



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

**ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល**

**THE ARBITRATION COUNCIL**

**Case number and name: 01/11-Pou Yuen**

**Date of award: 26 January 2011**

### **ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

#### **ARBITRAL PANEL**

Arbitrator chosen by the employer party: **Seng Vuoch Hun**

Arbitrator chosen by the worker party: **Ven Pov**

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

#### **DISPUTANT PARTIES**

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

Name: **Pou Yuen (Cambodia) Enterprise Ltd. (the employer)**

Address: Slang Oleong Village, Teouk Thla Commune, Sen Sok District, Phnom Penh

Telephone: 012 434 489

Fax: N/A

Representatives:

- |                  |                        |
|------------------|------------------------|
| 1. Mr Roger Shih | General Manager        |
| 2. Mr Som Samart | Head of Administration |
| 3. Ms Sok Pheng  | Administration         |
| 4. Mr Gan Jian   | Administration         |

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

Name: **Khmer Youth Federation Trade Union (KYFTU)**

##### **Local Union of KYFTU**

Address: Slang Oleong Village, Teouk Thla Commune, Sen Sok District, Phnom Penh

Telephone: 012 940 548

Fax: N/A

Representatives:

- |                   |                                       |
|-------------------|---------------------------------------|
| 1. Mr Mai Vathana | Vice-President of KYFTU               |
| 2. Mr Sea Sorn    | Official of KYFTU                     |
| 3. Mr In Ing      | President of the Local Union of KYFTU |

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4. Mr Noeun Yin

Vice-President of the Local Union of KYFTU

#### **ISSUES IN DISPUTE**

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

1. The workers demand that the employer pay the overtime meal allowance on each day they work overtime. The employer states that it will follow the existing practice.
2. The workers demand that the employer increase the main wage for skilled workers to US\$ 86. The employer states that it will follow the existing practice.

#### **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. 133 dated 9 June 2010 (Eighth 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 non-conciliation report No. 011 KB/RK/VK dated 31 December 2010 was submitted to the Secretariat of the Arbitration Council on 4 January 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 Commune, Tuol Kork District, Phnom Penh

**Date of hearing:** 11 January 2011 at 8:00 a.m.

#### **Procedural issues:**

On 16 December 2010, the Department of Labour Disputes received a complaint from the KYFTU outlining the workers' demands that the employer improve working conditions. Upon receiving the claim, the Department of Labour Disputes assigned an expert officer to resolve the dispute. As a result, eight of the 10 issues were conciliated. The two non-conciliated issues were referred to the Secretariat of the Arbitration Council on 4 January 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 two non-conciliated issues, held on 11 January 2011 at 8:00 a.m. Both parties were present at the hearing.

At the hearing, the Arbitration Council attempted to further conciliate the two non-conciliated issues and, as a result, the workers agreed to withdraw issue two.

Therefore, the Arbitration Council will consider only issue one in this case, based on the 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 Director of the employer to Som Samart and Sok Pheng, dated 11 January 2011.
2. Letter from the KYFTU notifying the Director of the employer of the election of the committee of the Local Union of KYFTU, No. 438 SSYX, dated 6 December 2010.
3. Letter from the KYFTU notifying the Director of the employer of the election of the committee of the Local Union of KYFTU, No. 406 SSYX, dated 28 October 2010.
4. Certificate of registration of the Local Union of KYFTU, dated 29 September 2010.
5. Internal Work Rules of the employer, No. 54 KB/RK/RFK, dated 4 August 2010.
6. Certificate of commercial registration of Pou Yuen (Cambodia) Enterprise Ltd., No. 54 KB/RK/RFK dated 4 August 2010.
7. Patent certificate of Pou Yuen (Cambodia) Enterprise Ltd., No. 1995 BN/CBP, dated 27 April 2010.
8. Statute of Pou Yuen (Cambodia) Enterprise Ltd., dated 29 March 2010.

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

1. Certificate of registration of the Local Union of KYFTU, dated 29 September 2010.
2. Letter from the KYFTU notifying the Director of the employer of the election of the committee of the Local Union of KYFTU, No. 438 SSYX, dated 6 December 2010.
3. Statute of the Local Union of KYFTU, No. 1961 KB/VK, dated 29 September 2010.

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

1. Report on collective labour dispute resolution at Pou Yuen (Cambodia) Enterprise Ltd., No. 011 KB/RK/VK, dated 31 December 2010.
2. Minutes of collective labour dispute resolution at Pou Yuen (Cambodia) Enterprise Ltd., dated 16 December 2010.

