KINGDOM OF CAMBODIA

NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 124/13-Quint Major

Date of award: 18 July 2013

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRAL PANEL

Arbitrator chosen by the employer party: **You Suonty**

Arbitrator chosen by the worker party: **Ann Vireak**

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

DISPUTANT PARTIES

Employer party:

Name: **Quint Major Industrial Co., Ltd. (QMI)**

Address: Trayeung Village, Peuk Commune, Ang Snoul District, Kandal Province

Telephone: 017 908 093 Fax: N/A

Representatives:

1. Mr Tang Limhorng Administrative Assistant
2. Mr Touch Puth Sorida Administrative Assistant

Worker party:

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

- The Local Union of CLUF (the union)

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

Telephone: 012 837 768 Fax: N/A

Representatives:

1. Mr. Khin Sokhon Secretary-General of CLUF
2. Mr. Bev Man Norin President of the union

3. Mr. Mok Magn	Vice-President of the union
4. Mr. Sok Vichara	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 provide a 4,000 riel payment in lieu of lunch per day. The employer claims it does not agree to the demand.
2. The workers demand that the employer maintain a US$5 health allowance and separate it from monthly wages. The employer claims it does not agree to the demand.
3. The workers demand that the employer remove the Head of the Finishing Section Chou Yam Mign as requested with thumbprints by workers who do not like him.
4. The workers demand that the employer increase the wages of workers in the finishing section twice a year at a minimum of US$5 each time. This matter and the matter of authorising leave should be decided by team supervisors. The employer claims it does not agree to the demand.
5. The workers demand that the employer provide a monthly US$10 bonus to workers who leave work in an orderly fashion. The employer claims it does not agree to the demand.
6. The workers demand that the employer install speakers in the inventory and sample building as well as building no. 2 and building no. 5. The employer claims it does not agree to the demand.
7. The workers demand that the employer provide 18 days of annual leave and additional 2 days for each year of seniority, with a maximum accrual of 30 days annual leave. The payment in lieu of remaining annual leave should be made twice a year (like the practice at QMI.G). The employer claims it does not agree to the demand.

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 2012 (Eleventh 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 unsuccessful conciliation report No. 456/13 dated 20 June 2013 was submitted to the Secretariat of the Arbitration Council on 20 June 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: 28 June 2013 (at 8:30 a.m.)

Procedural issues:

On 19 June 2013, the Department of Labour Disputes (the department) received a complaint from CLUF, outlining the workers' demands for the improvement of working conditions by the employer. Upon receiving the claim, the department assigned an expert officer to resolve the labour dispute and the last conciliation session was held on 19 June 2013, resulting in none of seven issues being resolved. The seven non-conciliated issues were referred to the Secretariat of the Arbitration Council (SAC) on 20 June 2013.

Upon receipt of the case, the SAC summoned the employer and the workers to a hearing and conciliation of the seven non-conciliated issues, held on 28 June 2013. Both parties were present.

At the hearing, the Arbitration Council conducted a further conciliation of the seven non-conciliated issues, resulting in the resolution of issues 4(B), 5, 6 and 7. Issues 1, 2 and 4 (A) remained unresolved.

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 dispute.

Both parties agree to defer the date of award issuance from 11 July 2013 to 18 July 2013.

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:

- Quint Major Industrial Co., Ltd. started its operation in 2006 employing 3,700 workers.
- The union is the claimant in this case. The union has 1,412 members receiving a Certificate of Most Representative Status on 30 September 2011 and that is valid until 30 August 2013.
- At the hearing, the workers claim that three workers present at the hearing are leaders of the union including Mr Bev Man Norin-President of the union, Mr. Mok Magn-Vice-President of the union, and Mr. Sok Vichara-Secretary of the union. The workers did not submit any evidence to prove that the three workers receive recognition of union leaders in the new term from Ministry of Labour and Vocational Training.
- Based on the evidence provided by the workers dated 3 July 2013, there is recognition of the union leaders in the second mandate from the Ministry of Labour and Vocational Training dated 31 May 2011: (1) Va Sat-President of the union, (2) Seng Sambath-Vice-President of the union and (3) An Rin-Secretary of the union. Based on the workers' statement dated 18 March 2013, the union informs the employer of the union's memberships on 18 March 2013 that:

  The first mandate of the union leaderships does not come to an end yet, but due to the resignation of the union's leader and the request from the union committee, the union organises an election for new leaders dated 15 March 2013…" The three elected members are 1) Beer Man Norin-President of the union, 2) Ul Sam Arth-Vice-President of the union, 3) Sak Chan-Secretary of the union.
- The Arbitration Council finds that among the three persons: 1) Beer Man Norin, 2) Mok Magn and 3) Sok Vichara, Beer Man Norin is the one who was listed in the notification on the elected leaders of the union. Mok Magn and Sok Vichara are not in the list. The workers do not explain the different names of the elected union leaders.

Issue 1: The workers demand that the employer provide a 4,000 riel payment in lieu of lunch per day.

- The employer and the workers agree that the employer has never provided an allowance to purchase lunch to the workers.

- The workers claim: (1) there are many companies which provide a 1,000 riel to 2,000 riel allowance to purchase lunch to their workers; (2) their wage is not enough for living (3) it motivates the workers.
- The workers claim that Yakjin provides lunch to their workers. The workers do not provide any proof for this claim.
- The workers claim that there is no legal basis for the demand.
- The employer claims that it recently increased workers' wages; therefore, it cannot afford to meet the demand. The employer claims that it complies with the Labour Law.

Issue 2: The workers demand that the employer maintain a US$ 5 health allowance and separate it from monthly wages.

- The employer and the workers agree that the employer increase their wages by US$19 starting from the day that notification no.103 dated 9 April 2013 of the Ministry of Labour and Vocational Training went into effect.
- The workers clarify their demand that the employer provide a US$5 health allowance on top of an additional US$ 19 in wages. A US$ 5 health allowance should not be incorporated into the minimum wage.
- The workers claim that so far the employer has not incorporated a US$5 health allowance into the workers' wage. Therefore, though the employer increases workers' wages by US$19, the workers still maintain the demand of not incorporating a US$5 health allowance into their wage.
- The workers claim that Gladpeer provides an additional US$14 on top of workers' wage without including a US$5 health allowance into the workers' wage.
- The employer claims that it does not agree to the demand. The company claims their implementation complies with the Labour Law.

Issue 4: The workers demand that the employer increase the wages of workers in the finishing section twice a year at a minimum of US$5 each time. This matter and the matter of authorising leave should be decided by team supervisors.

- At the hearing, the workers claim that it withdraws the demand in relation to the leave request but maintains the demand for a minimum US$5 increase of bonus for good performance twice per year to be incorporated into the wages of workers in the finishing section. The workers claim that the employer provides different bonuses for good performance to workers in different sections and this bonus is incorporated into the workers' wage. For example, at the cutting section and at the production line section, workers receive a US$5-10 bonus for good per twice per year. However, the employer provides only a US$ 2-3 skill bonus to workers in the finishing section.

- The employer claims that it does not specify how many months it once reviews the bonus for good performance for the workers in all sections. Each team supervisor is authourised to decide the matter.
- The workers claim that there are 250 workers in the finishing section. The workers who were considered to have performed well in the finishing section who were provided a US$2-3 bonus are:
    - Bev Man Norin, who commenced his work on 7 March 2009, received a bonus twice: 1) US$3 and 2) US$3.
    - Sok Vichara, who commenced his work on 15 January 2007 receives a bonus four times: 1) US$5, 2) US$3, 3) US$3 and 4) US$ 4.
    - Mok Magn, who commenced his work on 28 December 2008, receives a skill bonus three times: 1) US$2, 2) US$4 and 3) US$5.
- The workers claim that there is no backlog in their work performance. The workers claim that they don't remember the date the employer starting to provide bonus for good performance to the workers.
- The employer still claims that the supervisors of each section are the one who evaluate the workers' performance and they are authorised to decide whether or not to provide a bonus for good performance. The workers cannot receive the same bonus for good performance. Therefore, the employer cannot provide the same bonus to all workers as demanded.

REASONS FOR DECISION

At the hearing, the workers claim that the three workers who are present are the union leaders: 1) Bev Man Norin, 2) Mok Magn, 3) Sok Vichara. The workers do not submit any evidence to prove that they receive the recognition from the Ministry of Labour and Vocation Training. Therefore, before considering the three disputes, the Arbitration Council will consider the most representative status (MRS) of the union's leaders.

