KINGDOM OF CAMBODIA

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THE ARBITRATION COUNCIL

Case number and name: 07/13-Ocean Garment Co., Ltd.

Date of award: 6 March 2013

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRAL PANEL

Arbitrator chosen by the employer party: **Chhiv Phyrum**

Arbitrator chosen by the worker party: **Liv Sovanna**

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

DISPUTANT PARTIES

Employer party:

Name: **Ocean Garment Co., Ltd.**

Address: Prey Teer Village, Sangkat Chom Chao, Khan Po Sen Chey, Phnom Penh

Telephone: 012 332 747 Fax: N/A

Representatives:

1. Mr MD Rafiqul Islam — Personal Assistant to Manager
2. Mr Choun Vicheka — Administrative Assistant
3. Mr Oum Bunthoeun — Attorney at Law
4. Mr Sok Sambath — Assistant to Attorney at Law

Worker party:

Name: **- Cambodian Labour Union Federation (CLUF)**

- Local Union of CLUF (the union)

Address: (Borey Solar), #30C, Street 371, Trapaing Chouk Village, Sangkat Teok Tla, Khan Sen Sok, Phnom Pneh

Telephone: 012 837 768 Fax: N/A

Representatives:

1. Mr Vong Boreth — staff member of CLUF
2. Ms Ngim Phalla — staff member of CLUF

3. Mr Tin Sochea	President of the union
4. Mr Nov Savuth	Vice-President of the union
5. Ms Horl Sreyneang	Secretary of the union

ISSUES IN DISPUTE

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

1. The workers demand that the employer maintain wages and benefits of 143 workers who did not take part in the strike. The employer claims this issue has already been resolved by the Arbitration Council.
2. The workers demand that the employer provide a US$5 bonus to workers who can operate a single sewing machine, a US$10 bonus to those who can operate a double sewing machine, a US$15 bonus to those who can operate a triple or over triple sewing machine. The employer claims it will maintain the current practice and rejects the workers' demand.
3. The workers demand that the employer take the average sum of their wages as the basis for calculation payment in lieu of annual leave. The employer claims it will maintain current practice.
4. The workers demand that the employer implement Arbitral Award no. 06/12-Ocean Garment issued on 16 February 2012, Issue 2. The employer claims it does not implement the award.

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. 121 dated 7 June 2012 (Tenth 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. 043 dated 9 January 2013 was submitted to the Secretariat of the Arbitration Council on 9 January 2013.

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: 25 January 2013 (at 8:30 a.m.)

Procedural issues:

On 11 December 2012, the Department of Labour Disputes (the department) received a complaint from CLUF, outlining the workers' demands that the employer improve working conditions. Upon receiving the claim, the department assigned an expert officer to resolve the labour dispute and the last conciliation session was held on 4 January 2013. No issues were resolved. The four non-conciliated issues were referred to the Secretariat of the Arbitration Council (SAC) on 9 January 2013.

Upon receipt of the case, the SAC summoned the employer and the workers to a hearing and conciliation of the four non-conciliated issues, held on 25 January 2013 at 8:30 a.m. Both parties were present.

At the hearing, the Arbitration Council conducted a further conciliation of the four non-conciliated issues, but they remained unresolved.

The Arbitration Council considers the issues in dispute in this case based on the evidence and reasons below.

The Arbitration Council divided the issues into two types: rights disputes and interests disputes. In this case, the parties are signatories to the Memorandum of Understanding on Improving Industrial Relations in the Garment Industry (MoU), dated 3 October 2012. According to the MoU, both parties have agreed to binding arbitration for rights disputes. However, the MoU does not create binding obligations regarding interest disputes. The parties are able to choose non-binding arbitration for interest disputes, and can object to an arbitral award issued in relation to such disputes. Such an objection will not affect the parties' obligation to implement an award on rights issues in accordance with the MoU. In this case, the parties choose non-binding arbitration for their interests disputes.

In this case, the parties choose a non-binding Arbitral Award for interests dispute.

Both parties agree to defer the date of award issuance from 14 February 2013 to 4 March 2013.

