



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 64/11-M & V (Branch 3)

Date of Award: 15 July 2011

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRAL PANEL

Arbitrator chosen by the employer party: **Mar Samborana**

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

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

DISPUTANT PARTIES

Employer party:

Name: **M & V International Manufacturing Ltd (Branch 3) (the employer)**

Address: #1670, National Road 2, Chak Angreloeu Commune, Meanchey District, Phnom
Penh

Telephone: 016 707 046

Fax: N/A

Representative:

1. Mr Yin Nak Head of Administration

Worker party:

A. Name: **Cambodian Federation of Independent Trade Unions (CFITU)**

Local Union of CFITU

Address: #1670, National Road 2, Chak Angreloeu Commune, Meanchey District, Phnom
Penh

Telephone: 012 884 057

Fax: N/A

Representatives:

1. Ms Tep Kimvannary President of CFITU
2. Mr Nen Sitha President of the Local Union of CFITU
3. Ms Mean Lim Representative of worker delegates
4. Mr Som Vat Officer of CFITU

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B. Name: Worker delegates at M & V International Manufacturing Ltd (Branch 3)

Address: #1670, National Road 2, Chak Angreloeu Commune, Meanchey District, Phnom Penh

Telephone: 012 673 409

Fax: N/A

Representatives: Absent [correction: Ms Mean Lim (see CFITU representatives above)]

ISSUES IN DISPUTE

(From the Non-Conciliation Report of the Ministry of Labour and Vocational Training)

1. The workers demand that the employer deduct from the attendance bonus in proportion to the number of days of authorised leave taken. The employer states that it will follow Notification No. 041/11 KB/SCN, dated 7 March 2011.
2. The workers demand that the employer calculate daily wages during periods of annual leave based on the monthly piece rate payment. The employer states that it will follow the existing practice.
3. The workers demand that the employer calculate the hourly wage of female workers who go home to breastfeed their children on the basis of the piece rate payment. The employer states that it will follow the existing practice.
4. The workers demand that the employer provide a living allowance of US\$ 6 per month to piece rate workers who hold fixed duration contracts. The employer refuses to provide the allowance demanded by the workers, asserting that it will follow Notification No. 049/10 KB/SCN, dated 9 July 2010.
5. The workers demand that the employer provide a seniority bonus to workers who hold fixed duration contracts and have one year's service with the employer. The employer states that it will follow Notification No. 041/11 KB/SCN, dated 7 March 2011.
6. The workers demand that the employer increase the meal allowance paid after two hours of overtime work in compliance with Notification No. 041/11 KB/SCN, dated 7 March 2011, as follows:
 - They demand to be paid 1,500 riel for overtime until 9:00 p.m.
 - They demand to be paid 2,500 riel for overtime on public holidays and Sundays.The employer states that it will follow Notification No. 041/11 KB/SCN, dated 7 March 2011.
7. The workers demand that the employer pay 50% of the wages of women workers with one year's service when they take maternity leave. The employer states that it will follow Articles 183 and 184 of the Labour Law.

8. The workers demand that the employer hold a party once a year. The employer states that it cannot afford to do so.

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this award from Chapter XII, Section 2B 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*; and the *Prakas* on the Appointment of Arbitrators No. 136 dated 7 June 2011 (Ninth 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. 573 KB/RK/VK dated 27 May 2011 was submitted to the Secretariat of the Arbitration Council on 6 June 2011.

HEARING AND SUMMARY OF PROCEDURE

Hearing venue: The Arbitration Council, No. 72, Street 592, Corner of Street 327 (Opposite Indra Devi High School), Boeung Kak II Quarter, Tuol Kork District, Phnom Penh

Date of hearing: 22 June 2011 at 2:00 p.m.

Procedural issues:

On 25 April 2011, the Department of Labour Disputes received a complaint, dated 22 April 2011, from the worker delegates and the Local Union of CFITU outlining the workers' demands for the improvement of working conditions. Upon receiving the claim, the Department of Labour Disputes assigned an expert officer to conciliate the dispute and the last conciliation session was held on 25 May 2011. As a result, three of the 11 issues were conciliated. The eight non-conciliated issues were referred to the Secretariat of the Arbitration Council on 6 June 2011 via non-conciliation report No. 573 KB/RK/VK dated 27 May 2011.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer and the workers to a hearing and conciliation of the eight non-conciliated issues, held on 22 June 2011 at 2:00 p.m. Both parties were present at the hearing. The Arbitration Council attempted to conciliate the eight issues, resulting in issues 6, 7, and 8 being withdrawn. The remaining issues are issues 1, 2, 3, 4, and 5.

