KINGDOM OF CAMBODIA

NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 18/13- M & V (Branch 1)

Date of award: 4 March 2013

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRAL PANEL

Arbitrator chosen by the employer party: **Ing Sothy**

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.**

Address: Building 754, National Road 2, Sangkat Chom Chao, Khan Mean Chey, Phnom Penh

Telephone: 016 70 70 46 Fax: N/A

Representatives:

1. Mr Yin Nak — Head of Administration Department
2. Mr Jum Bosan — Administrator

Worker party:

Name: **- Cambodian Industry Union Federation (CIUF)**

- The Local Union of CIUF (the union)

Address: Building 754, National Road 2, Sangkat Chom Chao, Khan Mean Chey, Phnom Penh

Telephone: 012 699 395 Fax: N/A

Representatives:

1. Mr Hem Sok Ponlok — President of CIUF
2. Mr Tith Sokchan — Vice-President of CIUF

3. Ms Chan Sothy	President of the union
4. Ms Pol Phally	Secretary of the union
5. Ms Im Chan Sorya	Assistant Delegate
6. Ms Sean Sivorn	representative of workers
7. Ms Rin Sambath	representative of workers

ISSUES IN DISPUTE

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

1. The workers demand that the employer implement Arbitral Award no. 23 dated 11 March 2008 ordering the employer to pay attendance bonus in proportion to the number of days of authorised leave taken by workers during the month. The employer claims it will comply with the Notification no. 230 dated 25 July 2012.
2. The workers demand that the employer implement Arbitral Award no. 23 dated 11 March 2008 ordering the employer to average out the workers' wages over the last 12 months and use it as the basis for calculating payment in lieu of remaining annual leave.
3. The workers demand that the employer implement Arbitral Award 35/10 dated 7 May 2010 on the calculation of hourly wages for piece rate workers. The employer claims that it will maintain its current practice.
4. The workers demand that the employer refrain from acting discriminately and taking disciplinary action against workers who have not performed occasional overtime work as they were busy with personal commitments or had health-related issues. The employer claims overtime work is voluntary, so there is no force or discrimination.
5. The workers demand that the employer provide a 1,000 riel meal allowance per hour for overtime work performed on Sunday and holidays. The employer claims it is complying with the Notification no. 041 dated 7 March 2011.
6. The workers demand that the employer provide a 2,000 riel overtime meal allowance per hour. The employer claims it will maintain its current practice.
7. The workers demand that the employer pay their wages when there is no work supplied to them yet they are kept waiting for half an hour. The employer claims it will pay according to the demand only to those who fulfill the assignment and follow direction.
8. The workers demand that the employer provide an additional seniority bonus to workers who have been at the enterprise for at least 12 years. The employer claims it will comply with Notification no. 049 dated 9 July 2010.

9. The workers demand that the employer provide benefits to workers on fixed duration contracts equal to those on undetermined duration contracts (the living allowance of US$6). The employer claims it will comply with the Notification 049 dated 9 July 2010.
10. The workers demand that the employer refrain from reducing the attendance bonus when the workers take sick leave properly certified by doctors from state hospitals. The employer claims it will maintain its current practice when workers take sick leave properly certified by a doctor from a state hospital; it maintains the wages and reduces the attendance bonus in proportion to the number of leave days the workers have taken.
11. The workers demand that the employer refrain from reducing the attendance bonus of the workers who arrive 1-2 minutes late at work. The employer claims it will maintain its current practice.
12. The workers demand that the employer maintain additional bonus payable at the end of the 12th month (the 13th month bonus) for Rin Sambath, the head of the overlocking section, ID: K1940002. The employer claims that payment of the 13th month bonus is not legally mandated, so the employer has the right to decide whether or not to provide it.

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. 090 dated 18 January 2013 was submitted to the Secretariat of the Arbitration Council on 21 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: 8 February 2013 (at 2 p.m.)

Procedural issues:

On 13 December 2012, the Department of Labour Disputes (the department) received a complaint from CIUF, 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 14 January 2013, but they remained unresolved. The twelve non-conciliated issues were referred to the Secretariat of the Arbitration Council (SAC) on 21 January 2013 via the non-conciliation report no. 090 dated 18 January 2013.

Upon receipt of the case, the SAC Council summoned the employer and the workers to a hearing and conciliation of the twelve non-conciliated issues, held on 8 February 2013 at 2 p.m. Both parties were present.

At the hearing, the Arbitration Council conducted a further conciliation of the twelve non-conciliated issues, resulting in three issues (Issue 4, 7, and 11) being resolved. The remaining nine issues are Issue 1, 2, 3, 5, 6, 8,9,10 and 12.

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.

