



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

**ក្រុមប្រឹក្សាអន្តរាគមន៍**

**THE ARBITRATION COUNCIL**

**Case number and name: 55/10 – Tack Fat**

**Date of Award: 6 July 2010**

### **ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

#### **ARBITRATION PANEL**

Arbitrator chosen by the employer party: **Ly Tayseng**

Arbitrator chosen by the worker party: **Ann Vireak**

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

#### **DISPUTING PARTIES**

##### **Employer party:**

Name: Tack Fat Garment (Cambodia) Ltd.

Address: Phum Prek Tanou, Sangkat Chak Angre Leu, Khan Meanchey, Phnom Penh

Telephone: 012 887 368 Fax: N/A

Representative:

- |                    |                        |
|--------------------|------------------------|
| 1. Mr. Chum Tong   | Administrative Officer |
| 2. Mr. Chhim Yoeun | Administrator          |

##### **Worker party:**

Name: - **The Free Trade Union of Workers of the Kingdom of Cambodia**

- **The Free Trade Union of Workers in Tack Fat Garment (Cambodia) Ltd.**

Address: No. 16 B, street 360, Sangkat Boeung Keng Kang 3, Khan Chamkarmon,  
Phnom Penh.

Telephone: 012 839 515 Fax: N/A

Representative:

- |                      |   |
|----------------------|---|
| 1. Ms. Soth Chanthou | FTUWKC Officer                              |
| 2. Ms. Yong Leap     | FTU President in Tack Fat Garment Ltd.      |
| 3. Ms. Chheang Thida | FTU Vice-president in Tack Fat Garment Ltd. |

|                       |                             |
|-----------------------|-----------------------------|
| 4. Mr. Deth Sida      | Operational Commission      |
| 5. Ms. Saing Sokan    | Operational Commission      |
| 6. Ms. Chea Bona      | FTU member in Tack Fat Ltd. |
| 7. Ms. Ngon Ny        | FTU member in Tack Fat Ltd. |
| 8. Ms. Sor Seak Leng  | FTU member in Tack Fat Ltd. |
| 9. Ms. Kith Sophorn   | FTU member in Tack Fat Ltd. |
| 10. Ms. Yos Saroeun   | FTU member in Tack Fat Ltd. |
| 11. Ms. Soeun Sophon  | FTU member in Tack Fat Ltd. |
| 12. Ms. Ngov Chanoeun | FTU member in Tack Fat Ltd. |
| 13. Ms. So Saroeun    | FTU member in Tack Fat Ltd. |
| 14. Ms. Ouch Yoeun    | FTU member in Tack Fat Ltd. |
| 15. Ms. Sor Phoeun    | FTU member in Tack Fat Ltd. |
| 16. Ms. Chhith Sokea  | FTU member in Tack Fat Ltd. |
| 17. Ms. Chhum Sorphea | FTU member in Tack Fat Ltd. |
| 18. Ms. Sith Phally   | FTU member in Tack Fat Ltd. |
| 19. Ms. Phorn Chantha | FTU member in Tack Fat Ltd. |
| 20. Ms. Phon Chantha  | FTU member in Tack Fat Ltd. |
| 21. Ms. Yi Sophonroth | FTU member in Tack Fat Ltd. |
| 22. Ms. Lim Vy        | FTU member in Tack Fat Ltd. |
| 23. Ms. Mon Eng       | FTU member in Tack Fat Ltd. |

#### **ISSUES IN DISPUTE**

(In the Non-Conciliation Report)

- 1- The leaders of the Free Trade Union of Workers in Tack Fat factory asked that the company need not sign the piece rate cards of the workers who come to work and punch the card everyday because in the past they took advantage of this practice and did not sign the piece rate cards of the workers who had already punched their cards, which means the company did not provide wages to workers, asserting that they did not work. The company stated that it wishes to abide by the agreement struck between the company and the worker union on collective labour disputes of Tack Fat factory, Arbitral Award 95/09, issue 8. "The company and worker union agreed to comply with the signature of piece rate by the Chinese supervisor". The company stated that it will take action against any Chinese supervisor who acts improperly in signing the piece rate cards. As for the broken punch-in machine, the company will repair it.

- 2- The leaders of the Free Trade Union of Workers in Tack Fat factory demanded that the company stop trying everything possible to make workers feel sick of the company's acts, thus leading them to resign from work. It means that the company will wash their hands of responsibility for payments under the Labour Law. The company stated that this issue has already been resolved and sent to the Arbitration Council for decision-making.
- 3- Workers in the Finishing Section who came to work and punched the cards properly but whose piece rate cards were not signed by the company should receive wages because the company used excuses for not signing the piece rate cards. The company stated that of 145 workers in the Finishing Section, 87 will not receive wages because they did not adhere to the assignment, the Internal Work Rules, and the agreement with the company.
- 4- The leaders of the Free Trade Union of Workers in Tack Fat factory demanded that the company provide wages and US\$ 5 of attendance bonus to Ms. Yos Narien, ID 20708 for 9 March 2010 during which she punched the card properly. The company stated that Ms. Yos Narien was caught by the company manager in the act of leaving 15 minutes early, thereby leaving her daily wage deducted equivalent to 15 minutes as well as the US\$ 5 of attendance bonus.
- 5- The leaders of the Free Trade Union of Workers in Tack Fat factory demanded that the company reimburse 12 workers for full wages deducted by half an hour and the US\$ 5 of attendance bonus. The company said that it would not compensate for the 12 workers in the Finishing Section because they walked out on their work in order to support the suspended Ms. Yong Leap.
- 6- The workers demanded that the company compensate for annual leave because on 25 and 31 March 2010, the company forced five workers to take annual leave, so the workers came to work and punched the cards as normal. The company stated that the five workers' annual leave were deducted for six days as the company follows the agreement with the leaders of Free Trade Union of Workers in Tack Fat factory determined at the Arbitration Council.
- 7- The leaders of the Free Trade Union of Workers in Tack Fat factory demanded that the company be responsible for offensive language used by the Chinese supervisor who said they planned to beat a worker named Ms. Ngorn Ny, ID card 21453 in order to provoke a labour dispute as stipulated in Article 83 and to have her dismissed from

work like Ms. Yong Leap. The company maintained that it had no plan to beat Ms. Ngorn Ny as alleged by the union leaders.