Normally, the parties who appear before the Arbitration Council have the right to choose between a binding or non-binding award, regardless of whether their dispute is an interests or rights dispute. However, in the Memorandum of Understanding On Improving

Industrial Relations in the Garment Industry (MoU) signed by the Garment Manufacturers Association in Cambodia (GMAC) and six leading union confederations on 28 September 2010, the signatories agreed to submit their rights disputes to binding arbitration. For interests disputes, the signatories are able to choose either a binding or non-binding award at the hearing.

Since both parties are signatories to the MoU dated 28 September 2010, they are unable to object to an award on rights disputes. However, the parties have not agreed to choose binding arbitration on interests disputes. Any objection by the parties to an award on interests disputes will not affect their obligation to implement an award on rights disputes in accordance with the spirit of the MoU.

The Arbitration Council will consider the remaining issues in dispute based on evidence and reasons below.

EVIDENCE

Witnesses and Experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council:

A. Provided by the employer party:

1. Authorisation letter from the employer for Yin Nak, dated 20 June 2011.
2. Brief statement regarding the labour dispute in case 64/11, dated 10 June 2011.
3. Meeting schedule, dated 20 October 2010.
4. Letter from the Department of Labour Inspection to the director of the employer regarding overtime work, No. 083 KB/RK/RTK, dated 31 January 2011.

B. Provided by the worker party:

1. Letter from the Department of Labour Disputes to the president of the Local Union of CFITU regarding the union's request for recognition of the new union leaders and its third term, No. 610 KB/RK/VK, dated 12 July 2010.
2. Certificate of registration of the Local Union of CFITU, dated 5 July 2011.
3. Minutes of collective labour dispute resolution at M & V International Manufacturing Ltd (Branch 3), dated 20 May 2011.
4. Statute of the union, dated 23 May 2010.

C. Provided by the Ministry of Labour and Vocational Training:

1. Report on collective labour dispute resolution at M & V International Manufacturing Ltd (Branch 3), No. 573 KB/RK/VK, dated 27 May 2011.
2. Record of collective labour dispute resolution at M & V International Manufacturing Ltd (Branch 3), dated 20 May 2011.

D. Provided by the Secretariat of the Arbitration Council:

1. Notice to attend to the hearing addressed to the employer, No. 387 KB/AK/VK/LKA, dated 14 June 2011.
2. Notice to attend the hearing addressed to the workers, No. 388 KB/AK/VK/LKA, dated 14 June 2011.
3. Agreement on a binding award on rights disputes, dated 22 June 2011.

FACTS

- Having examined the report on collective labour dispute resolution;
- Having listened to the statements of the representatives of the employer and the workers; and
- Having reviewed the additional documents;

The Arbitration Council finds that:

Issue 1: The workers demand that the employer deduct from the attendance bonus in proportion to the number of days of authorised leave taken.

- Workers who attend work regularly are entitled to receive an attendance bonus of US\$ 7 per month.
- While the current practice of the employer is to maintain the US\$ 7 attendance bonus when workers take annual leave, special leave using annual leave or are absent on public holidays, it will not pay the bonus if workers take leave for sickness and personal commitments, regardless of whether the leave is authorised.
- The employer states that it provides the US\$ 7 attendance bonus to any worker attending work regularly in accordance with the number of working days in each month. To be eligible to obtain the bonus, a worker must not come to work late, leave early, or be absent. The employer cites Clause 1 of Notification No. 041 KB/SCN dated 7 March 2011 as a basis for this contention. Clause 1 provides that “workers who come to work regularly in accordance with the number of working days of each month shall receive at least a bonus of US\$ 7 per month.”
- The workers make this demand because their sick and commitment leave is authorised by the employer. The workers take leave for personal commitments when they are required by their province’s authority to obtain identity cards and land title deeds, or to fill out family registers, etc. The employer claims that taking this leave is against the spirit of Clause 1 of Notification No. 041 KB/SCN.
- The employer distinguishes between public holidays and leave authorised by the employer. The law authorises workers to take paid leave on public holidays. This also

applies to annual leave and special leave using annual leave. The attendance bonus must be maintained for such leave. On the other hand, the law does not state that workers must be paid when they take authorised sick or commitment leave. Therefore, when workers take this leave, the employer deducts the full attendance bonus.

