KINGDOM OF CAMBODIA

NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 252/13-M & V3

Date of award: 16 December 2013

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRAL PANEL

Arbitrator chosen by the employer party: **Kao Thach**

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

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

DISPUTANT PARTIES

Employer party:

Name: **M & V International Manufacturing Ltd.**

Address: Building no. 1623, National Road no. 2, Sangkat Chak Angre Krom, Khan Mean Chey, Phnom Penh

Telephone: 016 70 70 46 Fax: N/A

Representatives:

1. Mr Yin Nak — Head of Administration Department
2. Ms Vor Phyleng — Assistant to Director General

Worker party:

Name: **- Coalition of Cambodian Apparel Workers Democratic Unions (C.CAWDU)**

- Local Union of C.CAWDU (the union)

Address: House no. 2.3G, Sangkat Boeung Tumpun, Khan Mean Chey, Phnom Penh

Telephone: 012 988 623 Fax: N/A

Representatives:

1. Ms Meas Vanny — Dispute Resolution Officer of C.CAWDU
2. Mr Buth Bunchean — Dispute Resolution Officer of C.CAWDU
3. Mr Ak Chan — President of the union
4. Mr Kim Choeung — Vice-President of the union

5. Ms Soeun Chamroeun	Union Activist
6. Ms Pen Ratha	Union Activist

ISSUES IN DISPUTE

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

1. The workers demand that the employer provide a US$5 living allowance to all piece rate workers.
2. The workers demand that the employer provide a 4,000 riel payment in lieu of lunch.
3. The workers demand that the employer provide a US$3 incentive bonus to workers working on holidays.
4. The workers demand that the employer provide an additional US$5 accommodation and transportation allowance on top of an existing US$7.
5. The workers demand that the employer provide a 4,000 riel overtime meal allowance to workers who volunteer to work overtime from 4:30 p.m. to 6:30 p.m. and a 6,000 riel overtime meal allowance to workers who volunteer to work overtime from 6:30 p.m. to 8:30 p.m.
6. The workers demand that the employer arrange dining tables and chairs.

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. 155 dated 17 June 2013 (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. 1462 dated 22 November 2013 was submitted to the Secretariat of the Arbitration Council on 22 November 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: 29 November 2013 (at 2 p.m.)

Procedural issues:

On 17 October 2013, the Department of Labour Disputes (the department) received a complaint no. 073/13 dated 11 October 2013 from C.CAWDU, outlining the workers'

demands for the improvement of 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 12 November 2013, but the six non-conciliated issues remained unresolved. The six non-conciliated issues were referred to the Secretariat of the Arbitration Council (SAC) on 22 November 2013.

Upon receipt of the case, an Arbitration Panel was formed on 25 November 2013. The Secretariat of the Arbitration Council summoned the employer and the workers to a hearing and conciliation of the six non-conciliated issues, held on 29 November 2013. Both parties were present.

At the hearing, the Arbitration Council conducted a further conciliation of the six non-conciliated issues, but they remained unresolved. The workers withdrew Issue 6. Therefore, the Arbitration Council will consider the remaining five issues: Issues 1, 2, 3, 4, and 5.

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 interests disputes. The parties are able to choose non-binding arbitration for interests 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 non-binding Arbitral Award for the interests disputes.

Therefore, the Arbitration Council will consider the issues in dispute in this case based on the evidence and reasons below.

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:

- M & V International Manufacturing Ltd. (Branch 3) (M & V3) is a garment manufacturer. Currently, the company employs 3,300 workers *(according to non-conciliation report no. 1462-M & V3 dated 22 November 2013).*
- The union received a Certificate of Union Registration dated 13 September 2006 and a Letter no. 352 dated 28 March 2011 recognising union leaders in its second term: 1) Mr Ak Chan-President, 2) Mr Kim Cheung-Vice-President, and 3) Mr Seng Hong-Secretary.
- The union does not hold most representative status (MRS).
- Four workers from M & V3 attend the hearing including: 1) Mr Ak Chan, 2) Mr Kim Choeung, 3) Mr Soen Chamroeun, and 4) Ms Pen Ratha attended the hearing held on 29 November 2013 at the Arbitration Council.