- 8- The workers demanded that the company pay a one-day wage and US\$ 5 of attendance bonus for 26 March 2010 to Kith Sophorn because the worker properly took annual leave. However, the company stated that it would not follow suit.
- 9- Ms. Yong Leap demanded to be paid according to the salary schedule board. The company stated that it agreed to separately pay the wages to her for March 2010 in accordance with the salary schedule.

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

*The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B (Article 309 to 317) of the Labour Law (1997); the Prakas on the Arbitration Council No. 099 dated 21 April 2004; the Arbitration Council Procedural Rules which form an Annex to the same Prakas No. 099 dated 21 April 2004; and the Prakas on the Appointment of Arbitrators No. 076 dated 2 September 2009 (Seventh 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. 434 was submitted to the Secretariat of the Arbitration Council on 3 June 2010.*

#### **HEARING AND SUMMARY OF PROCEDURE**

**Place of hearing:** The Arbitration Council, No. 72, Street 592 Corner of Street 327 (Opposite Indra Devi High School) Boeung Kak 2 Quarter, Tuol Kok District, Phnom Penh.

**Date of hearing:** 10 June 2010 at 2:00 p.m.

#### **Procedural issues:**

On 22 April 2010, the Department of Labour Disputes received a complaint from the Free Trade Union of Workers of the Kingdom of Cambodia dated 20 April 2010 on the demand for the company to improve working conditions.

Having received the complaint, the Department of Labour Disputes assigned expert officials to conciliate the collective labour dispute and they conducted conciliation on 25 May 2010 with the result of no conciliation on all nine points. The nine non-conciliation points were submitted to the Secretariat of the Arbitration Council on 6 May 2010.

Having received the case, the Secretariat of the Arbitration Council extended the invitation to both employer and worker parties to attend a hearing, and conciliate the nine

non-conciliation points on 10 June 2010 at 2:00 p.m. Both parties appeared before the hearing at the invitation of the Arbitration Council.

During the hearing, the Arbitration Council tried to conciliate the nine non-conciliation issues, and the worker party offered to withdraw point 3 in this case. Therefore, the Arbitration Council will consider points 1, 2, 4, 5, 6, 7, 8, 9 based on the evidence and fact-finding as follows:

## **EVIDENCE**

**Witnesses and experts:** N/A

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

Provided by the employer party:

1. The authorisation letter of the President of Tack Fat Garment (Cambodia) Ltd to Mr. Chum Tong and Mr. Chhim Yoeun No. 014/05/10 dated 10 June 2010.
2. A letter of the Council for the Development of Cambodia No. 162/94 dated 19 July 1994 on the proposal for establishing Tack Fat Garment (Cambodia) Ltd.
3. A letter from the Minister of Commerce clarifying Tack Fat Garment (Cambodia) Ltd was registered as a business and recognised as natural person No. 2073 dated 5 October 1995.
4. A certificate of business registration of Tack Fat Garment (Cambodia) No. 2073 dated 5 October 1995.
5. A certificate of business registration of Tack Fat Garment (Cambodia) No. 3119 dated 23 June 2008.
6. The Internal Work Rules of Tack Fat Garment (Cambodia) registered No. 007 dated 20 January 1999.
7. The statute of Tack Fat Garment (Cambodia) Ltd dated 16 July 1995.
8. A minute on the collective labour dispute resolution in Tack Fat Garment dated 25 May 2010.
9. An agreement between the employer and union in dealing with the collective labour disputes in Tack Fat Garment in Arbitral Award 95/09 dated 24 July 2009.
10. A final warning letter addressed to Yos Navoeun and Tack Fat's employment contract with Yos Navoeun.
11. A salary schedule for March 2010 for the Sewing Section, Monitoring Section, Ironing Section, Packing Section and Quality Monitoring Section.
12. Record of Kith Saphon's annual leave in 2010.
13. A daily report on distributing pay slips to workers dated 12 June 2010.

14. A minute on the collective labour dispute resolution in Tack Fat Garment dated 4 May 2010.

Provided by the worker party:

1. A registration certificate of the Free Trade Union of Workers in Tack Fat Garment dated 14 September 2009.

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

1. A report on the collective labour dispute resolution in Tack Fat Garment Ltd No. 258 dated 6 May 2010.
2. A minute on the collective labour dispute resolution in Tack Fat Garment Ltd dated 4 May 2010.

Provided by the Secretariat of the Arbitration Council:

1. An invitation letter for the employer party to attend the hearing No. 274 dated 7 June 2010.
2. An invitation letter for the worker party to attend the hearing No. 224 dated 7 June 2010.