EVIDENCE

This section has been omitted in the English version of this arbitral award. For further information regarding evidence, please refer to the Khmer version.

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:

- Ocean Garment Co., Ltd. is a garment manufacturer employing 2,200 workers.
- There are two local unions in the factory of Ocean Garment. The local union of CLUF holds the most representative status (MRS).
- The local union of CLUF is the claimant. The union received the certificate of union registration from the Ministry of Labour and Vocational Training no. 1998 dated 24 November 2010. It has 201 members.

Issue 1: The workers demand that the employer maintain wages and benefits of 143 workers who did not take part in the strike.

- The workers demand that the employer maintain their wages on 16, 17, and 18 August 2012 and a US$10 attendance bonus for August 2012 for 137 workers though they did not attend work for 8 hours a day.
- The workers claim that:
    - They did not take part in the strike
    - They came to work every day, but they could not perform their work for 8 hours because of disruption caused by the workers on strike.
- The strike was from 11 August 2012 to 30 August 2012. The workers making this demand were not involved in the strike. They came to work as usual while other workers were on strike.
- The parties agree that the workers had not performed their work for 8 hours because the workers on strike came in to disrupt them.
- At the hearing, the workers raise that 137 workers did not punch in on 16, 17, and 18 August 2012.
- The employer claims that although they did not punch in, their supervisors did sign to account for their attendance.
- The employer agrees that striking workers did come in to disrupt them while they were working, but the employer claims they did not come in all the time. It alleges that during the time that workers on strike came in to disrupt them, the employer arranged police to guard them, but the police could not protect them all the time, so the striking workers came in once in a while which caused minor disruption.
- The employer claims that it provided US$20 to all workers (workers who did and did not go on strike) in August 2012. This is just the employer's gratuitous payment to cover their loss during the strike.
- The employer claims it did not reject the claim of the workers to maintain their wages and attendance bonus. The employer indicates that it will make payment to the workers if the workers submitted the following items to the employer:

- Payslip
- Acknowledgement from supervisor
- Fingerprints of the workers making the demand.

The employer claims that the workers failed to submit those items and therefore, it did not make payment to the workers.

- The employer claims it has provided a US$10 attendance bonus per month to workers who attended work full time and regularly without taking unauthorised or authorised leave since before August 2012. The parties agree that attendance bonus in August 2012 was US$10 per month.
- Two working shifts are: Morning shift is from 7 a.m. to 11 a.m. and the afternoon shift is from 12 p.m. to 16 p.m.
- In the attendance report, the employer uses "A" for workers absent without authorisation and "A Leave" for workers absent with authorisation.
- At the hearing, the workers submitted name list of the workers whose wages have been docked though they did not participate in the strike.
- The Arbitration Council orders the workers to submit evidence to prove that they did come to work and the number of hours of their work performed on 16, 17, and 18 August 2012. The workers submit the payslips to the Arbitration Council. The employer did not object to the evidence. The employer submits ID numbers of the worker who resigned and did not punch in and thumb printed, attendance record, and attendance record kept by supervisor. The workers do not object to the evidence. The Arbitration Council will consider the number of workers on whom it has jurisdiction to decide:

1. The name list of workers whose wages and benefits were docked though they did not take part in the strike.

This list shows 137 workers who make the demand, but the Arbitration Council finds that there are only 130 workers who have proper thumbprint.

2. The list of ID Numbers of the workers, who have resigned, not scanned their ID Card and fingerprints (22 workers in total).

ID Numbers of 11 Workers Who Have Resigned	ID Numbers of 7 Workers Who Have Not Thumb Printed	ID Numbers of 4 Workers Who Have Not Punched in
5169, 358, 5003, 5293, 41, 5309, 5586, 252, 3669, 5354, 5433	1737, 18076, 1228, 5363, 5434, 5213, 4106	4951, 2928, 515, 2676

The Arbitration Council will consider only the 108 workers who have properly thumb printed.

Among 108 workers, the Arbitration Council divided up into 2 teams: one team comprises the workers who received the acknowledgement signature from the supervisor about their attendance and another team comprises the workers who did not receive the acknowledgement signature from the supervisor about their attendance.