Issue 2: The workers demand that the employer calculate daily wages during periods of annual leave based on the monthly piece rate payment.

- The workers demand that the employer calculate daily wages during periods of annual leave based on the monthly piece rate payment. The workers demand that the employer put this calculation into practice from this time onwards, but do not demand back pay for past underpayment.
- The employer's practice is to use the main wage as the basis of calculating the wages of piece rate workers while they are on annual leave.
- The employer states that it uses a main wage of US\$ 61 as the basis for calculating wages during annual leave because paid annual leave is treated the same as paid public holidays, which are calculated based on the main wage. Moreover, no law requires the employer to use the monthly wage earned by piece rate workers as the basis for calculating wages during annual leave. The employer further states that it has had this practice since it commenced operation.

Issue 3: The workers demand that the employer calculate hourly wages for female workers who go home to breastfeed on the basis of the piece rate payment.

- The current practice is that when workers take a one hour break to breastfeed their children, the employer pays them one hour's wage, calculated using the main wage.
- The workers demand that the employer calculate the hourly wage for workers going home to breastfeed their children on the basis of the piece rate payment. The workers make this demand for piece rate workers only and not for non-piece rate workers.
- The workers do not demand that the employer back pay underpaid wages.

Issue 4: The workers demand that the employer provide a living allowance of US\$ 6 per month to piece rate workers who hold fixed duration contracts.

- There are two types of contracts offered by the employer: fixed and undetermined duration contracts.
- In 2008, the employer provided the workers with a monthly US\$ 6 living allowance, after the introduction of Notification No. 032 on living allowance.

- In July 2010, Notification No. 049 required the employer to incorporate the US\$ 6 living allowance into the main wage. The employer complied.
- When the employer incorporated the US\$ 6 into the main wage, the piece rate workers demanded that the employer retain the US\$ 6 as a separate allowance from their monthly wages.
- On 20 October 2010, the employer held a meeting with the workers and reached the following agreement:
 - o For workers commencing work before 1 October 2010
 - Monthly and daily paid workers: a US\$ 6 living allowance will be included in each worker's main wage.
 - Piece rate workers: a US\$ 6 living allowance will be included in the monthly wage if they earn over US\$ 61; otherwise, the employer will bump up their wage to US\$ 61 and they will not be eligible for the US\$ 6.
 - o For workers commencing work after 1 October 2010
 - The US\$ 6 living allowance will not be provided. If any probationary worker has not earned a US\$ 56 wage, or any permanent worker has not earned a US\$ 61 wage, the employer will bump up their wage.
- The workers making this demand are piece rate workers.
- The workers demand that the employer provide US\$ 6 per month to piece rate workers on fixed duration contracts. This includes workers who commenced work before 1 October 2010 and whose contracts subsequently expired and were replaced with new fixed duration contracts after the lapse of a one or two week period.
- The employer states that it will not accede to the workers' demand because those workers hold new contracts made after 1 October 2010. Their contracts were not renewed, rather the employer offered them new fixed duration contracts after they had stopped working for one or two weeks.

Issue 5: The workers demand that the employer provide a seniority bonus to workers who hold fixed duration contracts and have over one year's service.

- The employer offers two types of contracts: fixed and undetermined duration contracts.
- 60% of its workers hold undetermined duration contracts and the rest hold fixed duration contracts. Of these, 30% hold three month fixed duration contracts and 10% hold six month fixed duration contracts.

- The employer's practice is that upon expiration of the workers' contracts, it provides them with severance pay equal to 5% of their wages, as well as other benefits in accordance with the law. After a period of time has elapsed (i.e. one or two weeks), the employer signs new contracts with them. The employer does not take account of the workers' seniority when making these new contracts.
- The employer began this practice in 2007. Prior to 2007, the employer implemented work suspensions because its production line did not correspond with the number of workers and the employer lacked a sufficient number of purchase orders in certain periods of each year. Due to complaints and disputes regarding these work suspensions, the employer began to recruit workers in accordance with its production line, with 40% of workers holding fixed duration contracts and another 60% holding undetermined duration contracts. By doing this, the employer could ensure a smooth production line without resorting to work suspensions.