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

The Arbitration Council considers 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 1 is the garment factory. According to the collective dispute resolution report dated 18 January 2013, the company employs 295 workers.
- CIUF is the claimant in this case representing the union with 35 workers.
    - The local union is registered as no. 777 dated 10 June 2005. It received a certificate of recognition for the new union leaders on 20 September 2012 from the Department of Labour Dispute. The certificate of recognition recognises Ms Chan Sothy as the President, Ms Rin Sambath as Vice-President, and Ms Pol Phally as the secretary. According to the number of workers who contribute union membership fees, the union has 35 members. The union does not hold Most Representative Status (MRS) in M & V 1.
    - At the hearing held on 8 February 2013, the Arbitration Council enquired which workers were making the demands, but the workers failed to mention, validate, or submit an authorisation letter to the Arbitration Council. The workers submitted the authorisation letter with 252 thumbprints soliciting help from CIUF attached to the complaint. The Arbitration Council found that only the first page of the thumbprints of authorisation letter was dated and that the other pages were not. Therefore, the Arbitration Council recognises only those workers whose thumbprints were on the first dated page attached to the authorisation letter.
        - Chan Sothy, President of the local union
        - Rin Sambath, Vice-President of the local union
        - Pol Phally, Secretary of the local union
        - Sear Sivorn, worker representative
        - Im Chan Sorya, worker representative

As the five workers are leaders and members of the local union, they are already included in the total number of union members.

Issue 1: The workers demand that the employer implement Arbitral Award no. 23 dated 11 March 2008 ordering the employer to pay attendance bonus in proportion to the number of days of authorised leave taken by workers during the month.

- Arbitral Award no. 23 dated 11 March 2008, Issue 9 states that *"Ordering the employer to reduce the attendance bonus in proportion to the number of days of authorised leave that the workers have taken."*

Issue 2: The workers demand that the employer implement Arbitral Award no. 23 dated 11 March 2008 ordering the employer to average out the workers' wages over the last 12 months and use it as the basis for calculating payment in lieu of remaining annual leave.

- Arbitral Award no. 23 dated 11 March 2008, Issue 7 states that *"Order the employer to average out the workers' wages over the last 12 months and use it as the basis for calculating payment in lieu of remaining annual leave."*

Issue 3: The workers demand that the employer implement Arbitral Award no. 35 dated 7 May 2010 on using piece rate wages as the basis for calculating the wages of breastfeeding workers during their breastfeeding time.

Arbitral Award no. 35 dated 7 May 2010, Issue 1 states that *"Order the employer to use piece rate wages as the basis for calculating the wages of breastfeeding workers during their breastfeeding time."*

Issue 4: The workers demand that the employer refrain from acting discriminately and taking disciplinary action against the workers who do not work occasional overtime because they are busy with personal commitments or have health-related issues.

- The parties reached agreement on this issue.

Issue 5: The workers demand that the employer provide a 1,000 riel meal allowance for every hour of overtime work performed on Sundays and holidays.

- The workers confirm the demand that the employer provide a 1,000 riel meal allowance for every hour of overtime work on Sundays and holidays.
- The workers claim:
    - Working on Sundays and holidays is regarded as overtime work.
    - The employer provides a 1,000 riel meal allowance per hour to the workers working overtime on weekdays, so it should provide the same amount to the workers working overtime on Sundays and holidays.
- The employer claims:
    - On holidays: The employer does not provide a meal allowance to workers working for 8 hours because it is not overtime work. Where workers work overtime on holidays (for more than 8 hours), the employer provides a 2,000 riel meal allowance.
    - On Sundays: The employer provides a 2,000 riel overtime meal allowance to workers because working on Sundays is considered overtime work.
    - On weekdays: The employer provides a 2,000 riel meal allowance to workers working overtime from 4 p.m. to 6 p.m. If the overtime work extends past 6 p.m. (even 1 or 2 hours past 6 p.m.), the employer will provide the additional 2,000 riel meal allowance.
- The employer submits that it complies with the Notification 041/11.

Issue 6: The workers demand that the employer provide a 2,000 riel overtime meal allowance per hour to workers working overtime on weekdays.

- The workers confirm the demand that the employer provide a 2,000 riel overtime meal allowance per hour to workers working overtime on weekdays.
- In general, overtime work is from 4 p.m. to 8 p.m. The packaging section performs a lot of overtime work which sometimes extends until early in the morning.
- The workers claim the employer provides a 1,000 riel overtime meal allowance per hour during the weekday. The employer submits that it provides a 2,000 riel overtime meal allowance during the weekday from 4 p.m. to 6 p.m. If the overtime work extends beyond 6 p.m. (though 1 or 2 hours past 6 p.m.), the employer will provide a 2,000 riel meal allowance.
- The workers claim the 2,000 riel overtime meal allowance per hour of overtime work is too little compared to the rising price of food.
- The employer does not agree to the demand.

Issue 7: The workers demand that the employer continue to pay full wages when there is no work assigned to the workers.

- The parties have reached agreement in relation to this issue.

Issue 8: The workers demand that the employer provide an additional seniority bonus to workers who have been working at the workplace from 11 years onward.