3. Payslip: The workers submitted the payslip of 86 workers to the Arbitration Council.

4. Attendance Record: The employer submitted the 103 sheets of attendance record to the Arbitration Council (the Arbitration Council put sequential numbers on the record to facilitate the judgment). The Arbitration Council finds that among the 103 attendance records, the records that received the acknowledgement signature from the supervisors are as follows:

Sequent Number of the Attendance Record	ID Number of the Workers	Consider or Decline	Remark
16	5195	Consider	The record about this worker shows that the supervisor acknowledged that he/she came to work on 17 August 2012.
43, 44, 45, 46, 47, 48, 49,	5389, 5388, 5376, 4387, 3876, 3802, 2980,	Consider	The record about this worker shows that the supervisor acknowledged that he/she came to work on 16, 17, 18 August 2012.

5. Attendance Record Kept by the Supervisor: According to this Attendance Record kept by the supervisor, the workers who came to work on 16 and 17 August 2012 are as follows:

ID Number of the Workers Who Attended Work on 16 August 2012	Consider or Decline	Remarks
5014, 5316, 1614, 3629, 5340, 5305, 5380, 4356	Consider	
5388, 5389, 4387, 3876, 3802, 2980		See the interpretation in Issue 4 above

ID Number of the Workers Who Came to Work on 17 August 2012	Consider or Decline	Remarks
5014, 5316, 1614, 3629, 5340	Consider	
5388, 5389, 4387, 3876, 3802, 2980		See the interpretation in Issue 4 above

The attendance record kept by the supervisors did not show the ID Number of the workers who attended work on 18 August 2012.

Issue 2: The workers demand that the employer provide a US$5 bonus to workers who can operate a single sewing machine, a US$10 bonus to those who can operate a double sewing machine, a US$15 bonus to those who can operate a triple or over triple sewing machine.

The workers demand that the employer provide a US$5 bonus to workers who can operate a single sewing machine, a US$10 bonus to those who can operate a double sewing machine, and a US$ 15 bonus to those who can operate a triple sewing machine.

- The workers provide the reasons for the demand as follows:
    - The workers who can operate the sewing machines are more skilful than other workers, but they receive the same wages as others do.
    - The company prospers because of the skilled workers.
- The employer claims that it rejects the demand because there is no law stipulating about the above bonus and the factory is now facing difficulty. The factory recently increased the base wage to US$62 per month for workers on probation and US$67 per month for regular workers in January 2013.

Issue 3: The workers demand that the employer take the average sum of their wages as the basis for calculating the payment in lieu of annual leave.

The workers demand that the employer make payment in lieu of annual leave by taking the sum of wages, overtime payment, and all benefits that the workers have received in the last 12 months and divide them up with 12; then, with 26 and multiply with the number of days of annual leave.

- The employer takes the sum of their base wage plus the attendance bonus of the latest month as basis for calculation.
- The workers claim:
    - The current company practice makes the workers lose their benefits because overtime payment is not included in the calculation for payment in lieu of annual leave.

- The previous Arbitral Award also ordered the same as this demand.

- The employer claims there is no law stipulating about the calculation mentioned in the demand.

Issue 4: The workers demand that the employer implement Arbitral Award no. 06/12-Ocean Garment issued on 16 February 2012, Issue 2.

- The workers claim they have no intention of lodging the matter at the court because it is time-consuming.
- The Arbitral Award no. 06/12 dated 16 February 2012, Issue 2 states *"Order the employer to maintain wages and reduce attendance bonus in proportion to the number of days of sick leave certified by private clinics or hospitals."*

REASONS FOR DECISION

Before considering the demands, the Arbitration Council distinguishes rights dispute and interests dispute.

Paragraph 2, Article 312 of the Labour Law states:

> The Arbitration Council has legal jurisdiction to decide on disputes concerning the interpretation and enforcement of laws or regulations or of a collective agreement. The Council's decisions are in equity for all other disputes.