REASONS FOR DECISION

Issue 1: The workers demand that the employer deduct from the attendance bonus in proportion to the number of days of authorised leave taken.

Before turning to this issue, the Arbitration Council will consider whether the demand gives rise to a rights dispute or interests dispute.

In previous arbitral awards, the Arbitration Council has held that "a rights dispute is a dispute concerning entitlements in the law, an agreement or a collective agreement" (see *AA 05/11-M & V 1, reasons for decision, issues 1 and 5; 13/11-Gold Kamvimex, reasons for decision, issues 1 and 2; and 14/11-GHG, reasons for decision, issue 4*).

The Arbitration Council applies the interpretation above. This demand regarding the attendance bonus has a basis in Notification No. 041/11 KB/SCN dated 7 March 2011, making it a rights dispute.

According to the facts, the workers demand that the employer deduct from the attendance bonus in proportion to the number of days of authorised leave taken, including sick and commitment leave. The workers take leave for personal commitments when they are required by their province's authority to obtain identity cards and land title deeds, or to fill out family registers, etc. The employer does not agree to the workers' demand. The Arbitration Council considers this case as follows.

Point 1 of Notification No. 041/11 KB/SCN dated 7 March 2011 states: "workers who attend work regularly in accordance with the number of working days in each month shall receive a bonus of at least US\$ 7 per month".

The Arbitration Council considers that this notification does not contain a clear statement about authorised leave. The Arbitration Council considers that this ambiguity is the same as that in Notification No. 017 SKBY dated 18 July 2000, which states that “workers who attend work regularly in accordance with the number of working days in each month shall receive a bonus of at least US\$ 5 per month.”

Because of this ambiguity, in previous arbitral awards the Arbitration Council has ordered the employer to deduct from the attendance bonus in proportion to the number of days the employer has authorised the workers to take leave. The workers should not lose the full attendance bonus, on the grounds that they are authorised by the employer to take leave, (*see AAs 57/07-Seratex, reasons for decision, issue 3; 106/07-M & V 3, reasons for decision, issue 2; 128/08-Wei Hua, reasons for decision, issue 2; and 31/11-Quint Major Industrial, reasons for decision, issue 3*).

In this case, the employer will not deduct the US\$ 7 attendance bonus when the workers take leave on public holidays, special leave using annual leave, or annual leave because: (1) public holidays, which are authorised by the state, are distinguishable from leave authorised by the employer because the workers are paid for leave on public holidays. Thus their attendance bonus must be maintained; and (2) similarly, annual leave and special leave using annual leave are referred to in the law as paid leave. However, sick leave and leave for personal commitments authorised by the employer are not referred to as paid leave in the law, thus the full attendance bonus must be deducted.

The Arbitration Council agrees with the employer that public holidays authorised by the state, annual leave, and special leave using annual leave are referred to in the law as paid leave, and therefore the employer should not deduct the workers’ attendance bonus for such leave. However, the Council does not completely agree that taking sick leave and leave for personal commitments authorised by the employer can be construed as not coming to work regularly on the grounds that the law does not require that the workers be paid for the leave. The Arbitration Council considers that the employer has the right to deduct from the attendance bonus in proportion to the number of days of authorised leave and to deduct the full attendance bonus only when workers take leave without permission from the employer.

The Arbitration Council considers that the number of regular working days in each month refers to the number of days in each month that the employer requires the workers to attend work or that the law obligates the workers to serve the employer. Based on the law and the current practice of enterprises and establishments in Cambodia, the term “**working days in each month**” can mean:

- (1) Full working days of each month (where there are no statutory holidays, meaning 26 days per month or 21-22 days per month depending on the practice of each employer).
- (2) Non-full working days (where there are statutory holidays, meaning that there may be less than 26 days or 21-22 days per month depending on the number of statutory holidays and the practice of each employer).
- (3) Non-full working days (where a worker's leave is authorised by the employer, meaning that there may be less than 26 days or 21-22 days per month depending on the practice of each employer and the number of days of authorised leave).

Based on the explanation above, if workers receive proper permission for leave (including public holidays, annual leave, special leave using annual leave, sick leave and commitment leave), the number of working days in each month (where workers are required to serve the employer) will be reduced in accordance with the number of days of authorised leave. This means that if the workers have worked the number of days required by law in each month, excluding days of authorised leave, they will be considered as coming to work regularly. In such cases, the term "working days in each month" does not include statutory leave or leave authorised by the employer.