Issue 1: The workers demand that the employer provide a US$ 5 living allowance to all piece rate workers.

- The workers demand that the employer provide a US$ 5 living allowance to all piece rate workers.
- The workers claimed:
    - Before May 2013, the employer had provided a US$5 living allowance to all piece rate workers. Starting May 2013, the employer stopped providing such an allowance.
    - Since the piece rate is low, piece rate workers received as much as the minimum wage or just a little over minimum wage, regardless of how hard they worked.
    - Price of consuming goods is on the rise and causing trouble to the workers' living conditions.
- The employer claims that it cannot not afford to meet the demand and that it will comply with Notification no. 103 dated 9 April 2013 of the Ministry of Labour and Vocational Training.

Issue 2: The workers demand that the employer provide a 4,000 riel payment in lieu of lunch.

- The workers claimed their wages were low and the cost of consuming goods, rental fees, and utilities were on the rise. With such imbalances, the workers cannot afford to purchase nutritious food which has caused workers to faint during working hours.
- The employer claimed that it could not afford to meet the demand and would comply with Notification no. 041/11 dated 7 March 2011 which requires the workers to provide either a free meal or overtime meal allowance to workers who volunteered to work overtime.

Issue 3: The workers demand that the employer provide a US$3 incentive bonus to workers who attend work on public holidays.

- The employer claims it provided a US$2 incentive bonus per month to workers who voluntarily worked on holidays.
- The workers demand that the employer provide an additional US$1 incentive bonus on top of an existing US$2 incentive bonus to reach a total of US$3.
- The workers claimed:
    - The employer had provided a US$2 incentive bonus per month to workers who voluntarily worked on holidays since their base wage was US$61 per month. The base wage is currently US$80 after it was raised; therefore, the incentive bonus should also be raised.
    - To attend overtime work, the workers spent more on transportation and meals because there was no one selling affordable meals during the holidays. In short, the workers spent three times as much as they spent on meals on regular working days.
- The employer claims that it will not meet the demand because overtime work performed on holidays was on a voluntary basis and the employer maintains the US$2 incentive bonus for workers who volunteer to work on public holidays.

Issue 4: The workers demand that the employer provide an additional US$5 accommodation and transportation allowance on top of an existing US$7 allowance.

- The employer provided workers with a US$7 accommodation and transportation allowance per month.
- The workers demand that the employer provide an additional US$5 accommodation and transportation allowance on top of an existing US$7 allowance.
- The workers claimed the cost of transportation is on the rise. In the past, the workers spent from only US$8 to US$9 per month on transportation; however, currently they spend US$12 per month on transportation.
- The employer claimed that it would not meet the demand and that it would comply with Notification 230 dated 25 July 2012 of the Ministry of Labour and Vocational Training.

Issue 5: The workers demand that the employer provide a 4,000 riel overtime meal allowance to workers who volunteer to work overtime from 4:30 p.m. to 6:30 p.m. and a 6,000 riel overtime meal allowance to workers who volunteer to work overtime from 6:30 p.m. to 8:30 p.m.

- The employer provides a 2,500 riel overtime meal allowance to workers who volunteer to attend the overtime from 4:30 p.m. to 6:30 p.m. and a 3,000 riel overtime

meal allowance to workers who volunteer to attend the overtime from 6:30 p.m. to 8:30 p.m.

- The workers demand that the employer provide an additional 1,500 riel overtime meal allowance to the workers who volunteer to work overtime from 4:30 p.m. to 6:30 p.m. and an additional 500 riel overtime meal allowance on top of the existing overtime meal allowance to the workers who volunteer to work overtime from 6:30 p.m. to 8:30 p.m.
- The workers claim they spent around 2,000 riel to 3,000 riel to purchase a meal during overtime work which was not clean and nutritious and that affected their health.
- The employer claims that it will not meet the demand because it also provides a pack of instant noodles to each worker who attends the overtime until 8 p.m. Further, the overtime meal allowance was provided based on a collective agreement between the employer and the workers (C.CAWDU) dated 25 June 2013 in which Point 4 states:

  The employer agreed to provide a 2,500 riel overtime meal allowance to workers who attend the overtime from 4:30 p.m. to 6 p.m. If the workers extend their overtime work from 6:30 p.m. to 8:30 p.m., they will receive an additional 3,000 riel.