Clause 43 of the Prakas 099 on the Arbitration Council dated 21 April 2004 states:

> An arbitral award which settles an interest dispute takes the place of a collective bargaining agreement and shall remain in effect for one year from the date on which it becomes final unless the parties agree to make a new collective bargaining agreement replacing the award.

Paragraph 2, Article 312 of the Labour Law and Clause 43 of the Prakas no.099 on the Arbitration Council dated 21 April 2004 states that the Arbitration Council has legal jurisdiction to decide disputes concerning the interpretation and enforcement of laws or regulations or of a collective agreement. The Council's decisions are in equity for all other disputes. The Arbitration Council concludes that disputes concerning the interpretation and enforcement of laws or regulations or of a collective agreement are rights disputes and the Arbitration Council legally settles rights disputes (*see the Arbitration Award 05/11-M & V (Branch 1), Reasons for Decision, Issue 1&5, 13/11-Gold Kamvimex, Issue 1&2, 14/11-GXG, Issue 4).*

Any kinds of disputes that are not stipulated in the agreement or collective agreement are interests dispute and the Arbitration Council settles interests disputes based on equity (*see Arbitral Award 31/13-Quint Major Industrial, Reasons for Decision, Issue 4 and 62/11-Ocean Garment, Issue 1).*

Issue 1: The workers demand that the employer maintain their wages and benefits on 16, 17, and 18 August 2012 which were the dates they attend work and full attendance bonus for August 2012 though they have not performed their work for 8 hours a day.

Before considering the demand, the Arbitration Council considers whether the issue gives rise to a rights dispute or an interests dispute.

As this issue is about wages that are stipulated in the Labour Law *(1997)* and the attendance bonus stipulated in Notification no. 041 of the Ministry of Labour and Vocational Training dated 7 March 2011, this issue is a rights dispute.

The workers demand that the employer provide their wages on 16, 17, and 18 August 2012 and attendance bonus in August 2012 to workers who came to work while other workers were on strike from 11 August 2012 to 30 August 2012. The employer rejects the demand because the workers failed to submit the aforementioned evidence to the employer.

A. The workers' wages

Article 102 of the Labour Law (1997) 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.

According to the foregoing, the employer shall pay wages to workers by virtue of the contract. This means the employer shall provide wages for the period that the workers have performed their work. In the case that the workers have not performed their work for the set number of hours, the employer is not under obligation to pay wages for the time that the workers did not perform their work.

In the fact finding, the workers have not performed their works for 8 hours per day. The Arbitration Council finds that the workers are entitled to receive the wages of the hours that they have performed their work. However, in this case, the workers failed to perform their work because of the disruption caused by the workers on strike.

The Arbitration Council will consider whether or not the employer is free from the obligation to pay full wages on 16, 17, and 18 August 2012 to workers in the case that the failure to perform their work caused by the disruption of workers on strike.

Article 2 of the Labour Law states:

> …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 of the Labour Law refers that the employer has right to supervise and direct its company as long as the right is practiced in accordance with the laws and appropriately (s*ee the Arbitral Award no. 62/06-Quicksew, Reasons for Decision, Issue 5, 108/06-Trinunggal Komara, 33/07-Gold Fame, Issue 3, and 119/09-SL Garment, Issue 4 & 5).*

The Arbitration Panel in this case also agrees with the interpretation in previous cases.

Referring to Article 2 of the Labour Law (1997) above, the Arbitration Council finds that it is the employer's right to supervise and arrange an organised and safe workplace. Therefore, the employer shall arrange a convenient workplace for workers to perform their work.

It is possible that the workers on strike may engage in some activities or there is the potential that they may engage in some activities that may be disrupting to the workplace. Therefore, the employer shall predict or expect that striking workers may have some activities during the strike. The employer should have taken measures to prevent such activities.

In this case, the strike commenced on 11 August 2012, and the disturbing activities caused by the striking workers started from 16 August 2012 which was 6 days after the commencement of the strike, so this was not an unpredictable event. The employer did arrange police to guard the workplace but the police could not guard it all the time which let the workers on strike disturb workers who were performing their work. The disruption had occurred for three days from 16 till 18 August 2012. The Arbitration Council finds that the employer should have taken measures to prevent the disturbing activities. The fact that the employer failed to take measure to prevent the disturbing activities which disrupted the workers on duty is the inadequacy of the employer in organising and arranging an appropriate workplace for the convenience of the workers' performance. Therefore, the employer cannot avoid the obligation to pay wages to workers who could not perform their work because of the disruption caused by the other workers. The employer is under an obligation to pay workers full wages for 16, 17, and 18 August 2012.

- **The workers who received the acknowledgement from their supervisor about work attendance**

At the hearing, the employer raises that it has not rejected to pay wages and attendance bonus to all workers. The employer would have paid if the workers submit the evidence such as payslips, supervisor acknowledgement, and the thumbprints of the workers who were making the demand to the employer. Therefore, the Arbitration Council finds that the employer shall pay to workers indicated in table 4 & 5 in the fact finding of Issue 1 above.

- **The workers who did not receive the acknowledgement from their supervisor about their attendance at work**

The parties agree that on 16, 17, and 18 August 2012, the workers could not perform their work for 8 hours per day because of the disruption caused by the workers on strike. The

Arbitration Council finds that the employer agrees that the workers came to the workplace, but the employer would not pay them the wages unless the workers submitted the payslip and the acknowledgement from their supervisor. The Arbitration Council finds that the employer agrees that the workers came to the workplace, but they were disturbed by the workers on strike, the employer must pay them wages. Therefore, the employer must also pay wages to the workers who did not receive the acknowledgement from their supervisor.

In conclusion, the Arbitration Council decides to order the employer to pay 108 workers full wages for 16, 17, and 18 August 2012.

B. Attendance bonus

Point 2 of the Notification 230 of the Ministry of Labour and Vocational Training dated 25 July 2012 stated:

> Workers/employees who have come to work regularly every working day of each month without absence shall receive at least USD10 (ten) of attendance bonus per month… The provision of the benefits stipulated in this Notification shall be implemented from 1 September 2012 onwards…

As the above Notification 230 shall be implemented from 1 September 2012 onwards and in this case, the workers make the demand for the attendance bonus in August 2012, the Arbitration Council will consider based on an old Notification 041 of the Ministry of Labour and Vocational Training dated 7 March 2011 because this notification is still valid until August 2012.

Point 1 of the Notification 041 of the Ministry of Labour and Vocational Training dated 7 March 2011 states *"The workers who attend work regularly in accordance with the number of working days of each month shall receive at least a bonus of US$7 per month".*

Currently, the employer provides a US$10 attendance bonus per month to workers. The Arbitration Council finds that this practice is better than what is required by law.

In reference to the fact finding, the Arbitration Council finds that though the workers have not performed their work for 8 hours on 16, 17, and 18 August 2012, this failure to perform their work for 8 hours was not caused by the workers themselves *(see the interpretation of Issue 1 (A))*. Therefore, the Arbitration Council finds that the employer has no right to reduce the attendance bonus on 16, 17, and 18 August 2012.

In conclusion, the Arbitration Council orders the employer to pay 108 full attendance bonus for 16, 17, and 18 August 2012.

Issue 2: The workers demand that the employer provide a US$5 bonus to workers who can operate a single sewing machine, a US$10 bonus to those who can operate a double sewing machine, a US$15 bonus to those who can operate a triple or over triple sewing machine.

Before considering this issue, the Arbitration Council considers whether or not the demand gives rise to a rights dispute or an interests dispute.

The Arbitration Council finds that there is no provision in the Labour Law, collective agreement or any agreement between the parties obligating the employer to provide a US$5 bonus per month to workers who can operate a single sewing machine, a US$10 bonus per month to those who can operate a double sewing machine, a US$15 bonus per month to those who can operate a triple or over triple sewing machine.

In reference to the interpretation about a rights dispute and an interests dispute above, the Arbitration Council finds that this issue is an interests dispute.