In conclusion, the Arbitration Council agrees with the decisions in previous arbitral awards. Therefore, the Council orders the employer to deduct from the attendance bonus in proportion to the number of days of sick and commitment leave authorised by the employer.

Issue 2: The workers demand that the employer calculate daily wages during periods of annual leave based on the monthly piece rate payment.

Before turning to this issue, the Arbitration Council will consider whether the demand gives rise to a rights dispute.

The workers' demand has a basis in the Labour Law, making it a rights dispute (see explanation in issue 1 above).

In this case, the employer and workers are disputing over how to calculate wages during annual leave. The workers demand that the employer calculate the payment on the basis of the monthly wage earned by piece rate workers. The employer contends that the payment should be calculated on the basis of the main wage. The Arbitration Council considers whether the annual leave payment for piece rate workers must be calculated on the basis of the US\$ 61 minimum [main] wage or on monthly wage earned by the workers.

Article 166, paragraph 1 of the Labour Law states:

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.

Based on this article, the Arbitration Council considers that paid annual leave is given by the employer at the rate of one and a half work days per month of continuous service.

Article 102 of the Labour Law states:

For the purposes of this law, the term "wage", irrespective of what the determination or the method of calculation is, means the remuneration for the employment or service that is convertible in cash or set by agreement or by the national legislation, and that shall be given to a worker by an employer, by virtue of a written or verbal contract of employment or service, either for work already done or to be done or for services already rendered or to be rendered.

Based on this article, the Arbitration Council considers that wage is remuneration for employment or service which is convertible in cash and given to the workers for work or service already done or to be done, arising from the labour contract between the two parties.

Points 2 and 3 of Notification No. 049 dated 9 July 2010 state:

2. Provision of minimum wages of US\$ 56 to probationary workers employed from one to three months in textile, garment, and footwear sector... After completion of probationary period, the [permanent] workers shall receive minimum wages of US\$ 61 per month...
3. Piece rate workers shall receive wages on actual production. If they earn more than the minimum wages set forth in point 2, then they can receive the surplus...

Based on these points, piece rate workers are at least entitled to the US\$ 61 minimum wage per month and are entitled to more if they achieve a higher piece rate.

In Arbitral Award 82/06-M & V 3, reasons for decision, issue 6, the Arbitration Council held that "wages include actual wages earned by the workers. Actual wages for piece rate workers are the wages depending on the amount of piece rate they have produced."

Based on the facts, the Arbitration Council finds that the workers making this demand are piece rate workers. The employer's practice is to calculate the workers' wages during annual leave on the basis of the US\$ 61 main wage. The Arbitration Council considers this practice to be improper because piece rate workers lose benefits where they earn more than US\$ 61, the minimum wage guaranteed by the law.

In conclusion, the Arbitration Council is of the view that the employer must calculate the wage of piece rate workers during annual leave on the basis of their monthly wage.

The Arbitration Council orders the employer to calculate the daily wage of piece rate workers during periods of annual leave based on their monthly piece rate payment.

Issue 3: The workers demand that the employer calculate hourly wages for female workers who go home to breastfeed on the basis of the piece rate payment.

Before turning to this issue, the Arbitration Council will consider whether the demand gives rise to a rights dispute.

The workers' demand has a basis in the Labour Law, making it a rights dispute (see explanation in issue 1 above).

Article 184 of the Labour Law states:

For one year from the date of child delivery, mothers who breast-feed their children are entitled to one hour per day during working hours to breast-feed their children. This hour may be divided into two periods of thirty minutes each, one during the morning shift and the other during the afternoon shift. The exact time of breast-feeding is to be agreed between the mother and the employer. If there is no agreement, the periods shall be at the midpoint of each work shift.

In Arbitral Award 39/11-M & V 1, issue 5, the Arbitration Council held that:

In calculating average daily wages, the employer must find monthly average wages earned [by the workers]. The Arbitration Council holds that in calculating hourly wages for women piece rate workers, the employer must take their daily average wages and divide it by the number of hours they have worked.

Based on Article 184 of the Labour Law and previous arbitral awards, the Arbitration Council considers that the hours in which the employer allows workers to breastfeed their children are considered working hours, during which the employer must maintain wages.