Issue 6: The workers demand that the employer arrange dining tables and chairs.

- At the hearing, the workers decided to withdraw Issue 6 from this case. Therefore, the Arbitration Council will not consider this particular issue.

REASONS FOR DECISION

Before considering the demand, the Arbitration Council will interpret:

1) Claimants in this case

Among the four workers attending the hearing, two workers claim they were union leaders: 1) Mr Ak Chan-President and 2) Mr Kim Choeung-Vice-President. However, the workers do not provide evidence proving they were recognised as union leaders in the third term by the Ministry of Labour and Vocational Training. Therefore, the Arbitration Council will consider the representativeness of union leaders as follows:

Article 268 of Labour Law states:

In order for their professional organisations to enjoy the rights and benefits recognised by this law, the founders of those professional organisations must file their statutes and list of names of those responsible for management and administration, with the Ministry in charge of Labour for registration.

The Arbitration Council considers that the article above means a professional organisation is entitled to rights and interests in accordance with the Labour Law when such a professional organisation holds a registration certificate and is recognised by the Ministry of Labour and Vocational Training.

The Arbitration Council also considers that these rights and interests include the right to represent union members in the resolution of disputes before the Arbitration Council *(see Arbitral Award no. 62/06-Quick Sew, issue 2 and 31/08-South Bay, issue1, and 94/09-Tack Fat).*

Paragraph 2, Clause 3 of Prakas no. 305 dated 22 November 2001 of the Ministry of Labour and Vocational Training on the Representativeness of Professional Organisations of Workers and Employees in Enterprises and Establishments and the Right of Collective Negotiation to Conclude a Joint Convention for Enterprises and Establishments states: *"…Any way, the leaders' term shall not exceed two years, but they can be re-elected."*

In this case, the Ministry of Labour and Vocational Training issued a letter on recognising union leaders in its second term on 28 March 2011. According to Paragraph 2, Clause 3, Prakas no. 305 above, the Arbitration Council finds that recognition of union leaders in its second term: 1) Mr Ak Chan-President, (2) Mr Kim Choeung, and (3) Mr Seng Heng-Secretary was valid until 28 March 2013; however, the term expired before the hearing date. However, at the hearing, the workers did not provide any claim or evidence proving that the union held the third term election.

At the hearing, the Arbitration Council found that only four workers were present: 1) Mr Ak Chan, 2) Mr Kim Choeun, 3) Ms Soeun Chamroeun, and 4) Ms Penn Ratha. The workers do not provide evidence proving that the four workers were legitimate union leaders formally recognised by the Ministry of Labour and Vocational Training.

In this case, the Arbitration Council finds that the four workers were not legitimate union leaders. Therefore, the four workers have no right to represent members of the union.

Nonetheless, Clause 19 of Prakas 099 dated 21 April 2004 on the Arbitration Council states that: *"A party may appear before the arbitration panel in person…or be represented by any other person expressly authorised in writing by that party."*

According to the foregoing, "authorised in writing" shows that disputing parties can permit other persons to represent them in the process of dispute resolution before the Arbitration Council only when the latter receives written authorisation representing the disputing parties *(see Arbitral Award no. 161/09-Prek Treng and 43/10-Ming Jian).*

In this case, the Arbitration Council finds that there were no other workers authorising the four workers to represent them in the process of dispute resolution. Therefore, the Arbitration Council finds that there are only 4 workers who appear before the Arbitration Council.

In conclusion, the Arbitration Council will resolve issues in the dispute for only four workers present at the hearing: 1) Mr Ak Chan, 2) Mr Kim Choeung, 3) Ms Soeun Chamroeun, and 4) Ms Pen Ratha.

2) Definition of Rights and Interests Disputes

Paragraph 2 of Article 312 of the Labour Law states: *"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."*

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

> 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.