Article 268 of the Labour Law states that:

> "In order for their professional organisation 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 filing will be renewed when there are changes in the statutes or management."

The Arbitration Council finds that Article 268 of the Labour Law stated above means that the professional organisation enjoys the rights and benefits recognized by this law when that professional organisation already registered at the Ministry in Charge of Labour.

In previous awards, the Arbitration Council also finds that the rights and the benefits included the right of the union to represent its members to resolves the disputes before the

Arbitration Council *(see the Arbitral Award No. 62/06-Qicksew, Issue 2, 30/08-E Garment, 31/08-South Bay and 94/09-Tack Fat).*

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

Paragraph 2, Clause 3, Prakas *305,* dated 22 November 2001, states *"…Their union leaders' mandate, however, may not exceed two years, with the possibility of re-election."*

In this case, the Ministry of Labour and Vocational Training issues a notification to recognise the union leaders in the second mandate dated 31 May 2011. Based on Paragraph 2, Clause 3 of Prakas no. 305, the Arbitration Council finds that the union leaders in the second mandate are (1) Va Sat, (2) Seng Sambath and (3) An Rin and the mandate expired on 31 May 2013. This means the recognition already came to an end. At the hearing, the Arbitration Council finds that there are three workers who are present: 1) Bev Man Norin, 2) Mok Magn, 3) Sok Vichara. The workers do not submit any evidence to prove that the three workers are the union's leaders that are officially recognised by the Ministry of Labour and Vocational Training.

The Arbitration Council finds that the three workers are not the union's leaders by law. Therefore, the three workers do not have right to represent the union's members because the Ministry of Labour and Vocational Training do not officially recognise them yet.

However, Clause 19 of Prakas 099 dated 21 April 2004 of the Arbitration Council states "*authorised in writing*" means that the dispute parties can assign others to represent them in resolving the dispute at the Arbitration Council only when that person obtains written authorisation *(see the Arbitral Awards no. 161/09-Prek Treng Trading and 43/10-Ming Jian).*

In this case, the Arbitration Council finds that there are no other workers who authorise the three workers to represent them to resolve the dispute. Therefore, the Arbitration Council finds that only the three authorised workers can resolve the dispute at the Arbitration Council.

In conclusion, the Arbitration Council considers the dispute for 1) Bev Man Norin, 2) Mok Magn and 3) Sok Vichara who are present at the hearing.

Issue 1: The workers demand that the employer provide a 4,000 riel payment in lieu lunch per day.

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

In the company policy, the employer does not provide a 4,000 riel payment in lieu of lunch per day to the workers. The workers demand that the employer provide a 4,000 riel allowance to purchase lunch per day because: (1) there are many companies who provide a 1,000 riel to 2,000 riel allowance purchase lunch to their workers; (2) their wage is inadequate; and (3)It motivates the workers. Based on the demand, the Arbitration Council

finds that there is no provision in the Labour Law, agreement or collective agreement, the company's internal work rules or any past practice stipulating the obligation of the employer to provide a 4,000 riel allowance to purchase lunch per day for the workers. Therefore, the Arbitration Council finds that the dispute is an interests dispute.

For an interests dispute, the Arbitration Council considers:

According to Paragraph 2, Article 96 of the Labour Law:

> 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, Prakas 305 of the Ministry of Social Affairs, Veterans and Youth Rehabilitation dated 22 November 2011 about the most representative status of professional organisations of workers in enterprise and establishments and the rights of collective negotiation and to conclude a collective agreement for enterprise and establishments states:

> 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.

Based on Article 96 of the Labour Law and Clause 9 of the above Prakas, the Arbitration Council always considers the most representative status of the parties in dispute for an interests dispute because it finds that the most representative status of the union provides the right to the union to negotiate a collective agreement in the enterprise and to bring the interests disputes to the Arbitration Council to resolve.

Clause 43 of Prakas no.099 of the Ministry of Social Affair, Veterans and Youth Rehabilitation 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 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 them of their right to strike over interests disputes covered in collective agreement for a 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 in 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 no. 81/04-Evergreen, Reasons for Decision, Issue 4, and 98/04-Great Union, Issue 3).*

In 169/11-Fortune Teo, Issue 5, the Arbitration Council declined 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).