In this case, the employer has been paying workers on the basis of the main wage for the hours they are absent due to breastfeeding. However, the workers demand that the employer calculate the hourly wage of piece rate workers on the basis of the actual wage earned in each month.

In conclusion, the Arbitration Council orders the employer to calculate the hourly wage of piece rate workers by dividing their average daily wage by the number of hours they have worked.

Issue 4: The workers demand that the employer provide a living allowance of US\$ 6 per month to piece rate workers who hold fixed duration contracts.

Before turning to this issue, the Arbitration Council will consider whether the demand gives rise to a rights dispute.

The workers' demand has a basis in the agreement made on 20 October 2010 between the workers and the employer, making it a rights dispute (see explanation in issue 1 above).

The workers demand that the employer provide US\$ 6 per month to workers holding fixed duration contracts made both before and after 1 October 2010.

A. Case of workers who held fixed duration contracts before 1 October 2010 which were replaced one to two weeks after expiration

According to the facts, in the agreement dated 20 October 2010 the employer agreed to provide US\$ 6 per month to piece rate workers commencing work before 1 October 2010.

The Arbitration Council finds that there are some workers who held fixed duration contracts before 1 October 2010 which were not renewed immediately upon expiration, but after one to two weeks had elapsed.

The Arbitration Council will consider whether the workers in this case are still considered to be workers commencing before 1 October 2010.

Article 73, paragraph 1 of the Labour Law 1997 states:

A labour contract of specific duration normally terminates at the specified ending date. It can, however, be terminated before the ending date if both parties are in agreement on the condition that this agreement is made in form of writing in the presence of a Labour Inspector and signed by the two parties to the contract.

Article 73, paragraph 6 of the Labour Law 1997 states:

At the expiration of the contract, the employer shall provide the worker with the severance pay proportional to both the wages and the length of the contract. The exact amount of the severance pay is set by a collective agreement. If nothing is set in such agreement, the severance pay is at least equal to five percent of the wages paid during the length of the contract.

In previous arbitral awards, the Arbitration Council has held that an employer has an obligation to provide severance pay where a fixed duration contract expires and the employment relationship between the employer and the worker has been terminated (see *AAs 60/06-New Max Garment, reasons for decision, issue 6*; *99/06-South Bay, reasons for*

decision, issue 6; 85/09-Nan Kuang, reasons for decision, issue 4; and 124/09-Focus Footwear, reasons for decision, issue 3).

The Arbitration Council applies the interpretation above. The employer has an obligation to provide severance pay where a fixed duration contract expires and the employment relationship has been terminated.

In this case, the employment relationship between the employer and the workers has been terminated because the employer has fulfilled its duty to pay severance pay equal to 5% of wages and other perquisites in the Labour Law. After the expiration of their contracts, the workers are not obliged to wait for the contracts to be renewed or to serve to the employer.

In previous arbitral awards, the Arbitration Council has interpreted “**seniority**” as “the length of successive service which adds more rights or privileges for workers based on the length of service provided by the worker...The seniority will end only when the worker stops working for the enterprise” (see AAs 68/05-Gold Lida; 75/05-Fortune Garment; 17/10-Zongtex Garment; 60/10-Kin Tay, reasons for decision, issue 2; 101/10-Tripos International, reasons for decision, issue 2; and 14/11-GHG, reasons for decision, issue 4).

The Arbitration Council applies the interpretation above. Seniority will end when the worker stops working for the enterprise. In cases where the worker has stopped working for one or two weeks, their seniority will be ended.

Based on the interpretation above, newly-signed contracts between the employer and the workers will be considered as separate agreements, stipulating rights and obligations of each party and specifying a new period of employment relationship. Therefore, the workers are considered as having commenced work after 1 October 2010. As a result, they are not entitled to the US\$ 6.

The Arbitration Council notes that the Cambodian Labour Law has a bias toward contracts of undetermined duration, evident from Article 67(7) & (8). The reason for this bias is that undetermined duration contracts lead to increased employment security. This is important for workers and is in the interests of the employer because long term employment leads to increased commitment to work from employees (see AA 10/03-Jacqsintex). In contrast, the practice of signing short-term employment contracts of specific duration (where the total length of the contracts exceeds two years) in order to avoid giving statutory benefits seems improper. Although the Labour Law does not prohibit the employer from implementing this practice, the employer is not encouraged to do so. This is because an internationally known principle of civil code requires that parties in civil relationships must implement their rights and fulfil their obligations with integrity and in good faith. Creating an employment

relationship using short-term contracts in order to avoid fulfilling statutory obligations goes against the principles of integrity and good faith, and in this case the parties are considered as having misused the law. For this reason, the practice should not be continued unless there is a problem with production and the enterprise has an urgent need to use short-term contracts, e.g. insufficient purchase orders.