- The employer claims that it is complying with *Notification* 041, and that it provides the seniority bonus as follows:
    - US$2 per month to workers who have been working for 2 years;
    - US$3 per month to workers who have been working for 3 years;
    - US$4 per month to workers who have been working for 4 years;
    - US$5 per month to workers who have been working for 5 years;
    - US$6 per month to workers who have been working for 6 years;
    - US$7 per month to workers who have been working for 7 years;
    - US$8 per month to workers who have been working for 8 years;
    - US$9 per month to workers who have been working for 9 years;
    - US$10 per month to workers who have been working for 10 years;
    - US$11 per month to workers who have been working for 11 years;
    - US$11 per month to workers who have been working for over 11 years onward.
- The workers demand that the employer provide workers an additional US$1 for each year of their service after 11 years which means it is provided to the workers who have been working for 12 years onward:
    - US$12 per month to workers who have been working for 12 years.
    - US$13 per month to workers who have been working for 13 years.
    - US$14 per month to workers who have been working for 14 years.

    - The same formula to be applied continuously.
- The workers claim the employer should motivate those workers who have been working for over 12 years because they have spent a long time at the factory.
- According to the statement of the workers at the hearing, the Arbitration Council finds that there are workers who have been working at the factory for over 11 years.
- The employer claims it will comply with Notification no. 041/11.

Issue 9: The workers demand that the employer provide equal benefits to workers on fixed duration contracts as to those on undetermined duration contracts (US$6 living allowance).

- Issues 1 and 2 of the Notification no. 049/10 dated 9 July 2010 state:

  1. US$ 6 living allowance of 2008 will be incorporated into the main wages of workers in the textile, garment, and footwear manufacturing sectors.

  2. A minimum wage of US$56 will be provided to workers on probation employed for one to three months in the textile, garment, and footwear production sectors; that is, the current minimum wage of US$45 plus additional wages of US$5 and the living allowance of US$6. After completion of the probationary period, the workers will receive a minimum wage of US$61 per month; that is, a minimum wage of US$50 plus additional wages of US$5 and the living allowance of US$6.
- At the hearing, the employer claims that there are two types of workers at M & V 1:
    - Workers on fixed duration contracts (the contracts signed before 1 October 2010) including:
        - The workers on monthly wages.
        - The workers on piece rate wages.
- According to the statement at the hearing and the minutes of the meeting dated 20 October 2010 and submitted by the employer,
    - Workers who receive monthly wages receive a US$6 living allowance incorporated in the monthly wages.
    - For the workers on a piece rate wage who signed their contracts before 1 October 2010, the employer provided the additional US$6 on top of the US$61 base wage (the US$6 living allowance had already been included in the US$61 of the base wage), so the workers received more than their US$61 piece rate wage. In circumstances where piece rate workers receive less than US$61, the employer provides US$61.
    - The minutes of the meeting were signed by Chan Sothy, Sean Sivon, Nen Sitha, Hin Mai, and other signatures were present but with no names attached.
    - The objection to the minutes of the meeting dated 20 October 2010 was filed by Chan Sothy and Sean Sivon that: *"The meeting minutes dated 20 October*

2010 was used by the employer to share and notify…It was not the minutes of the agreement…I signed on the minutes but this did not reflect that I agreed with the company policy…" Besides the statement, the workers did not submit any evidence to prove that the minutes were not agreed to, or the reason that both workers had signed the minutes if they did not agree with the practice. Therefore, the Arbitration Council accepts the minutes as valid one.

- The workers demand that the employer provide a US$6 living allowance to workers who signed their fixed duration contracts after 1 October 2010, and who receive more than US$61 in wages.
- The workers claim that the living allowance forms part of their wages; so the workers who are under the same working conditions and have the same skills should also get the same wages.
- Not a single member of the local union of CIUF was offered a fixed duration contract.
- The workers submitted the names of 11 workers on fixed duration contracts responsible for the demand. As the workers claimed that not a single member of the local union of CIUF was offered a fixed duration contract, the Arbitration Council presumes that the 11 workers listed are not members of the local union. As the 11 workers did not submit an authorisation letter and were not present at the hearing, the Arbitration Council cannot consider the demand.

Issue 10: The workers demand that the employer refrain from reducing part of their attendance bonus when they take sick leave properly certified by a state hospital.

- The workers demand that the employer refrain from reducing part of their attendance bonuses when they take sick leave properly certified by a state hospital.
- The workers argue that:
    - The workers were absent because they were sick, not because they had personal commitments.
    - That the employer maintain the wages when workers take sick leave, so the employer should also maintain the attendance bonus.
- Concerning the attendance bonus, since early 2012, the employer has reduced the attendance bonus in proportion to the number of days of sick leave that the workers have taken (before 2012, the employer took away the whole attendance bonus when the workers took sick leave). The practice is not stated in the internal rules of the factory or the labour contract.
- The employer submits that it will continue to reduce the attendance bonus in proportion to the number of days of sick leave that the workers have taken.

Issue 11: The workers demand that the employer refrain from reducing part of the attendance bonus of workers who arrive 1-2 minutes late to work.

- The parties reached agreement on the issue.

Issue 12: The workers demand that the employer maintain the additional bonus payable at the end of the 12th month (the 13th month bonus) for Rin Sambath-Head of Overlocking Section, ID: K1940002.