**FACTS**

- Having examined a report on the collective labour dispute resolutions
- Having listened to the argument of representatives of workers and employer, and
- Having reviewed additional documents

**The Arbitration Council finds that:**

- Tack Fat commenced operations in late 1995. The company currently employs approximately 1,166 workers.
- The company has seven unions: Free Trade Union of Workers, Coalition of Cambodian Apparel Workers' Democratic Union (C.CAWDU), Apparel Workers' Development Union, Asia Cambodia Union, Worker Union, and Khmer Youth Union. However, none of the unions has most representative status.
- The Free Trade Union of Workers is the claimant in this case. The union confirmed that there are 777 workers with union membership. The union submitted a letter asking the company to deduct the union contribution fees for January 2010. The company agreed with this assertion.

**Issue 1: The leaders of the Free Trade Union of Workers in Tack Fat factory ask that the company need not sign the piece rate cards of the workers who already punched the cards.**

- The company party asserted that the punch-in of piece rate cards before and after work should bear a signature by certain supervisors (Chinese supervisors), or else the workers will not get paid. If any workers whose piece rate cards are not signed by the specified supervisors, then they will have their wages and attendance bonus deducted by US\$ 5. The workers argue that this practice has taken place since June 2009. On 24 July 2009, the employer signed an agreement with C.CAWDU regarding the signature on a piece rate card by the specified supervisors; that the company will discipline any supervisor who behaves improperly in signing piece rate cards. Moreover, the company stated that it will repair any broken punch-in machines [ .. ].
- The worker party said that they properly punch in before [ ] starting work, so the company need not seek a signature from the supervisors because such practice amounts to pressure on workers. For instance, the direct supervisor of Ms. Ngou Ny told her to take three days of annual leave, but since she did not have a personal commitment to take leave, she refused to do so, and instead she came to work as normal. However, her supervisor did not sign her piece rate card and the company reduced the number of days for annual leave by six days.
- The worker party asserted that if workers did not sew (clothes) according to the set quota, the supervisors will not sign the piece rate card either. For example, a female worker in Group A, Sewing Section, who was preparing a marriage certificate, requested annual leave from 11 to 15 May 2010, but the supervisor denied her the leave, saying she had to finalise her work, or else her piece rate card will not be signed. It is asserted that all supervisors in Group A are Cambodian.
- The worker party also raised the issue of Ms. Yong Leap who was bitten by a supervisor, and dismissed from the job because the supervisor in question did not sign her piece rate card, and she was absent from her workplace. Ms. Yong Leap, who appeared before the hearing, asserted that she was off duty when she was contacted by phone from an official at the Ministry of Labour for a meeting (The President of the factory was also present in a room at the factory). The two parties acknowledged that the attendance in the meeting by Ms. Yong Leap was not permitted by her supervisor. Despite acknowledgement from the worker party, Ms. Yong Leap maintained that after receiving a phone call from the official at the Ministry of Labour, she did not see her (Chinese) supervisor and left a message with another (Cambodian) supervisor and went to the meeting.

- The company party asserted that the fact that the company requires a signature from supervisors is that it is part of the direct oversight by the company during working hours, and is to monitor who walks in and out of the workplace. Before the supervisor was required to sign piece rate cards, the company announced the news to all workers by using a microphone. Moreover, the company argues that the practice of deducting US\$ 5 of attendance bonus for any worker whose piece rate cards were not signed by the supervisors is in accordance with the Notification No. 017.
- The Internal Work Rules of Tack Fat, Article 2, Point "I", states "*Workers are not allowed to walk out of their workplace without permission.*"

**Issue 2: Workers demand the company stop trying everything possible to make workers feel sick of the company's acts, thus leading them to resign from work**

- During the hearing, the worker party asserted that the company used to pressure the workers to resign, for example by relocating the work site from the top floor to the ground floor, removing products from the factory [which is disruptive to the workers], suspending contracts by providing only 50 percent of wages and forcing workers to take annual leave.
- The worker party added that this claim to ensure that the company will not pressure workers to resign again in the future.
- The company maintained that it had not pressured the workers, and the reason why it decided to move workers from one place to another was because of production needs and the situation of the company.

**Issue 4: Workers demand that the company provide wages and US\$ 5 of attendance bonus to Ms. Yos Narien, ID 20708 for 9 March 2010**

- During the hearing, the worker party said it demanded the employer provide the wages it deducted for 15 minutes of absence on 9 March 2010 and attendance bonus deducted by the employer on the same day.
- The worker party added that on 9 March 2010 at 3:55 p.m. the supervisor gave a piece rate card to Ms. Yos Narien. After receiving the piece rate card, she went to the punch-in place. Attached to each punch-in machine were clocks which are marked at two to three minute intervals. When Ms. Yos Narien arrived at the punch-in machine, there were a lot of workers crowding to the machine. Due to the crowd, she decided to wait for another machine with about three minutes remaining to four o'clock.
- The worker party went on to say that while they were waiting, the President of the company arrived, and snatched the piece rate card from her, writing that she was 15 minutes early.

- Ms. Yos Narien asserted that the general practice is that during either five or three minutes before leaving, the supervisor hands out attendance piece rate cards to workers to punch out and collects them back to keep until the workers start work. The employer did not know how long before leaving the supervisor hands out the piece rate cards to the workers. The employer promised to provide documents clarifying the timing of returning the piece rate cards to the workers before leaving.
- According to the clarification of the employer party through documents submitted to the Arbitration Council on 14 June 2010, the supervisor handed out attendance piece rate cards to workers 20 minutes before leaving work. According to the document, the employer added that providing the piece rate cards 20 minutes early is to give the workers time to clean their machines. The employer party explained that it did not mean that the workers who received the piece rate cards could walk through to the punch-in place. The workers have to complete the eight-hour work day, but they were allowed to wait for punching from five minutes before 4:00 p.m. The workers did not object to the documents submitted by the employer to the Arbitration Council.
- The employer added that because Ms. Yong Narien's piece rate card was marked as leaving 15 minutes early, her wage was deducted by 15 minutes. The employer asserted that, as for the attendance bonus, it depends on the principles of the company. If workers are five minutes late, their wages will not be deducted, but if they are more than five minutes late, their wages will be deducted.