#### **D. Provided by the Secretariat of the Arbitration Council:**

1. Notice to attend the hearing addressed to the employer, No. 012 KB/AK/VK/LKA, dated 5 January 2011.
2. Notice to attend the hearing addressed to the worker party, No. 013 KB/AK/VK/LKA, dated 4 January 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:**

- Pou Yuen (Cambodia) Enterprise Ltd. (Pou Yuen) commenced operation in May 2010. It employs 2,200 workers.
- The Local Union of KYFTU, registered on 29 September 2010, is the claimant in this case.
- The Local Union of KYFTU represents 250 workers; however, it has received union contribution fees from only 140 members.

### **Issue 1: The workers demand that the employer pay the overtime meal allowance on each day they work overtime.**

- The workers and the employer agree that for overtime lasting from 4:00 p.m. to 6:00 p.m. a 1,000 riel meal allowance is provided, and for overtime extending from 6:00 p.m. to 8:30 p.m. an additional 1,000 riel meal allowance is provided.
- Overtime work from 4:00 p.m. to 6:00 p.m. takes place every day and all workers volunteer to work during these hours. Overtime work from 6:00 p.m. to 8:00 p.m. does not occur as frequently, only taking place three or four days per week.
- The employer pays an overtime meal allowance to the workers along with their monthly wages on the 8<sup>th</sup> of every month.
- The workers make this demand because they need the allowance in order to buy a meal during overtime work. Moreover, they argue, *Prakas* [Notification] No. 017 prohibits the overtime meal allowance from being provided once a month, instead requiring the employer to pay the allowance to workers each day, so they can buy a meal each day. The workers say they do not have enough money to buy meals; and sometimes they become sick, unconscious, or faint during working hours due to hunger.
- The employer argues that it is unable to provide as demanded by the workers. As there is a large number of workers in the factory and overtime work takes place every day, the employer claims it does not have enough staff to arrange for the provision of the overtime meal allowance each day. Furthermore, it has integrated

monthly wages and the overtime meal allowance in its accounting system and finds it very difficult to modify the system. It says it has not received any complaints from workers regarding the issue.

- The workers state that they make this demand on behalf of all the workers in the factory. However, the union has not submitted to the Arbitration Council authorisation letters from workers who are not its members.

### **REASONS FOR DECISION**

#### **Issue 1: The workers demand that the employer pay the overtime meal allowance on each day they work overtime.**

The Local Union of KYFTU demands in this case that the employer pay the overtime meal allowance each day, on behalf of all workers at Pou Yuen. The Arbitration Council considers the issue as follows.

Clause 19 of *Prakas* No. 099 SKBY dated 21 April 2004 provides that “[a] party may appear before the arbitration panel in person, be represented by a lawyer...or be represented by any other person expressly authorised in writing by that party.”

This means that in an arbitral hearing, a party may appear before the arbitration panel in person, be represented by a lawyer who is a member of the Bar Association of the Kingdom of Cambodia, or be represented by any other person expressly authorised in writing by that party (*see Arbitral Award 122/10-Meng Yan*).

As per the findings of fact, the workers who are not members of the Local Union of KYFTU are absent and the claimant union has not submitted authorisation letters to the Arbitration Council. Hence, the Arbitration Council considers the demand as applicable to the members of the Local Union of KYFTU only.

Article 116 of the Labour Law states: “Labourers' wages shall be paid at least two times per month, at a maximum of sixteen-day intervals. Employees' wages must be paid at least once per month.”

Based on this article, the Arbitration Council considers that labourers' wages must be paid at least twice per month and employees' wages must be paid at least once per month. The Labour Law merely determines the period for payment of wages.

However, the workers in this case demand that the employer pay the overtime meal allowance on each day of overtime work. Thus, the Arbitration Council considers whether the overtime meal allowance is considered as wages and whether the workers are entitled to have the allowance provided on each day of overtime work.

Article 103 of the Labour Law states:

Wage includes, in particular:

- actual wage or remuneration;
- overtime payments;
- commissions;
- bonuses and indemnities;...

According to the above article, overtime payments are a component of wages. The Arbitration Council considers that the workers will be paid an overtime meal allowance as long as they work overtime, due to the relationship between the overtime meal allowance and overtime payments. The Arbitration Council further considers whether or not the overtime meal allowance is part of overtime payments.