- The workers demand that the employer provide the 13th month bonus, which is equal to 50% of the base wage, to Rin Sambath - Head of the overclocking section, ID:K1940002.
- Rin Sambath commenced her job on 11 March 1994. After having worked for two months, she was promoted to the position of supervisor of the overclocking team. Rin Sambath supervised 64 workers.
- The 13th month bonus is equal to one month's base wages. The employer has provided the 13th month bonus to all team supervisors since 1998.

  The agreement dated 2 December 2004 between the employer and the worker representatives was submitted to the Arbitration Council. The agreement stated that from 2004 onward, the 13th month bonus would be reduced to 50% of one month's base wages.
- The agreement dated 2 December 2004 between the employer and the workers stated: *"…The employer agrees to provide 50% of the annual bonus to the team supervisors who have received it in the past, worked hard, and managed their work well."* Every year, the 13th-month bonus is paid in April. The payment is based on the wages for work performed earlier (for instance, the payment of the 13th month was the bonus for the work that the workers have done from May 2011 to April 2012).
- According to the statement of the employer at the hearing and the agreement dated 2 December 2004 above, the 13th month bonus is provided to:
  - The team supervisor, whose job is to oversee the workers.
  - The team supervisors who work hard and manage their work well.

  The workers do not object to the statement.
- The movement of the workers in the overlocking section is as follows:
  - May 2010, the employer opened the new branch at Stoeung Mean Chey and transferred 59 workers in the overlocking section from M & V (Branch 1) to the new branch. Therefore, there were only 5 remaining workers in the overlocking section at M & V (Branch 1).
  - Later on, the employer transferred another worker from the overlocking section at M & V (Branch 1) to the new branch at Steung Mean Chey.
  - Later, another worker in the overlocking section has resigned.
  - Later, another worker passed away.

- Currently, there are only 2 workers in the overlocking section namely, Rin Sambath and the other worker.

- According to the meeting minutes dated 23 March 2011 submitted by the employer, on 23 March 2011, there was a meeting among the Administration Section, Rin Sambath, and the workers' representative about the demotion of Rin Sambath from overclocking head to overclocking worker. The minutes states:

  Currently, there is only 1 worker, and the overlocking section does not require a head anymore, so the company has decided to demote Rin Sambath from the overlocking section to the position of overlocking worker, but the employer still maintains the same benefits for Rin Sambath that she has received so far.

- On 24 March 2011, the employer issued the notification posted in the factory which states that:

  M & V International Manufacturing would like to inform all workers that from the date of this notification, Rin Sambath is no longer the section head because there is only one worker in the section for which it is not required to have a head. The company still maintains Rin Sambath's benefits. Therefore, from the date of this notification, Rin Sambath is no longer section head and responsible for attendant tasks.

Rin Sambath claims at the hearing that she had seen the notification, but that she did not agree with it. The Arbitration Council finds that if Rin Sambath did not agree with her demotion, she should have protested when she was invited to the meeting by the administration section. However, the workers fail to submit evidence as proof that she had protested. Therefore, the Arbitration Council assumes that the worker agreed with her demotion.

- The employer did not provide a 13th month bonus for 2011, payable in April 2012 (the bonus for the work from May 2011 to April 2012) to Rin Sambath.
- The workers claims the employer did not provide Rin Sambath the 13th month bonus because the employer bears a grudge against her quarrelling with the President of the factory who took the fan away from her section on 19 March 2011. According to the written statement of Rin Sambath, *"On Saturday 19 March 2011… then President of the factory took the fan from the overlocking section, but I objected. I asked, 'If you take it away, will you provide another fan? Because of the disagreement, there was a tug of war over the fan."* At the hearing, the Arbitral Panel asked the worker about the argument with the factory President, details of the quarrel, and how they could understand each other because the President of the factory is Chinese. The workers failed to provide the reasonable answers to prove that there was really a quarrel. Therefore, the Arbitration Council does not have sufficient facts to assume that there was really a quarrel between the worker and the President.

- The employer contends that it does not bear a grudge against the worker as alleged. The reasons for the employer failing to provide the 13th month bonus are:
    - The 13th month bonus is not a benefit similar to those written in the meeting minutes. It is a bonus provided to team supervisors who have worked hard and managed their work well. The worker does not object to the statement above.
    - Currently, Rin Sambath has no workers under her supervision.
    - At the hearing, the workers claimed that currently, various supervisors have 32 workers under their supervision.

REASONS FOR DECISION

Before considering the demand, the Arbitration Council distinguishes rights and interests disputes.

Paragraph 2 of Article 312 of the Labour Law states that *"The Arbitration Council has legal jurisdiction to decide dispute 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 dispute 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 *(see the Arbitration Award 05/11-M & V (Branch 1), 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 disputes and the Arbitration Council settles interests disputes based on equity *(see the Arbitral Award 31/11-Quint Major Industrial, Issue 4 and 62/11-Ocean Garment, Issue 1).*

Issue 1: The workers demand that the employer implement Arbitral Award no. 23 dated 11 March 2008 ordering the employer to pay attendance bonus in proportion to the number of days of authorised leave taken by the workers in the month.