**Issue 5: The worker party demands the employer provide the 12 workers in the Finishing Section with wages the company deducted by half an hour, and US\$ 5 of attendance bonus.**

- The worker party asserted that on 23 March 2010, after having lunch, the workers overheard the fighting between the union President and supervisor. Therefore, at the end of lunch time, the workers questioned them about the conflict at the administrative office for about five minutes. After this exchange, the workers returned to their workplaces. As soon as they arrived at their places, they were told that the piece rate cards of the 12 workers were taken to the office; then the 12 workers were in a hurry to retrieve their cards. During that evening, the workers spent approximately 30 minutes talking with the employer about the collection of their piece rate cards.
- The workers said that the reason for this claim was because they did not stage a strike as alleged by the employer; they said they know that if they went on strike they would not get paid.

- The employer maintained that on 23 March 2010, the workers did not work. According to the usual practice of the company, the attendance bonus will not be provided if any worker comes to work more than five minutes late, and if they do not work at all. On that day, the workers walked out of their workplaces and this was considered to be irregular work. This practice has been adopted by the employer since Notification No. 017 came into effect.
- The employer added that on that day there were certain workers who were interrogating them about the 12 workers, and the employer caught all the 12 workers in this act.

**Issue 6: The worker party demands the employer compensate four workers for their annual leave it deducted from 25 to 31 March 2010.**

- The workers demanded that the employer compensate for the annual leave it deducted from 25 to 31 March 2010 on the grounds that the employer forced them to take their annual leave. The workers refused to follow the employer's instruction and they came to work on those days as normal.
- The workers claimed that there were four claimants as listed below:
  - Ms. Ngoun Ny was offered three days of her annual leave in 2009, and four days in 2010. She maintained that she was told to take three days of leave.
  - Ms. Sin Phally had seven days of annual leave in 2009, and four and a half days in 2010. She asserted that she was told to take five days of leave.
  - Ms. Phorn Chantha had 15 days of annual leave in 2009 and 2010. She asserted that she was told to take six days of leave.
  - Ms. Soeun Sophon had nine days of annual leave in 2009, and four and a half days in 2010. She was told to take three days of leave.
- The employer party maintained that the reason why it deducted the annual leave was because the employer and workers have an agreement about the use of annual leave.
- The employer added that the reason for which it deducted six days of annual leave was because the workers had an excessive amount of unused annual leave and the deduction was reasonable.
- In 2009, the company deducted four days of annual leave: in June and July 2009.

**Issue 7: The worker party demands the company be responsible for offensive language used by the supervisor who said he would beat a worker, Ms. Ngon Ny ID**

**21453 so that a labour dispute erupts as stipulated in Article 83 of the Labour Law and that the worker will be dismissed like Ms. Yong Leap.**

- The worker party alleged that on 25 March 2010, they overheard an interpreter of the (Chinese) supervisor warn that Ms. Ngon Ny should be careful about herself. The translation was that if the supervisor refuses to sign the punch in card, the workers should make protest, otherwise they will be beaten. The company party objected to the accusation, saying that it had no plan or intention of allowing the supervisor to beat the worker, Ms. Ngon Ny.
- The union acknowledged that since it heard the interpreter warn that Ms. Ngon Ny should be careful about herself, from 25 March 2010 to the hearing day on 10 June 2010, Ms. Ngon Ny was still working in the company as normal, and there has not been any incident . However, the union remains worried about incidents that may occur to her in the future.
- Ms. Ngon Ny claimed that she was working in the company as normal. However, she remains concerned about her future safety. Therefore, she asked the company be responsible for her safety if there is any incident in the future.
- The company party maintained that it could not put forward any scenario for consideration and be responsible for it, and the company had no plan to beat the worker as alleged. Therefore, the company dismissed the accusation.

**Issue 8: The workers demand that the company pay a one-day wage and US\$ 5 of bonus for 26 March 2010 to Ms. Kith Sophorn because the worker properly took annual leave.**

- The worker, Ms. Kith Sophorn, claimed that she asked for permission from the company for four days from 22 to 26 March 2010. The worker received permission from the supervisor, Administrative Director, and an accounting officer who was too busy to examine her leave form, but told her to take leave.
- The company maintained that in principle, workers shall initially seek permission from a supervisor. Then, the permission shall be granted by the Administrative Director and an accounting officer. In this case, it is asserted that Ms. Kith Sophorn had sought proper permission from the company.
- Ms. Kith Sophorn clarified that it was inappropriate that the company deducted her wages for one day and the US\$ 5 of attendance bonus on 26 March 2010 because she had received proper permission. Therefore, she asked the company reimburse her for wages of one day and the US\$ 5 of attendance bonus.
- Mr. Chum Tong, the Administrative Director, acknowledged that he had allowed Ms. Kith Sophorn leave, adding that upon his decision to grant leave, he thought Ms. Kith

Sophorn still had annual leave, but when an accounting officer reviewed her leave, the worker had only two and a half days of annual leave remaining because the rest of the 2009 annual leave has been used. Therefore, the accounting officer did not provide her with full wages in accordance with the number of days of leave she actually took. According to the salary schedule board for 26 March 2010, the letter “A” was placed in the column of Ms. Kith Sophorn. This means that she was absent without permission. The Administrative Director thought that this may be a mistake.