Paragraph 2 of Article 96 of the Labour Law 1997 states:

The collective agreement is a written agreement relating to the provisions provided for in Article 96 - paragraph 1. The collective agreement is signed between:

a) One part: an employer, a group of employers, or one or more organisation representative of employers; and

b) The other part: one or more trade union organisations representative of workers…

Clause 9 of the Prakas no. 305 dated 22 November 2001 states:

The union having the most representative status (MRS) has the right to request the employer to enter into negotiations on joint conventions applied by all workers and employees represented by that union. In this case, the employer is under the obligation to negotiate with the union.

In reference to Article 96 and Clause *9* above, in general, the Arbitration Council always consider the MRS of the union in dispute in the case regarding interests disputes because the Arbitration Council finds that the MRS gives legitimate rights to the union to form the collective agreement with the employer and bring interests dispute to the Arbitration Council for resolution.

Clause 43 of the Prakas 099 dated 21 April 2004 states:

An arbitral award which settles an interests dispute takes the place of a collective bargaining agreement and shall remain in effect for one year from the date on which it becomes final unless the parties agree to make a new collective bargaining agreement replacing the award.

In reference to Clause 43 above, the arbitral award regarding an interests dispute, the Arbitration Council takes into account the most representative status (MRS) of the union in dispute because the Arbitration Council considers that MRS provides the union with legal rights to negotiate collective agreements with the employer, and the union with MRS also has legal rights to bring the interests dispute to the Arbitration Council for resolution.

Clause 43 of the Prakas no. 099 dated 21 April 2004 states:

An arbitral award which settles an interest dispute takes the place of a collective bargaining agreement and shall remain in effect for one year from the date on which it becomes final unless the parties agree to make a new collective bargaining agreement replacing the award.

In reference to the above Clause 43, an arbitral award which settles an interest dispute takes the place of a collective bargaining agreement. It applies to all workers in the

company and strips the rights to strike for the demand of future interests dispute from other workers who are not the members of this union. Hence, the Arbitration Council can only settle interests dispute brought in by the union which has MRS in the enterprise or the collective unions which have more than half of the number of workers as members in the enterprise (*see Arbitral Awards 81/04-Evergreen, Reasons for Decision, Issue 4, and 98/04-Great Union, Issue 3.*

In Arbitral Award 169/11-Fortune Teo, Issue 5, the Arbitration Council declined to consider interests dispute because the claimant union does not have MRS in the factory (*see Arbitral Awards 02/11-Pou Yuen, Reasons for Decision Issue 2, and 66/11-In Han Sung, Issue 1).*

The Arbitration Panel in this case also agrees with the interpretation in made previous cases mentioned above.

In this case, the Arbitration Council finds that the Local Union of CLUF does not hold MRS. Therefore, the Arbitration Council considers that this union has no legitimate right to bring an interests dispute to the Arbitration Council for resolution.

In conclusion, the Arbitration Council decides to decline to consider the workers' demand that the employer provide a US$5 bonus to workers who can operate a single sewing machine, a US$10 bonus to workers who can operate a double sewing machine, a US$15 bonus to the workers who can operate a triple or over triple sewing machine.

Issue 3: The workers demand that the employer make payment in lieu of annual leave by taking the average sum of wages, overtime payment, and all benefits that the workers have received in the last 12 months as the basis for calculation (taking the sum of wages, overtime payment, and all benefits that the workers have received in the last 12 months and dividing them by 12 (the number of month in a year) and 26 (the average number of working days per month) and multiplying with the number of days of annual leave).

Before considering this issue, the Arbitration Council considers whether or not the demand gives rise to a rights dispute or an interests dispute.

Article 168 of the Labour Law 1997 states:

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

In reference to the interpretation about the rights dispute above, the Arbitration Council finds that this dispute is a rights dispute.

The Arbitration Council considers whether or not the employer is under an obligation to take the sum of wages, overtime payment, and other bonuses that the workers receive in the last 12 months as basis for calculation of payment in lieu of annual leave.

In reference to the Article 168 of the Labour Law 1997 above the employer shall take the average sum of wages, allowance, benefits, indemnity, and benefits in kind provided to the workers as the calculation formula.