First, 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 states that *"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 Arbitral Award no. 23 dated 11 March 2008 at Issue 9 which states *"Order the employer to pay attendance bonus in proportion to the number of days of authorised leave taken by the workers."* In reference to the interpretation of the rights dispute above, the Arbitration Council finds that this issue is a rights dispute.

The Arbitration Council considers whether or not it has the jurisdiction to resolve the dispute about the workers' demand that the employer implement Arbitral Award no. 23 dated 11 March 2008 at issue 9 which states *"Order the employer to pay attendance bonus in proportion to the number of days of authorised leave taken by the workers."*

According to Point 1 of Article 353 of the Code of Civil Procedure 2006 above, The Arbitration Council finds that only the court has the jurisdiction to rule that the parties to implement an Arbitral Award. The Arbitration Council has no jurisdiction to resolve the objection to or the protest against the Arbitral Award implementation.

Therefore, the Arbitration Council decides to decline to consider the workers' demand that the employer implement the Arbitral Award no. 23 dated 11 March 2008 at issue 9 which states *"Order the employer to pay attendance bonus in proportion to the number of days of authorised leave taken by the workers."*

Issue 2: The workers demand that the employer implement Arbitral Award no. 23 dated 11 March 2008, at issue 7 which states *"Order the employer to take the average sum of the wages in the last 12 months as the basis for the calculation of the payment in lieu of the remaining annual leave."*

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

Point 1 of Article 353 of the Code of Civil Procedure 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 Arbitral Award no. 23 dated 11 March 2008 at issue 7 which states *"Order the employer to take the average sum of the wages over the last 12 months as the basis for calculating the payment in lieu of the remaining annual leave."*

The Arbitration Council considers whether or not it has the jurisdiction to resolve the dispute about the workers' demand that the employer implement Arbitral Award no. 23 dated 11 March 2008 at issue 9 which states that *"Order the employer to take the average sum of the wages in the last 12 months as the basis for the calculation of the payment in lieu of the*

remaining annual leave." (see the AC's decision on which institutions have the jurisdiction to rule on implementation of Arbitral Awards in the Reasons for Decision, Issue 1 above)

Therefore, the Arbitration Council decides to decline to consider the workers' demand that the employer implement the Arbitral Award no. 23 dated 11 March 2008 at Issue 9 which states that *"Order the employer to take the average sum of the wages in the last 12 months as the basis for calculating the payment in lieu of the remaining annual leave."*

Issue 3: The workers demand that the employer implement Arbitral Award no. 35 dated 7 May 2010 at Issue 1 which states that *"Order the employer to use the piece rate wage as the basis for calculating piece rate workers' wages during their breastfeeding periods."*

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

Point 1 of Article 353 of the Code of Civil Procedure states *"An implementation 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 no. 35 dated 7 May 2010 at Issue 1 which states *"Order the employer to use the piece rate wage as the basis for calculating piece rate workers' wages during their breastfeeding periods."*

The Arbitration Council considers whether or not it has the jurisdiction to hear the workers' demand that the employer implement the Arbitral Award no. 35 dated 7 May 2010 at Issue 1 which states that "Order the employer to use the piece rate wage as the basis for calculating the worker's wage during breastfeeding periods*." (see the AC's decision on which institutions have the jurisdiction to rule on implementation of Arbitral Awards in the Reasons for Decision, Issue 1 above)*

Hence, the Arbitration Council declines to consider the workers' demand that the employer implement the Arbitral Award no. 35 dated 7 May 2010 at Issue 1 which states *"Order the employer to use the piece rate wage as the basis for calculating piece rate workers' wages during their breastfeeding periods."*

Issue 5: The workers demand that the employer provide a 1,000 riel meal allowance per hour for the overtime work performed on Sundays and holidays.

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

- Point 2 of the Notification 041/11 dated 7 March 2011 states *"The workers who volunteer to work overtime at the employer's request shall receive a 2,000 riel meal allowance per day or be provided with a free meal."*

In this case, the employer does not provide a meal allowance for the first 8 hours of the overtime work performed on holidays, but in instances where the workers perform the

overtime on holidays (longer than 8 hours), the employer provides a 2,000 riel overtime meal allowance. The workers demand that the employer provide a 1,000 riel overtime meal allowance per hour for the overtime work performed on holidays or Sundays because work performed on holidays or Sundays is overtime work.

Therefore, to consider whether the dispute concerns a rights or an interests dispute, the Arbitration Council will consider whether or not working on holidays and Sundays is overtime work.

A. Work performed on holidays:

Article 137 of the Labour Law states that:

> In all establishments of any nature, whether they provide vocational training, or they are of a charitable nature or liberal profession, the number of hours worked by workers of either sex cannot exceed eight hours per day, or 48 hours per week.

According to the meaning of Article 137, the workers work 8 hours per day or 48 hours per week.

Article 139 of the Labour Law states that:

> In cases of special urgency which require workers to work overtime, other than the usual working hours, the overtime hours shall be paid at an increased rate of 50% (fifty percent). Working overtime at night between 22:00h to 05:00h or during weekly time off, shall be additionally paid at an increased rate of 100% (one hundred percent).

According to Article 139 above, the rate of overtime work payment other than the usual working hours is 150% compared to the usual wage.

Article 164 of the Labour law*:*

> In establishments or enterprises where work cannot be interrupted because of the nature of their activities requiring the workers to occupy with working during holidays; those workers shall be entitled to an indemnity in addition to wages for the work performed. The amount of this indemnity to be paid by the employer shall be set by a Prakas of the Ministry in Charge of Labour.

Clause 2 of Prakas 10 dated 4 February 1999 on Indemnity for Work on Holidays states that:

> In special cases when an establishment or enterprise cannot interrupt its activities during the special holidays, as promulgated in a declaration of MSALVR, the owners or directors of an establishment or enterprise can request its employees to work on those days.

Clause 4 of the same Prakas also states *"Employees working on holidays have the right to get a usual rate of pay on normal work days…"*

According to Articles 137, 139*,* and 164 of the Labour Law*,* Clause 2 and 4 of Prakas 10 dated 4 February 1999 on Indemnity for Work on Holidays, the Arbitration Council finds that the workers' holiday work is similar to what they perform on regular working days, but the difference is that when on holidays, workers are entitled to be on paid leave and if they

perform work on these days, they are entitled to receive wages equal to that of regular working days. It means that workers who work on holidays receive additional wages on top of the existing wages. Holiday working hours shall not exceed 48 hours per week or 8 hours per day and wage rate is not the same as that of the overtime work.

In the previous arbitral award, the Arbitration Council interpreted that, *"Work performed on holidays is not overtime work…"* (*see the Arbitral Award 115/08-Top One, Issue 4, and 52/12-Star Sportwear, Issue 2)*

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

In the fact finding section, it is stated that the employer does not provide overtime payment to workers who work 8 hours on holidays, but if the workers work overtime during this period (more than 8 hours), the employer provides a 2,000 riel meal allowance. The Arbitration Council finds that the employer has fulfilled its obligation stipulated in the Notification 041/11 above. The workers demand that the employer provide a 1,000 riel meal allowance per hour for the overtime work on holidays. The Arbitration Council finds that there is no provision in the Labour Law*,* any agreements, or collective agreements stipulating the obligation of the employer to provide a 1,000 riel meal allowance per hour for overtime work on holidays. Therefore, the Arbitration Council finds that this 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, in interests disputes generally, the Arbitration Council takes the most representative status (MRS) of the union into consideration because it provides unions with the legitimate right to negotiate a collective agreement with the employer, and the union also has the legitimate right to bring an interestss 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 collective agreement for one year period and this 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.

In this case, CIUF is the claimant on behalf of the union, which does not hold MRS. The Arbitration Council finds that CIUF does not meet the legal requirement to bring an interests dispute to the Arbitration Council.

In conclusion, the Arbitration Council decides to decline to consider the workers' demand that the employer provide a 1,000 riel meal allowance per hour for the overtime work performed during holidays.

B. Work on Sunday:

According to the meaning of Article 137 of the Labour Law above, the usual working hours shall not exceed 8 hours per day or 48 hours per week. In this case, the employer requires workers to work from Monday to Saturday for 8 hours per day, or a total of 48 hours per week, and Sunday is the weekly day off, hence not the usual weekday. When the workers volunteer to work on Sundays, they are working more than the usual working hours.

In previous cases, the Arbitration Council held *"The usual work hours is 8 hours per day or 48 hours per week from Monday to Saturday. The Arbitration Council finds that work outside the usual work hours is overtime work." (see the Arbitral Award 114/08-Whitex Garment, Reasons for Decision, Issue 5, 52/12-Star Sportwear, Issue 2)*

The Arbitration Panel in this case also agrees with the interpretation made in the previous cases. The Arbitration Council finds that if workers volunteer to work on Sundays, they work overtime. Therefore, workers who volunteer to work on Sundays, or outside the usual work hours, are performing overtime work.

According to Point 2 of the Notification 041/11 dated 7 March 2011 above, as work on Sundays is overtime work, the workers who volunteer to work on Sundays are entitled to receive 2,000 riels per day without taking the number of hours into account.

In the fact finding section, the employer provides a 2,000 riel meal allowance for overtime work performed on Sunday. The Arbitration Council finds that the employer has fulfilled its obligation stipulated in Notification no. 041/11 mentioned above. The workers demand that the employer provide a 1,000 riel meal allowance per hour for overtime work performed on Sundays. Therefore, the Arbitration Council finds that it is an interests dispute *(see the interpretation on the interests dispute in the Reasons for Decision, Issue 1 (A), Overtime Work on holidays).*

In conclusion, the Arbitration Council decides to decline to consider the workers' demand that the employer provide a 1,000 riels meal allowance per hour for the overtime work performed on Sunday.

Issue 6: The workers demand that the employer provide a 2,000 riel meal allowance per hour to workers working overtime on weekdays.

Before determining the issue, the Arbitration Council will consider whether the issue gives rise to a rights dispute or an interests dispute.

- Point 2 of Notification 041/11 dated 7 March 2011 states *"The workers who volunteer to work overtime at the employer's request shall receive a 2,000 riel meal allowance per day or be provided with a free meal."*

  In this case, the employer provides a 2,000 riel overtime meal allowance for overtime work performed from 4 p.m. to 6 p.m. If the overtime work extends beyond 6 p.m., the employer provides an additional 2,000 riel overtime meal allowance. The Arbitration Council finds that the practice of the employer is better than what is stipulated in the Notification 041/11. The Arbitration Council finds that there is no a legal provision, agreement or collective agreement obligating an employer to provide an additional 2,000 riel meal allowance per hour of overtime work. Hence, the Arbitration Council finds that the workers' demand is more than what the laws stipulate, so the issue is an interests dispute *(see the interpretation on interests dispute in the Reasons for Decision, Issue1 (B) Work on holidays).*

In conclusion, the Arbitration Council declines to consider the workers' demand that the employer provide a 2,000 riel overtime meal allowance per hour to workers working overtime on weekdays.

Issue 8: The workers demand that the employer provide the workers a US$1 increase to the seniority bonus for each year of seniority (after the 11th year of working) workers accrue from 12 years of seniority onward.

Before determining the issue, the Arbitration Council will consider whether the issue gives rise to a rights dispute or an interests dispute.

Point 3 of the Notification 041/11 dated 7 March 2011 states:

A. 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

B. The workers who have seniority in accordance with the years mentioned above shall receive a seniority bonus based on the years of seniority (as mentioned in the table above) except for workers who have worked for more than 11 years who shall receive a seniority bonus of US$11 per month."

In this case, the employer provides a US$11 seniority bonus per month to workers with the seniority of more than 11 years. The Arbitration Council finds that the employer has complied with Point 3 of the Notification no. 041/11. Moreover, the Arbitration Council finds that there is no legal provision, agreement, or collective agreement requiring the employer to increase the seniority bonus by US$1 for each year of the seniority (after the 11th year of working) to workers with 12 years of seniority or more. The Arbitration Council finds that the workers' demand is more than what the law stipulates; therefore, the issue is an interests dispute (see the interpretation of interests dispute in the Reasons for Decision, Issue 1 (A), Overtime Work on holidays)

In conclusion, the Arbitration Council decides to decline to consider the workers' demand that the employer increase the seniority bonus by US$1 for each year of seniority (after the 11th year of working) to workers with 12 years of seniority or more.

Issue 9: The workers demand that the employer provide a US$6 living allowance to workers who signed fixed duration contracts after 1 October 2010 and received more than US$ 61 in wages.

Not a single member of the local union was offered a fixed duration contract. The 11 workers who make the demand are not union members. There is no authorisation letter and they did not attend the hearing; therefore, the Arbitration Council is unable to consider the dispute for the 11 workers. The Arbitration Council considers that there are no workers making the demand.

In conclusion, the Arbitration Council decides to decline to consider the workers' demand that the employer provide a US$6 living allowance to workers who signed a fixed duration contract after 1 October 2010 and received more than US$61 of the wages.

Issue 10: The workers demand that the employer maintain the full attendance bonus when they take sick leave properly certified by state hospitals.

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

Point 2 of the Notification 230 dated 25 July 2012 states "*Workers who attend work regularly in accordance with the number of working days in each month without absence will receive a monthly bonus of at least US$10…"*

In this case, the employer reduces attendance bonus in proportion to the number of days of leave for illness that the workers have taken. The workers demand that the employer maintain full attendance bonus when the workers take leave for illness properly certified by a state hospital. The Arbitration Council finds that there is no provision in the Labour Law, agreement, or collective agreement obligating the employer to maintain full attendance bonus for workers who take leave for illness properly certified by state hospitals. Therefore, the Arbitration Council finds that the workers' demand is more than the law; therefore, the issue is an interests dispute *(see the interpretation about the interests dispute in the Reasons for Decision, Issue 1 (A) Work on holidays).*

In conclusion, the Arbitration Council decides to decline to consider the workers' demand that the employer maintain their full attendance bonus when they take sick leave properly certified by state hospitals.

Issue 12: The workers demand that the employer maintain the 13th month bonus for Rin Sambath, a bonus that is equal to 50 percent of one month's base wage.

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

The Arbitration Council finds that the workers' demand is stated in the agreement dated 2 December 2004 between M & V International Manufacturing Ltd. and worker representatives. In reference to the interpretation of rights dispute above, the Arbitration Council finds that the issue is a rights dispute.

The employer did not provide the 13th month bonus of 2011 (from May 2011 to April 2012) to Rin Sambath in April 2012. The workers claim that the employer did not provide the 13th month bonus because the employer bore a grudge against her for having quarrel with the President of the factory who took the fan from her section on 19 March 2011. The employer claims that it does not bear grudge. The employer did not provide the 13th month bonus because the 13th month bonus is not included in "other benefits" written down in the minute of the meeting. The 13th month bonus is a bonus provided to team supervisors who work hard and exhibit strong work management. Currently, Rin Sambath has no workers under her supervision.