B. Case of workers holding fixed duration contracts and commencing work after 1 October 2010.

According to the facts, these workers were newly recruited after 1 October 2010. In accordance with the agreement above, they are not entitled to the US\$ 6.

In conclusion, the Arbitration Council rejects the workers' demand that the employer provide US\$ 6 to the workers holding fixed duration contracts, as paid to workers holding undetermined duration contracts.

Issue 5: The workers demand that the employer provide a seniority bonus to workers who hold fixed duration contracts and have over one year's service.

Before turning to this issue, the Arbitration Council will consider whether the demand gives rise to a rights dispute.

The workers' demand has a basis in Notification No. 041 KB/SCN dated 7 March 2011 and the Labour Law, making it a rights dispute (see explanation in issue 1 above).

The workers demand that the employer provide a seniority bonus to workers who hold fixed duration contracts and have over one year's service.

According to the facts, the workers holding fixed duration contracts do not have one year of seniority because their contracts are not consecutively renewed. The employer states that when the workers' contracts expire they are provided with severance pay equal to 5% of their wages and other benefits in accordance with the law. After one or two weeks have elapsed, a new contract is signed. As such, each worker's seniority starts from the date of their latest contract.

Point 3 of Notification No. 041 KB/SCN dated 7 March 2011 on the seniority bonus states:

The workers who have worked at any factory, enterprise, and establishment, for more than one year shall receive a seniority bonus as follows:

Seniority (in years)	1	2	3	4	5	6	7	8	9	10	11
Amount of money received (in dollars)	0	2	3	4	5	6	7	8	9	10	11

In previous arbitral awards, the Arbitration Council has interpreted “**seniority**” as “the length of successive service which adds more rights or privileges for workers based on the length of service provided by the worker...The seniority will end only when the worker stops working for the enterprise” (see AAs 68/05-Gold Lida; 75/05-Fortune Garment; 17/10-Zongtex Garment; 60/10-Kin Tay, reasons for decision, issue 2; 101/10-Tripos International, reasons for decision, issue 2; and 14/11-GHG, reasons for decision, issue 4).

Based on the interpretation in issue 4 (see above), a worker’s seniority continues in accordance with the actual period of service for the employer until they stop working for the employer. In cases where a worker stops working for and ceases to have an actual employment relationship with the employer (even for one or two weeks), their seniority will end. Therefore, the workers’ seniority will not be counted.

In conclusion, the Arbitration Council rejects the workers’ demand that the employer provide a seniority bonus to workers holding fixed duration contracts of less than one year which are not consecutively renewed.

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

DECISION AND ORDER

Part I. Rights dispute:

Issue 1: Order the employer to deduct from the attendance bonus in proportion to the number of days of sick and commitment leave authorised by the employer.

Issue 2: Order the employer to calculate the daily wage of piece rate workers during periods of annual leave based on their monthly piece rate payments.

Issue 3: Order the employer to calculate the hourly wage of female piece rate workers by dividing their average daily wage by the number of hours they have worked.

Issue 4: Reject the workers’ demand that the employer provide US\$ 6 per month to workers holding fixed duration contracts, as paid to workers holding undetermined duration contracts.

Issue 5: Reject the workers’ demand that the employer provide a seniority bonus to workers holding fixed duration contracts of less than one year which are not consecutively renewed.

Type of award: binding award

The award of the Arbitration Council in part I will be final and is enforceable by the parties in accordance with the MoU, dated 28 September 2010.

Part II. Interests dispute: N/A

Type of award: non-binding award

The award in part II will become binding eight days after the date of its notification unless one of the parties lodges a written opposition with the Minister of Labour through the Secretariat of the Arbitration Council within this time period.

SIGNATURES OF THE MEMBERS OF THE ARBITRAL PANEL

Arbitrator chosen by the employer party:

Name: **Mar Samborana**

Signature:

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: