the Arbitration Council decides not to issue an arbitral award on this issue.

**Ninth Issue: The workers demand that the company negotiate with the worker representatives and the union when the company dismisses any worker**

Because no worker has been dismissed up to now and the workers only demand for the future, the Arbitration Council decides not to issue an arbitral award in respect of this issue. Please see the reasoning in the second issue above.

**Tenth Issue: The workers demand that the company increase wages for the workers who work hard and do heavy jobs**

The law does not state [the difference] between heavy work and light work; it just states the minimum wage of US\$45. Thus, this issue is an interests dispute and the Arbitration Council decides not to issue an arbitral award on this issue. Please see the reasoning in the fourth issue above.

**Issue Eleven: The workers demand that the company give notice to the Labour Inspector whenever recruiting or dismissing any worker**

Article 21 of the Labour Law states that each time a worker is recruited or dismissed, an employer must notify the Ministry of Labour. The notification must be given in writing no later than ten days after the recruitment or dismissal. The duration [of this time period] extends to 30 days for agricultural enterprises. The notification of recruitment and dismissal is not applied in respect of casual workers who are under fixed duration contracts which are no longer than 30 continuous days or workers completing intermittent work for a duration no longer than three months within a period of 12 consecutive months.

As far as the workers' claim is concerned, the Arbitration Council finds that it falls under the jurisdiction of the Labour Inspector to monitor the enterprise/establishment's implementation of the Labour Law, as is specified in Article 21 of the Labour Law. The workers do not lose if the employer fails to apply Article 21. Thus the Arbitration Council has a discretion to deny the workers' demand.

### **Twelfth Issue: The workers claim a wage deduction of 1,000 riel per month for the union**

Although Article 281 prohibits employers from deducting workers' wages for union dues and from paying the dues for the workers, the decision of the Arbitration Council is not opposed to the law because Article 281 is intended to protect workers' rights and to prohibit employers from interfering with the establishment of a worker organization [which is] under their influence, as is specified in Article 280<sup>1</sup>. As Article 112 also requires the employer to clearly inform the workers about each pay day, the employees could make their claim at that time if the deduction is not in conformity with their will<sup>2</sup>.

In regard to wage deductions, Article 129 of the Labour Law provides, "However, the worker can authorize deductions of his wage for dues to the trade union to which he belongs. This authorization must be in writing and can be revoked at any time." In addition to this Article, Article 5 of the MoSALVY Prakas 305 states, "All workers who are members of a union may make a written request 15 days in advance for the employer to deduct their wages to pay dues to the union which they belong to, in accordance with Article 129 of the Labour Law." Based on the law and the Prakas, the employer is legally required to deduct wages for union dues upon the workers' request<sup>3</sup>.

### **Thirteenth Issue: The workers demand that the company not deduct double their wages when they are absent without permission**

When the workers are absent without authorisation, the company always deducts double their wages for the purpose of making the workers stop [that behavior]. The Arbitration Council finds that this activity is incorrect because it contradicts the Labour Law or the Internal Work Rules of the company.

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<sup>1</sup> Article 280 says that any interference shall be prohibited. This means that acts of interference include any actions for the purpose of establishing a worker organization which is under the influence of the employer or any employer organization or support to a worker organization through a financial system or another way in the purpose of **stalling** the organization under the control of the employer or another employer's organization.

<sup>2</sup> Article 112 states that the employer must take measures to clearly inform the workers about the wages of all workers during the time of pay day if the wage has been changed.

<sup>3</sup> See the AC award for Tonga case dated 11 June 2003

A- Article 27 of the Labour Law states that "Any disciplinary sanction must be proportional to the seriousness of the misconduct. The Labour Inspector is empowered to decide the appropriateness of the sanction."

B- Paragraph 2 of Clause 6 of the company's Internal Work Rules states that absence without authorisation could be a mistake. The Law considers that this is a mistake as determined below:

- Absence of less than two days is considered minor misconduct;
- Absence of over two days and less than six days is considered medium misconduct;
- Absence of more than six days is considered serious misconduct.

3- Paragraph 3 of clause 6 of the Internal Work Rules states that the company will deduct wages from any employees who are absent without authorisation, according to the number of absences.

Therefore the Arbitration Council finds that the company must stop deducting double the workers' wages because it does not conform with the disciplinary sanctions as provided in Article 27 of the Labour Law and [the employer's] Internal Work Rules.

Based on the above reasoning, the evidence and the law stated above, the Arbitration Council decides as follows:

### **DECISION**

- 1- Order the employer to organise a nursing room and a day care center in the factory under the supervision of the Ministry of Labour or pay for the cost of child care through invoices from women workers who send their children to outside day care centers. The employer must start to apply this order in January 2005.
- 2- Reject the workers' demand that the company pay compensation for transportation fees home after the company terminates casual workers.
- 3- Reject the workers' demand that the employer reduce the heat in the factory. Order the employer to place a thermometer in the factory so the workers and the employer may know the exact temperature in the factory.
- 4- Reject the workers' demand that the company build a shelter and canteen for the workers.
- 5- Order the employer to provide special leave as mentioned in Prakas 267 after this Arbitral Award comes into effect.
- 6- Reject the workers' demand that the company organise a new election for shop stewards.

- 7- Reject the workers' demand that the company maintain their wages when the workers come within 15 minutes late per day.
- 8- Reject the workers' demand that the company pay compensation for past piece rates lower than minimum wage.
- 9- Reject the workers' demand that the company negotiate with the worker representatives and the union when the company dismisses any worker.
- 10- Reject the workers' claim that the company increase wages for the workers who work hard and do heavy work.
- 11- Reject the workers' demand that the company inform the Labour Inspector when the company recruits or dismisses any worker.
- 12-
  - A- Order the company to start deducting union contributions from the workers' wages each month and give them to the union between the 10<sup>th</sup> and 12<sup>th</sup> of each month.
  - B- [Order] the union to send the list of names of the workers who agreed to have a deduction from their wages for union contributions, to the employer at least 15 days in advance of every month. To avoid a problem on the deduction of the union contribution, the union must have the workers fill out their name on the receipt for contribution every month and submit it with the list of names to the employer.
  - C- The application of the union contribution must be held when the union fulfills the condition in point B above and the employer must not make difficulty for the implementation of the union's work.
- 13- Order the employer to stop deducting double wages from the workers who were absent without permission and to follow the rules mentioned in the Internal Work Rules of the company.

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

Arbitrator chosen by the employer party:

Name: **Kao Thach**

Signature: .....

Arbitrator chosen by the employee party:

Name: **Ven Pov**

Signature: .....

Chair of Arbitration Panel:

Name: **Kong Phallack**

Signature: .....

*This Award will become binding after eight days of the date of its notification unless one of the parties lodges a written opposition with the Secretariat of the Arbitration Council within this time period.*

*This Award is immediately binding upon the parties if the parties have agreed as such in writing before the notification of the Award, or if the parties are bound to comply with a collective bargaining agreement stipulating that no opposition to the Award may be lodged.*