Paragraph 2 of Article 312 of the Labour Law and Clause 43 of the Prakas no.099 on the Arbitration Council 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 has jurisdiction to settle the rights disputes. Any kinds of disputes that are not stipulated in the agreement or collective agreement are interests disputes and the Arbitration Council settles interests disputes based on equity.

Issue 1: The workers demand that the employer provide a US$ 5 living allowance to all piece rate workers.

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

Point 1, Notification no. 032 dated 17 April 2008 of the Ministry of Labour and Vocational Training states:

> Provide an allowance to support living of workers, apprentices, casual workers, probationary workers and permanent workers who are working in the garment and footwear manufacturing factory, enterprise, establishment in the amount of US$6 (six US Dollar) per month. This allowance is not included as a part of the net wage (base wage).

Point 1, Notification No. 049/10 KB/SCN dated 9 July 2010 states: *"The living allowance of US$6 of 2008 shall be incorporated into the main wage of workers in the textile, garment, and footwear sector."*

Notification no. 049 above states that *"Notification no. 032 dated 17 April 2008 of the Ministry is null and void."*

According to Notification no. 032 and 049 above, the Arbitration Council finds that a phrase *"an allowance to support living"* used by the Ministry of Labour and Vocational Training in Notification no. 032 is null and void and superseded by *"a living allowance"* stated in Notification no. 049. Therefore, hereafter, the Arbitration Council will use the phrase *"a*

living allowance" stated in Notification no. 049 instead of *"an allowance to support living" as used* in the issue.

Point 4 of Notification no. 103 dated 9 April 2013 of Ministry of Labour and Vocational Training states: *"Notification no. 049 dated 9 July 2010 and 206 dated 13 December 2011of the Ministry is null and void."*

In this case, the US$6 living allowance has been incorporated into base wage of workers in textile, garment, and footwear manufacturing sector since 2010 in accordance with Notification no 049 above; however, this notification was superseded by Notification no.103. Therefore, the employer has been under an obligation to provide a living allowance in addition to base wage since 2010.

In this case, the workers claim before May 2013, the employer had provided a US$5 living allowance to all piece rate workers. Starting May 2013, the employer stopped providing such an allowance. The employer claims that it cannot afford to meet the demand and that it will comply with the Notification no. 103 dated 9 April 2013 of the Ministry of Labour and Vocational Training.

In the previous cases, the Arbitration Council held that *"Parties making allegations bear burden of proof before the Arbitration Council." (see Arbitral Award no. 112/06-Riverrex, Reasons for Decision, Issue 1, 01/07-Supreme, and 123/07-E-Garment, Issue 1)*

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

In this case, the workers did not provide specific evidence proving when the employer had provided a US$5 living allowance and the reasons behind the employer's decisions to stop providing such an allowance. Further, the workers did not provide sufficient reasons that the employer should maintain the US$5 living allowance. Therefore, the workers failed to fulfill the burden of proof by proving their allegations, which is the ground for the Arbitration Council's consideration.

The employer claimed it would comply with the aforementioned Notification no. 103. The Arbitration Council finds that Notification no. 103 does not mention a living allowance. Therefore, the Arbitration Council finds that the employer failed to fulfill the burden of proof proving such claim, the grounds for the Arbitration Council's consideration.

Further, the Arbitration Council finds that there is no provision in the Labour Law, collective bargaining agreement, agreement between the parties, internal work rule, or past practice stipulating the employer's obligation to provide piece rate workers with a US$5 living allowance. Therefore, the Arbitration Council finds that the workers' demand is more than what is mandated by law. Therefore, the issue is an interests dispute.

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

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 organisations representative of employers; and

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

Moreover, Clause 9 of the Prakas 305 dated 22 November 2001 states that:

The union having most representative status has the right to request the employer to negotiate a collective agreement which applies to all workers represented by that union. In this case, the employer has the obligation to negotiate with the union.

According to Article 96 and Clause 9 of the Prakas above, generally, in interests disputes, the Arbitration Council takes most representative status (MRS) of the union into consideration because it provides unions with the legal right to negotiate a collective agreement with the employer, and the union also has the legal right to bring an interests dispute case to the Arbitration Council for resolution.

Clause 43 of Prakas Number 099 dated 21 April 2004 states that:

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 the above Clause 43, an arbitral award which settles an interests dispute takes the place of a collective bargaining agreement. It binds all workers in the company and strips their right to strike over interests disputes covered in a collective agreement for a one year period that includes other workers who are not the members of this union. Hence, the Arbitration Council can only settle interests disputes brought by unions which have MRS in the enterprise or collective unions which have more than half the number of workers as members in the enterprise *(see the Arbitral Award Number 81/04-Evergreen, Reasons for Decision, Issue 4, and Number 98/04-Great Union, Issue 3).*

In 169/11-Fortune Teo, Issue 5, the Arbitration Council declines to consider an interests dispute because the union that brought the case did not have MRS in the factory *(see Arbitral Award no. 02/11-Pou Yuen, Reasons for Decision, Issue 2, and 66/11-In Han Sung, Issue 1)*.

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

According to the findings of fact, the four workers at M & V3 are claimants in this case; therefore, the Arbitration Council finds that the four workers do not meet legal requirement to bring interests dispute to the Arbitration Council.

Therefore, the Arbitration Council decides to decline to consider the workers' demand that the employer provide a US$5 living allowance to all piece rate workers.

Issue 2: The workers demand that the employer provide a 4,000 riel payment in lieu of lunch to each worker.

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

The Arbitration Council finds that there is no provision in the Labour Law, collective bargaining agreement, agreement between the parties, internal work rule, or past practice obligating the employer to provide a 4,000 riel payment in lieu of lunch per day to each worker. Therefore, the Arbitration Council finds that the demand is an interests dispute.

(see interpretation on interests dispute in Reasons for Decision, Issue 1 above)

In conclusion, the Arbitration Council decides to decline to consider the workers' demand that the employer provide a 4,000 riel payment in lieu of lunch to each worker.

Issue 3: The workers demand that the employer provide a US$3 incentive bonus to workers working on holidays.

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

The Arbitration Council finds that there is no provision in the Labour Law, collective bargaining agreement, agreement between the parties, internal work rule, or past practice obligating the employer to provide a US$3 incentive bonus to workers voluntarily working on holidays or provide an additional US$1 incentive bonus on top of the existing US$2 bonus. According to the findings in the facts, the employer provides a US$2 incentive bonus to workers voluntarily working on holidays. The Arbitration Council finds that the employer's practice is better than what is mandated by law. Therefore, the Arbitration Council finds that the workers' demand in this issue is an interests dispute.

(see interpretation on interests dispute in Reasons for Decision, Issue 1 above)

Therefore, the Arbitration Council decides to decline to consider the workers' demand that the employer provide a US$3 incentive bonus to workers working on holidays.

Issue 4: The workers demand that the employer provide an additional US$5 accommodation and transportation allowance on top of an existing US$7 allowance.

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

Point 1, Notification no. 230 of the Ministry of Labour and Vocational Training dated 25 July 2012 states: *"Provide a US$7 accommodation and transportation allowance per month."*

According to the findings of fact, the employer provides workers with a US$7 accommodation and transportation allowance per month. The Arbitration Council finds that the employer has fulfilled an obligation to provide accommodation and transportation in accordance with Notification 230. Nonetheless, the workers demand that the employer

provide an additional US$5 accommodation and transportation allowance on top of an existing US$7 allowance per month. Therefore, the workers' demand is more than what is mandated by law.

The Arbitration Council finds that there is no provision in the Labour Law, collective bargaining agreement, agreement between the parties, internal work rule, or past practice obligating the employer to provide an additional US$5 accommodation and transportation allowance on top of an existing US$7 allowance per month. Therefore, the Arbitration Council finds that the workers' demand in this issue is an interests dispute.

(see interpretation on interests dispute in Reasons for Decision, Issue 1 above)

Therefore, the Arbitration Council decides to decline to consider the workers' demand that the employer provide workers with an additional US$5 accommodation and transportation allowance on top of an existing US$7 allowance per month.

Issue 5: The workers demand that the employer provide a 4,000 riel overtime meal allowance to workers who volunteer to work overtime from 4:30 p.m. to 6:30 p.m. and a 6,000 riel overtime meal allowance to workers who volunteer to work overtime from 6:30 p.m. to 8:30 p.m.

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

Point 2 of Notification no. 041/11 dated 7 March 2011 states: *"The workers who volunteer to work overtime at the employer's request shall receive 2,000 riels of meal allowance per day or be provided with a free meal."*

According to the findings of fact, the employer provides a 2,500 riel overtime meal allowance to the workers who volunteer to work overtime from 4:30 p.m. to 6:30 p.m. and a 3,000 riel overtime meal allowance to the workers who volunteer to work overtime from 6:30 p.m. to 8:30 p.m. The Arbitration Council finds that the employer's practice is better than the Notification no. 041/11 above. Moreover, the employer's practice is in accordance with Point 4 of an agreement made between the employer and the workers (C.CAWDU) dated 25 June 2013.

The Arbitration Council finds that there is no provision in the Labour Law, collective bargaining agreement, agreement between the parties, internal work rule, or past practice obligating the employer to provide an additional 1,500 riel overtime meal allowance to the workers who volunteer to work overtime from 4:30 p.m. to 6:30 p.m. and an additional 500 riel overtime meal allowance on top of the existing overtime meal allowance to the workers who volunteer to work overtime from 6:30 p.m. to 8:30 p.m. Therefore, the Arbitration Council finds that the workers' demand in this case is an interests dispute.

The employer provides a 2,500 riel overtime meal allowance to the workers who volunteer to work overtime from 4:30 p.m. to 6:30 p.m. and a 3,000 riel overtime meal

allowance to the workers who volunteer to work overtime from 6:30 p.m. to 8:30 p.m. The Arbitration Council finds that the employer's practice is better than what is mandated by Notification 041/11 above. The employer's practice also complies with Point 4 of the agreement between the employer and the workers (C.CAWDU) dated 25 June 2013.

Further, the Arbitration Council finds that there is no provision in the Labour Law, collective bargaining agreement, agreement between the parties, internal work rule, or past practice obligating the employer to provide an additional 1,500 riel overtime meal allowance for overtime work performed from 4:30 p.m. to 6:30 p.m. and an additional 500 riel overtime meal allowance from 6:30 p.m. to 8:30 p.m. on top of the existing overtime meal allowance. Therefore, the Arbitration Council finds that the workers' demand in this issue is an interests dispute.

(see interpretation on interests dispute in Reasons for Decision, Issue 1 above)

Therefore, the Arbitration Council decides to decline to consider the workers' demand that the employer provide an additional 1,500 riel overtime meal allowance to the workers who volunteer to work overtime from 4:30 p.m. to 6:30 p.m. and an additional 500 riel overtime meal allowance on top of the existing overtime meal allowance to the workers who volunteer to work overtime from 6:30 p.m. to 8:30 p.m.

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

DECISION AND ORDER

Part I. Rights dispute: N/A

Part II. Interests dispute:

Issue 1: Decline to consider the workers' demand that the employer provide a US$5 living allowance to all piece rate workers.

Issue 2: Decline to consider the workers' demand that the employer provide a 4,000 riel payment in lieu of lunch to each worker.

Issue 3: Decline to consider the workers' demand that the employer provide a US$3 incentive bonus to workers who attend work on public holidays.

Issue 4: Decline to consider the workers' demand that the employer provide workers with an additional US$5 accommodation and transportation allowance on top of an existing monthly US$7 allowance.

Issue 5: Decline to consider the workers' demand that the employer provide an additional 1,500 riel overtime meal allowance to the workers who volunteer to work overtime from 4:30 p.m. to 6:30 p.m. and an additional 500 riel overtime meal allowance on top of the existing

overtime meal allowance to the workers who volunteer to work overtime from 6:30 p.m. to 8:30 p.m.

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: **Kao Thach**

Signature: .....

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: .....