**Issue 9: Ms. Yong Leap demands that she be paid according to the salary schedule board**

- Ms. Yong Leap asserted that previously the company paid her according to the salary schedule board like other workers. However, in March 2010, the company paid her differently from the salary schedule board; on 10 April 2010 when she would get paid for March 2010, the company paid her differently from the salary schedule board, and she offered to sign it for payment. However, the company required her to affix a thumbprint in order to get payment and Ms. Yong Leap did not to accept this request.
- The company acknowledged that it had paid Ms. Yong Leap differently from the salary schedule board because she had to await the pending decision by the Labour Inspector on her suspension. Furthermore, it was probable that the accountant considered that Ms. Yong Leap was terminated.
- The company maintained during the hearing that it had not required Ms. Yong Leap to append her thumbprint, but it only had paid her differently from the salary schedule board, and if she decides when to receive payment, the company will pay her then.

**REASONS FOR DECISION**

**Issue 1: The leaders of the Free Trade Union of Workers in Tack Fat factory ask that the company need not sign the piece rate cards of the workers who already punched in.**

In this case, the workers had punched in and out. However, the company demanded a signature from a supervisor, and if there is no signature, the workers will not get paid for that day. Therefore, the Arbitration Council will consider as follows:

Article 2 of the Labour Law states, “[*All natural persons or legal entities*]...are considered to be employers who constitute an enterprise, in the sense of this law, provided that they employ one or more workers, even discontinuously...and so on... under the supervision and direction of the employer.”

In the previous cases, the Arbitration Council found that Article 2, Paragraph 2 of the Labour Law above means the employer has the rights to oversee and manage the company as long as the rights are in accordance with the law and regulations. (*See the Arbitral Award*

62/06 – *Quick Sew, Reason for decision, issue 5*; AA 108/06 – *Trinunggal Komara, Reason for decision, issue 1*; AA 33/07 – *Gold Fame, Reason for decision, issue 3*; AA 106/07 – *M & V, Reason for decision, issue 3*; AA 84/08 – *Trinunggal Komara, Reason for decision, issue 1 and AA 08/09 – Global Apparel*).

According to Article 2 of the Labour Law and the finding by the Arbitration Council in the previous cases, the Arbitration Council is of the view that Article 2, Paragraph 2 of the Labour Law above means the employer has the rights to oversee and manage the company, and take any actions to ensure that its assembly line runs smoothly as long as the measures are taken in a legitimate and appropriate manner.

Based on the facts, the Arbitration Council is of the opinion that Tack Fat Garment Ltd took action, requiring the signature from a supervisor on the piece rate cards of the workers who punched in properly so that it could monitor the performance of the workers. If the piece rate cards of any workers do not bear the signature of a supervisor, those workers will not get paid even if they come to work and punch in. The measure was taken to ensure that the workers will not walk out of the workplace without notification.

The Arbitration Council will consider if the actions taken by the company were legitimate and appropriate or not.

Article 27 of the Labour Law (1997) stipulates, “*Any disciplinary sanction must be proportional to the seriousness of the misconduct...*”

Article 28 of the Labour Law (1997) stipulates, “*The employer shall not impose fines or double sanctions for the same misconduct. These fines mean any measure that leads to a reduction of the remuneration being normally due for the performance of work provided.*”

The Internal Work Rules of Tack Fat Garment Ltd, Clause 2, Point “I” states, “*Workers shall not walk out of the workplace without permission.*”

Based on the facts, the Arbitration Council finds that workers who walk out of the workplace without permission will not be offered a signature by the supervisor in charge on their piece rate cards even though those workers punch in and out properly. The fact that Ms. Yong Leap had met for talks with an official from the Ministry of Labour without notifying the supervisor in charge was against the Internal Work Rules of the company. In the company’s Internal Work Rules, the Arbitration Council did not find that any worker who breached this provision would be subject to disciplinary action, but in practice the supervisor in charge did not sign the worker’s piece rate cards, thus resulting in her not being paid her wages and not receiving the US\$ 5 of attendance bonus.

According to the regulations and Internal Work Rules of the company, the Arbitration Council finds that the employer has the right to punish workers who walk out of the workplace without notification, but the punishment shall be proportionate to the misconduct,

and the company shall not take any disciplinary action against workers that might lead to the reduction of their wages.

Therefore, based on the facts and legal principles, the Arbitration Council finds that the action taken by the company, to demand a signature from the supervisor in charge so that the wages and attendance bonuses of the workers will be deducted are improper and unlawful. Therefore, the Arbitration Council orders the employer to abandon the action requiring the supervisor in charge to sign the punch in cards so that the wages and attendance bonuses of workers will be deducted.

In conclusion, the Arbitration Council orders the employer to discontinue the action requiring the supervisor in charge to sign the punch in cards so that the wages and attendance bonuses of workers will not be deducted.

**Issue 2: Workers demand the company stop trying everything possible to make workers feel sick of the company's acts, thus leading them to resign from work**

Based on the above facts, the Arbitration Council finds that the demand in issue 2 is focused on the fact that the workers are worried about the possibility of a dispute between workers in the company and the company in the future. Furthermore, during the hearing, a company's representative asserted that the company had not persecuted workers so that they would resign from work, and the fact that the company moved the workers from one place to another was in response to the production needs and other practical needs of the company. Therefore, the Arbitration Council is of the view that this claim is made for a future demand.