In Arbitration Council jurisprudence, the Arbitration Council orders the employer to make payment in lieu of annual leave to each individual worker by taking the sum of their individual wages within the last 12 months, dividing by 12 to get the average monthly wage; then, dividing this figure with 26 to get the average daily wage. This figure is then multiplied with the remaining number of days of annual leave (*see the Arbitral Award no. 27/04-MS International, Reasons for Decision, Issue 3 and 94/07-Fortune Garment, Issue 2).*

The Arbitration Panel in this case also agrees with the interpretation made in previous cases.

In the current company practice, the employer takes the average wages and attendance bonus of the latest month as the basis for the calculation of payment in lieu of annual leave. The Arbitration Council finds that the employer practice is not in compliance with Article 168 of the Labour Law 1997 and the previous arbitral awards.

In conclusion, the Arbitration Council decides to order the employer to take average wages, the overtime payment, and other bonuses that the workers have earned in the last 12 months as part of the calculation for payment in lieu of annual leave.

Issue 4: The workers demand that the employer implement the Arbitral Award no. 06/12-Ocean Garment issued on 16 February 2012, Issue 2.

Before considering the demand, the Arbitration Council considers whether the issue gives rise to a rights dispute or an interests dispute.

Point 1 of Article 353 of the Code of Civil Procedure 2006 states *"An execution ruling of a court must be obtained in order to execute an arbitration award, whether domestic or foreign."*

In this case, the workers demand that the employer implement the Arbitral Award 06/12 dated 16 February 2012, Issue 2 which states *"Order the employer to maintain the wages and deduct the attendance bonus in proportion to the number of days of sick leave that the workers have taken with proper certificate from the clinic or private hospital."*

In reference to the interpretation about the rights dispute above, the Arbitration Council finds that this issue is a rights dispute.

The Arbitration Council will consider whether or not it has the jurisdiction to resolve the issue that the workers demand the employer to implement the Arbitral Award 06/12 dated 16 February 2012, Issue 2 which states "*Order the employer to maintain the wages and*

reduce the attendance bonus in proportion to the number of days of sick leave taken by the workers properly certified by private clinics or hospitals."

In reference to Point 1 of Article 353 of the Code of Civil Procedure 2006 above, The Arbitration Council finds that only the court has jurisdiction to enforce an arbitral award. The Arbitration Council has no jurisdiction to resolve the objection or complaint about the arbitral award implementation.

Therefore, the Arbitration Council decides to decline to consider the workers' demand that the employer implement the Arbitral Award 06/12 dated 16 February 2012, Issue 2 which states "*Order the employer to maintain the wages and reduce the attendance bonus in proportion to the number of days of sick leave taken by the workers properly certified by private clinics or hospitals."*

DECISION AND ORDER

Part I. Rights dispute:

Issue 1: - Order the employer to pay 108 workers full wages for 16, 17, and 18 August 2012.

- Order the employer to pay 108 workers full attendance bonus on 16, 17, and 18 August 2012.

Issue 2: Order the employer to take the average sum of wages, overtime payment, and other bonuses which the workers have earned within the last 12 months as part of the calculation for payment in lieu of annual leave.

Issue 4: Decline to consider the workers' demand that the employer implement the Arbitral Award 06/12 dated 16 February 2012, Issue 2 which states "*Order the employer to maintain the wages and reduce the attendance bonus in proportion to the number of days of sick leave taken by the workers properly certified by private clinics or hospitals."*

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 3 October 2012.

Part II. Interests dispute:

Issue 2: Decline to consider the workers' demand that the employer provide a US$5 bonus to workers who can operate a single sewing machine, a US$10 bonus to those who can operate a double sewing machine, a US$15 bonus to those who can operate a triple or over triple sewing machine.

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 period.

SIGNATURES OF THE MEMBERS OF THE ARBITRAL PANEL

Arbitrator chosen by the employer party:

Name: **Chhiv Phyrum**

Signature: .....

Arbitrator chosen by the worker party:

Name: **Liv Sovanna**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: .....