In previous arbitral awards, the Arbitration Council has found that the overtime meal allowance is not part of overtime payments because the allowance is paid in lieu of the provision of a meal; it is not a payment made to workers for overtime work. If the employer does not provide this allowance, it is required to provide a free meal to the workers. Hence, the overtime meal allowance is not connected with overtime payments (*see Arbitral Award 17/10-Zongtex, issue 1*).

The Arbitration Council agrees with the above interpretation; the overtime meal allowance is paid to workers instead of the provision of meals; it is not a payment made to workers for overtime work.

Point 4 of Notification No. 049 KB/SCN of the Ministry of Labour and Vocational Training, dated 9 July 2010 stipulates that “benefits the workers used to receive in accordance with Notification No. 017 SKBY dated 18 July 2000, points 3, 4, 5, and 6 shall be retained and enforceable.”

Point 4 of Notification No. 017 SKBY dated 18 July 2000 states that “workers who voluntarily work overtime at the employer’s request shall receive a meal allowance of 1,000 riels per day or receive a free meal.”

In Arbitral Award 17/10-Zongtex, the Arbitration Council interpreted this point as meaning that the provision of a free meal encourages workers to work overtime after regular working hours, because food is a fundamental and indispensable human need and should be provided by the employer. Therefore, if the employer does not provide a meal to overtime workers, Notification No. 017 SKBY dated 18 July 2000 requires it to provide a meal allowance of 1,000 riels per day in lieu of a free meal.

Based on the said notification and interpretation above, the employer is obliged to provide a free meal to those workers who volunteer to work overtime because the provision

of a free meal is essential to give the workers more energy to work overtime. However, the Arbitration Council finds that the Notification does not specify the period in which the allowance must be provided.

In previous arbitral awards, the Arbitration Council has found that a free meal should be provided to workers for each day of overtime work. Thus, it is reasonable that a meal allowance be paid to the workers on a daily basis (see *Arbitral Awards 47/07-Chung Fai, issue 5; 79/07-Terratex, issue 5; 85/09-Nan Kuang, issue 10; and 17/10-Zongtex, issue 1*).

The Arbitration Council considers that the overtime meal allowance should be provided to the workers at an appropriate time to ensure that the workers can afford to buy meals during overtime work. Thus, the provision of an overtime meal allowance can be made on a daily basis, weekly basis, or monthly basis, as long as the workers can manage their expenditure.

In this case, the workers demand that the employer provide the overtime meal allowance once a day, on the basis that they need money to buy meals during overtime work. They claim that the law requires the employer to provide the allowance to the workers on a daily basis because they need to buy a meal every day. Moreover, the workers state that they currently do not have enough money to buy meals and sometimes become sick, unconscious, or faint due to hunger.

The Arbitration Council finds that overtime work takes place every day from 4:00 p.m. to 6:00 p.m. The workers need food to work overtime. In this case, the workers state that they cannot afford to buy a meal each day they work overtime. Thus, they demand that the employer pay the overtime meal allowance on each day of overtime work. The Arbitration Council considers that the workers need money to buy a meal each day. With respect to the employer's arguments that it does not have enough staff to arrange for the provision of the overtime meal allowance to a large number of workers (2,200 workers) and that it has integrated the overtime meal allowance with the workers' monthly wages in its accounting system, the Arbitration Council considers that it is in fact a burden on the employer to arrange for the provision. Overtime work takes place every day and the employer must spend money to hire additional staff and modify its accounting system. However, in this case the Arbitration Council considers that the difficulty faced by the workers is more serious than that faced by the employer and therefore the employer should immediately resolve the issue. The Council further considers that although the employer needs to spend money to hire more staff and to modify its accounting system, it will achieve higher profitability if it can resolve the workers' problem because if they have enough money to buy meals, they will have more energy to work and will be motivated to work harder. This compromise will lead to better cooperation at the workplace.

Therefore, the Arbitration Council orders the employer to pay the overtime meal allowance on a daily basis to workers who are members of the Local Union of KYFTU, for each day they volunteer to work overtime.

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 pay the overtime meal allowance on a daily basis to workers who are members of the Local Union of KYFTU, for each day they volunteer to work overtime.

**Type of award: non-binding award**

This award 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 MEMBERS OF THE ARBITRAL PANEL**

Arbitrator chosen by the employer party:

Name: **Seng Vuoch Hun**

Signature: .....

Arbitrator chosen by the worker party:

Name: **Ven Pov**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: .....