Regarding the prospective demand in this case, the Arbitration Council interpreted, "*The Arbitration Council is intended to deal with labour disputes, not to settle the problems that have not happened yet.*" (See the Arbitral Award 10/03 – Jacqsintex, Reason for decision, issue 2; AA 14/06 – Seng Yong Ltd, Reason for decision, issue 2; AA 141/08 – Bloom time, Reason for decision, issue 3; AA 70/09 – G W, Reason for decision, issue 3; AA 123/09 – Suit way, Reason for decision, issue 1 and AA 42/10 – Tack Fat, Reason for decision, issue 2 and 4.

The Arbitration Council in this case agrees with its interpretation of the previous cases, notably that the Arbitration Council is designed to deal with existing labour disputes not to settle any problem that has yet to take place. Based on the jurisprudence in the above Arbitral Awards, the Arbitration Council decides not to consider this demand by the workers.

**Issue 4: Workers demand that the company provide wages and US\$ 5 of attendance bonus to Ms. Yos Narien, ID 20708 for 9 March 2010**

### **A. Wages for 15 minutes on 9 March 2009**

Based on the facts, workers should receive piece rate cards before going to the punch-in machine. The workers asserted that on 8 March 2010 at 3:55 p.m. the supervisor gave a piece rate card to Ms. Yos Narien. Having received the piece card, she went to the punch-in machine. Attached to each punch-in machine are clocks which are marked at two to three minute intervals. When she went to the punch-in machine, there are too many workers crowding toward the machine and she was waiting until 4:00 p.m. to punch in due to crowds of people. The employer added that workers can go to punch in five minutes early.

The Arbitration Council finds that after the supervisor distributed piece rate cards, the workers had no more work to do except clearing their desks properly. The company practice is that the workers may go to the punch-in machine five minutes early, and the employer did not object that on 9 March 2010, there were workers going to the punch-in machine along with Ms. Yos Narien.

Therefore, the Arbitration Council is of the view that after the supervisor handed out piece rate cards to workers, they could conclude their work. In other words, the employer had no evidence to show the workers left their workplace more than 15 minutes early and the company practice was that the workers may leave 5 minutes early. The employer also disputed that the day on which the employer noted Ms. Yos Narien left 15 minutes early showed that there were many other workers there as well. Therefore, the Arbitration Council finds that the employer had no admissible evidence proving that Ms. Yos Narien left 15 minutes early. Furthermore, Ms. Yos Narien had also completed her daily tasks. Therefore, the Arbitration Council decides to order the employer to provide wages to Ms. Yos Narien for the 15 minutes it deducted for 9 March 2010.

### **B. Attendance bonus**

Point 3 of Notification No. 745 dated 23 October 2006 states, *“All benefits the workers used to receive through the Notification No. 017 dated 18 July 2000 in Point 3, 4, 5, 6 shall be kept the same.”*

Point 3 of the Notification No. 017 dated 18 July 2000 states, *“Workers who work regularly in each month shall receive at least US\$ 5 of bonus per month.”*

Based on the content of the above Notification, it means that the attendance bonus is the payment given to workers who come to work on a regular basis each month.

In previous cases, the Arbitration Council interpreted that the workers who did not come to work on time as set out by the employer will not be entitled to receive the attendance bonus.

Based on the facts and the above interpretation, the employer had no admissible evidence to show Ms. Yos Narien left 15 minutes early. Therefore, the Arbitration Council

determines that Ms. Yos Narien was present at work that day and should receive the attendance bonus.

In summary, the Arbitration Council orders the employer to reimburse Ms. Yos Narien's wages for the 15 minutes it deducted for 9 March 2010 as well as the US\$ 5 of attendance bonus.

**Issue 5: The worker party demands the employer provide the 12 workers in the Finishing Section with wages the company deducted for half an hour, and the US\$ 5 attendance bonus.**

Based on the facts, the employer did not provide the wages for half an hour or the US\$ 5 attendance bonus to the workers due to their absence at the workplace when they were inquiring about the union leader and their protest regarding the employer's seizure of their attendance cards. The Arbitration Council considers if the employer should provide wages and the US\$ 5 of attendance bonus to workers who were not available for work for half an hour.

Based on the facts, the 12 workers were absent from their workplaces when they were inquiring about the union leader; together with their protest regarding the employer's seizure of their attendance cards, this was characterised as a strike. Thus, in this case, the Arbitration Council considers as follows:

- **Wages:**

Article 318 of the Labour Law states, "*A strike is a concerted work stoppage by a group of workers that takes place within an enterprise or establishment for the purpose of obtaining the satisfaction for their demand from the employer as a condition of their return to work.*"

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

Articles 318 and 332 of the Labour Law state that a strike refers to the stoppage of work by a group of workers and take place within an enterprise or establishment in a bid to achieve equitable solutions to the workers' demand; it is also a condition for resuming their work. During a strike, the employment contract is suspended and the employer is not obliged to pay the workers.

In the previous cases, the Arbitration Council noted that according to Article 332 of the Labour Law, the content of this article means the strikers will not be paid during the gathering regardless of whether or not the strike is carried out in accordance with the Labour Law. (See *the Arbitral Award 49/05 – Ocean Garment, Reason for decision, issue 3; AA 27/10 Heart Enterprise and AA 42/10 – Tack Fat, Reason for decision, issue 5 – B*).

Based on the facts, the 12 workers were absent from work, inquiring about the union leader and they made a protest regarding the seizure of their piece rate cards; this is characterised as a strike. Therefore, the workers are not entitled to receive wages.