The Arbitration Council finds that there is no any fact supporting the workers' assumption that there really was a quarrel between her and the President of the factory. Hence, the Arbitration Council will consider whether the employer has the right to demote Rin Sambath from her position as head of the overlocking section to worker.

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 above means the employer has the right to supervise and direct the workers as long as the right is compliant with the law and is reasonable *(see the Arbitral Award no. 62/06-Quicksew Cambodia, Reasons for Decision, Issue 5, 108/06-Trinunggal Komara, 33/07-Goldfame Enterprises, Issue 3, 119/09-SL Garment, Issue 4 & 5).*

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

In reference to Article 2 of the Labour Law 1997 above, the Arbitration Council finds that it is the right of the employer to supervise and direct the workers. The employer can supervise and direct workers based on many factors; one of which is the production line. Therefore, the employer can divide the manpower into teams or structural teams (with or without hierarchy).

In this case, Rin Sambath commenced her work on 11 March 1994. After having worked for 2 months, she was promoted to be the leader of the overlocking team. Rin Sambath supervised 64 workers. On 23 March 2011, there was a meeting among the administration section, the worker representatives, and Rin Sambath on demoting Rin Sambath from the overlocking team leader to worker because there was only one worker in the overlocking section, and therefore, a team leader was no longer required. The Arbitration Council finds that the employer has the right to adjust the structure of the overlocking section from a team with a team leader and workers to a team without a team leader and workers where all members of the overlocking section are equal.

The Arbitration Council will consider whether or not Rin Sambath is entitled to receive the 13th month bonus when she is no longer the overlocking team leader.

The agreement between the employer and the workers dated 2 December 2004 states *"…The company agrees to pay 50% of the annual bonus that the team leaders used to receive so far for their hard work and good work management".*

According to the statement of the employer at the hearing and the agreement dated 2 December 2004 above, the 13th month bonus is provided to team leaders who have workers

under their supervision and who have worked hard and managed their work well. Rin Sambath is no longer the overlocking team leader and the Arbitration Council finds that she is not entitled to receive the 13th month bonus unless the employer agrees to keep providing her the 13th month bonus.

The minutes of the meeting dated 23 March 2011 and submitted by the employer to the Arbitration Council states *"…the company decided to demote Rin Sambath from the overlocking team leader to worker and maintain the same benefits that she used to receive in the past."* The Arbitration Council finds that the term *"benefits"* is not clearly defined and whether it includes the 13th month bonus. According to the agreement dated 2 December 2004 mentioned above, the 13th month bonus is a bonus. At the hearing, the employer claimed that the 13th month bonus was not included in the term "other benefits", written in the meeting minutes. The 13th month bonus is a bonus provided to the team supervisors who have worked hard and have managed their work well. The workers did not oppose this claim. The Arbitration Council assumes that the benefits here do not include the 13th month bonus.

In conclusion, the Arbitration Council decides to reject the workers' demand that the employer maintain the 13th month bonus for Rin Sambath.

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: Decline to consider the workers' demand that the employer implement Arbitral Award no. 23 dated 11 March 2008 at Issue 9 which states "Order the employer to deduct the attendance bonus in proportion to the number of days of authorised leave that the workers have taken.

Issue 2: Decline to consider the workers' demand that the employer implement Arbitral Award no. 23 dated 11 March 2008 at Issue 7 which states "Order the employer to take the average sum of the wages over the last 12 months as the basis for calculating payment in lieu of the workers' remaining annual leave."

Issue 3: Decline to consider the workers' demand that the employer implement Arbitral Award no. 35 dated 7 May 2010 at Issue 1 which states *"*Order the employer to use the piece rate wage as the basis for calculating piece rate workers' wages during their breastfeeding periods*."*

Issue 9: Decline to consider the workers demand that the employer provide a US$6 living allowance to workers who signed fixed duration contracts after 1 October 2010 and received more than US$61 in wages.

Issue 12: Reject the workers' demand that the employer maintain the 13th month bonus for Rin Sambath, a bonus which is equal to 50 per cent of one month's base wage.

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. Interestss dispute:

Issue 5:

- Decline to consider the workers' demand that the employer provide a 1,000 riel overtime meal allowance per hour for overtime work performed on holidays.

- Decline to consider the workers' demand that the employer provide a 1,000 riel overtime meal allowance per hour for overtime work performed on Sundays.

Issue 6: Decline to consider the workers' demand that the employer provide a 2,000 riel overtime meal allowance per hour for overtime work performed on a weekday.

Issue 8: Decline to consider the workers' demand that the employer provide the workers a US$1 increase to the seniority bonus for each year of seniority (after the 11th year of working) workers accrue from 12 years of seniority onward.

Issue 10: Decline to consider the workers' demand that the employer maintain their full attendance bonus when they take leave for illness properly certified by a state hospital.

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 written opposition within this period with the Minister of Labour through the Secretariat of the Arbitration Council.

SIGNATURES OF THE MEMBERS OF THE ARBITRAL PANEL

Arbitrator chosen by the employer party:

Name: **Ing Sothy**

Signature: .....

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: .....