**Attendance bonus**

Point 3 of the Notification No. 745 dated 23 October 2006 states, “*All benefits the workers used to receive through the Notification No. 017 dated 18 July 2000 in Point 3, 4, 5, 6 shall be kept the same.*”

Point 3 of the Notification No. 017 dated 18 July 2000 states, “*Workers who work regularly each month shall receive at least US\$ 5 of bonus per month.*”

Article 324 of the Labour Law stipulates, “*A strike must be preceded by prior notice of at least seven working days and be filed with the enterprise or establishment...*”

Article 320, Paragraph 4 of the Labour Law states, “*The right to strike can be exercised only when all peaceful methods for settling the dispute with the employer have already been tried out.*”

In previous cases, the Arbitration Council decided that the workers who went on a strike that breaches the Labour Law, if they did not come to work on a regular basis, those workers will not receive payment of wages and the attendance bonus. (See *the Arbitral Award 03/05 – Flying Dragon, Reason for decision, issue 3; AA 63/07 – Phnom Penh Garment; AA 110/07 – Now Corp, Reason for decision, issue 3; AA 81/08 – Global Apparel, Reason for decision, issue 1 and 2; AA 27/10 – Heart Enterprise*).

According to Point 3 of the Notification No. 017, Article 324 and 320 of the Labour Law, and the finding of the Arbitration Council in previous cases, the Arbitration Council is of the view that workers shall notify the company at least seven days prior to their strike and if they fail to make such a notification, the strike will be considered to be illegal. If the workers who went on a strike that breaches the Labour Law did not come to work on a regular basis, then they will not receive payment of wages and attendance bonus.

Based on the facts, the 12 workers were unavailable for work, and instead made a demand regarding the seizure of the workers’ attendance cards; this was characterised as a strike. Therefore, the workers will not be paid the US\$ 5 of attendance bonus because the refusal to work combined with their demand which was not notified, is against the procedure for a lawful strike.

In summary, the Arbitration Council decides to reject the demand by the workers that the company provide wages and the US\$ 5 of attendance bonus to the 12 workers in the Finishing Section.

**Issue 6: The workers demand the employer compensate for annual leave it deducted from 25 to 31 March 2010 to four workers.**

Article 170 of the Labour Law (1997) stipulates, *“In principle, annual leave is normally given for the Khmer New Year unless there is a different agreement between the employer and the worker. In this case, the employer must inform the Labour Inspector of this arrangement...”*

In previous cases, the Arbitration Council found, *“Article 170 of the Labour Law above means regarding the use of the workers’ annual leave, the employer should give the leave on Khmer New Year, and it can use the workers’ annual leave at any time besides the Khmer New Year unless there is agreement between the employer and workers with the employer obliged to notify in advance the Labour Inspector of the agreement.”* (See *Arbitral Award 21/05 – Sinomax, Reason for decision, issue 2; AA 81/07 – Supreme, Reason for decision, issue 1; and AA 123/09 – Suit Way, Reason for decision, issue 2.*)

In this case, the Arbitration Council also agrees with the previous interpretation of the Arbitration Council in that the use of the workers’ annual leave except for the Khmer New Year shall have agreement between the employer and workers, and the employer is obliged to notify the Labour Inspector of the agreement in advance.

Based on the facts, the worker and employer parties agreed to use half of their annual leave each year. In 2009, the employer exercised its rights according to the agreement. The employer took notice of the workers’ remaining annual leave in 2009 and 2010 and determined that the workers’ annual leave was not used up, and so it should be deducted.

The Arbitration Council finds that the reason why the employer includes the workers’ remaining annual leave in the new annual leave is inappropriate. The Arbitration Council finds that the arguments of the workers and employer are that they will use half of their annual leave for each year. Therefore, the employer would not use the remaining annual leave of the workers for further deduction because the employer deducted the annual leave allotted in the agreement.

Moreover, the Arbitration Council finds that the employer did not notify the Labour Inspector of the agreement on the annual leave. Therefore, the Arbitration Council finds that the agreement goes against the law.

**Issue 7: The worker party demands the company be responsible for offensive language used by the supervisor who said he would beat a worker, Ms. Ngon Ny ID 21453 so that the labour dispute erupts as stipulated in Article 83 of the Labour Law and that the worker will be dismissed like Ms. Yong Leap**

In this case, the worker party demanded the company be responsible for the offensive language used by the supervisor who said he would beat a worker, Ms. Ngon Ny, who overheard a translator on 25 March 2010. The worker party acknowledged that from 25

March 2010 to the hearing day on 10 June 2010, Ms. Ngon Ny still came to work as normal, and there was no any incident happening to her yet. The fact that they demanded the responsibility from the company was that they were still concerned about possible incidents towards Ms. Ngon Ny in the future. Therefore, the Arbitration Council will consider as follows:

Being consistent with its previous decisions, the Arbitration Council determines that it will not consider the demand for future disputes on the grounds that:

Prospective demands in previous cases were interpreted as follows, "*The Arbitration Council is intended to deal with labour dispute, not to settle the problems that have not happened yet.*" (See the Arbitral Award 10/03 – *Jacqsintex*, Reason for decision, issue 2; AA 14/06 – *Seng Yong Ltd*, Reason for decision, issue 2; AA 36/09 – *Citadel*, Reason for decision, issue 1).

In this case, the Arbitration Council agrees with the interpretation in the above cases because no one can predict what will happen in the future. In this case, the worker party only voices its concerns about the safety of Ms. Ngon Ny after overhearing the supervisor's translator who said Ms. Ngon Ny should be careful about her safety. Therefore, the Arbitration Council will not consider the demand for the company to be responsible for the language of the supervisor who allegedly said he would beat Ms. Ngon Ny, ID 21453.

Therefore, the Arbitration Council decides to reject the demand by the workers that the company be responsible for the language of the supervisor who said he would beat Ms. Ngon Ny, ID 21453.

**Issue 8: The workers demand that the company pay a one-day wage and US\$ 5 of bonus for 26 March 2010 to Ms. Kith Sophorn because the worker properly took annual leave.**

In this case, Ms. Kith Sophorn sought leave according to the company's policy, which meant she had received permission to use annual leave from the supervisor and the Administrative Director. However, the company deducted her wages and the US\$ 5 attendance bonus. Therefore, the Arbitration Council will consider whether or not Ms. Kith Sophorn has the right to demand the company reimburse her.

Article 166 of the Labour Law, Paragraph 1 stipulates, "*Unless there are more favourable provisions in collective agreements or individual labour contracts, all workers are entitled to paid annual leave to be given by the employer at the rate of one and a half work days of paid leave per month of continuous service.*"

Article 167 of the Labour Law, Paragraph 1 stipulates, "*The right to use paid leave is acquired after one year of service.*"

According to Articles 166 and 167 above, any worker who has worked for at least one year will be entitled to get one day and a half of leave per month.

In this case, Ms. Kith Sophorn sought leave according to the company's policy, received written permission to use her annual leave from the supervisor and the Administrative Director as well as verbal permission from an accounting officer. In the hearing, Mr. Chum Tong, the Administrative Director, acknowledged that he had granted permission to Ms. Kith Sophorn without taking into account whether or not she exhausted the annual leave or not. However, when the company's accounting officer found out that Ms. Kith Sophorn had used up her annual leave in 2009, the Administrative Director reversed his decision to grant her leave and did not allow the use of annual leave for 2010. The Arbitration Council finds that the company should assess the workers' leave before allowing them to take leave. It decides that if the company had already allowed the workers to take leave, then it could not raise an objection and put the blame on its workers.

Therefore, the Arbitration Council finds that to deduct the wage and attendance bonus of Ms. Kith Sophorn was improper. The Arbitration Council finds that the employer had allowed the worker to use the annual leave and then when it discovered that the worker had annual leave for 2010 only, it decided not to allow the annual leave; thus the employer's mistake should not have a detrimental effect on the workers.

Therefore, the Arbitration Council decides the company shall provide the wages for one day: 26 March 2010 and the US\$ 5 of attendance bonus for March 2010 to Ms. Kith Sophorn because she had applied for the leave properly by using her annual leave.

#### **Issue 9: Ms. Yong Leap demands that she be paid according to the salary schedule board**

Ms. Yong Leap asserted that, in the past, the company paid her according to the salary schedule board like other workers. However, in March 2010, the company paid her differently from the salary schedule board. Therefore, the Arbitration Council will consider as follows:

Article 2, Paragraph 2 of the Labour Law stipulates, "*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 the previous cases, the Arbitration Council finds that Article 2, Paragraph 2 of the Labour Law above means the employer has the rights to oversee and manage the company as long as the rights are implemented in compliance with the law and in an appropriate way. (See the Arbitral Award 62/06 – Quick Sew, Reason for decision, issue 5; AA 108/06 – Trinunggal Komara, Reason for decision, issue 1; AA 33/07 – Gold Fame, Reason for decision, issue 3; AA 106/07 – M & V, Reason for decision, issue 3; AA 84/08 – Trinunggal Komara, Reason for decision, issue 1 and AA 08/09 – Global Apparel).

The Arbitration Council finds that the rights of the employer include determining how the workers should be paid as long as the employer ensures the practice is reasonable and lawful.

In this case, the Arbitration Council finds that the demand by Ms. Yong Leap that the company should pay her according to the same schedule board as other workers is baseless. The Arbitration Council finds that the employer's decision for Ms. Yong Leap to be paid differently did not cause any detriment to her legal benefits. Therefore, the Arbitration Council is of the view that the employer's oversight of Ms. Yong Leap's payment is reasonable and is not detrimental to her.

In conclusion, the Arbitration Council decides to reject the demand by Ms. Yong Leap that the company should pay her for March 2010 in accordance with the salary schedule board like other workers.

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

#### **DECISION AND ORDER**

- Issue 1:** Order the employer to abandon the measures requiring the Chinese supervisor to sign the attendance slips of the workers so that their wages and attendance bonus would be deducted. This order is effective from the date of entry into force of this Arbitral Award.
- Issue 2:** Decline to consider the demand by workers that the company stop trying everything possible to make workers feel sick of the company's acts, thus leading them to resign from work.
- Issue 4:** Order the employer to provide 15 minutes of wages for 9 March 2010 and the US\$ 5 attendance bonus to Ms. Yos Narien within two weeks of the date of entry into force of this Arbitral Award.
- Issue 5:** Reject the demand by workers that the employer should pay the 12 workers in the Finishing Section whose US\$ 5 attendance bonus was deducted by the employer.
- Issue 6:** Order the employer to compensate for the annual leave it deducted from 25 to 31 March 2010 to five workers; Ngoun Ny, Sin Phally, Phorn Chantha, and Soeun Sophon.
- Issue 7:** Decline to consider the demand by workers that the company be responsible for the offensive language of the supervisor who said he would beat a worker named Ngoun Ny, ID 21453.
- Issue 8:** Order the company to provide one day of wages for 26 March 2010 and the US\$ 5 attendance bonus for March 2010 to Kith Sophorn.

**Issue 9:** Reject the demand by Ms. Yong Leap that the company should pay her according to the salary schedule board like other workers.

**Type of Award: Non binding awards**

*1- 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: **Ly Tayseng**

Signature: .....

Arbitrator chosen by the worker party:

Name: **Ann Vireak**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: .....