In this case, there are only three workers who are the claimant and present at the hearing. The Arbitration Council finds that the three workers do not have right to bring the dispute to the Arbitration Council.

Therefore, the Arbitration Council decides to decline to consider the workers' demand that the employer provide a 4,000 riel payment in lieu of lunch per day.

Issue 2: The workers demand that the employer maintain a US$ 5 health allowance and separate it from monthly wages.

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

Point 1, Notification no.103 dated 9 April 2013 of the Ministry of Labour and Vocational Training states "*A US$5 health allowance per month approved in 2011 shall be incorporated in the workers' wage for garments and footwear manufacturers.*"

Point 2 of the notification above states:

> The minimum wage of the worker at garment and footwear manufacturers is determined to be US$ 75 per month for the workers who are in the probation period from 1-3 months (the current wage is US$ 56 plus US$14 wage increase and a US$5 health allowance). After the probation, the workers' minimum wage is US$ 80 per month (US$61 minimum wage plus US$ 14 wage increase, a US$5 health allowance).

In reference to the notification no.103 above, the Arbitration Council finds that a US$ 5 health allowance per month is already incorporated in the minimum wage. Therefore, the employer does not have the obligation to provide as the workers' demand.

In this case, the employer and the workers agree that the employer provide a US$ 19 wage increase to the workers' wage since the Notification no.103 dated 9 April 2013 from the Ministry of Labour and Vocational Training comes in to effect. The workers claim that they demand the employer provide a US$5 health allowance on top of the US$19 wage increase.

Based on the demand, the Arbitration Council finds that there is no legal provision, agreement, collective agreement, the company's internal work rule or any past practice stipulating the obligation of the employer to provide a US$5 health allowance on top of the US$19 wage increase. Therefore, the Arbitration Council finds that the dispute is an interests dispute *(see the Reasons for Decision, interpretation about an interests dispute, Issue 1 above).*

Therefore, the Arbitration Council decides to decline to consider the workers' demand that the employer maintain a US$ 5 health allowance and separate it from the monthly wage.

Issue 4: The workers demand that the employer increase the wages of workers in the finishing section twice a year at a minimum of US$5 each time. This matter and the matter of authorising leave should be decided by team supervisor.

The Arbitration Council considers whether the dispute gives rise to a rights or an interests dispute.

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 previous cases, the Arbitration Council finds that Article 2 of the Labour Law above means that the employer has the right to manage and supervise the company as long as it complies with the laws and is reasonable *(see the Arbitration Award no.62/06-Quicksew, Reasons for Decision, Issue 5, 108/06-Trinunggal Komara, 33/07-Goldfame, Issue 3 and 119/09-SL Garment, Issue 4 and 5.*

Moreover, in the Arbitral Award no. 24/05-Wearwel, Issue 3, the Arbitration Council decides:

> The employer can unilaterally decide to arrange the schedule of bonus other than the bonus stipulated in the Labour Law to motivate workers for production efficiency.
>
> The Arbitration Council finds that arrangement of bonus does not violate the Labour Law and the schedule of bonus payments do not violate workers' right.

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

In this case, the employer claims that the supervisors of each section are the one who evaluate the workers' work performance and are authorised to make decisions on providing the bonus. All workers cannot receive equal bonuses. The workers demand that the employer increase the workers' wage at the minimum of US$5 twice a year. Since the demand is relevant to the dispute on bonus to the workers, the Arbitration Council finds that the dispute is a rights dispute.

The Arbitration Council finds that skills and value of performance of each worker are different; therefore, the bonus that the workers receive is different. The Arbitration Council finds that the employer's decision to provide bonus to the workers based on their skills and value of their performance is the employer's right and this decision is reasonable by law.

In conclusion, the Arbitration Council rejects the workers' demand that the employer increase the wages of workers in the finishing section by a minimum of US$5 twice a year.

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 4:

Reject the workers' demand that the employer increase wage of workers in the finishing section at the minimum of US$5 twice a year.

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 1:

Decline to consider the workers' demand that the employer provide a 4,000 riel payment in lieu of lunch per day.

Issue 2:

Decline to consider the workers' demand that the employer maintain a US$ 5 health allowance and separate it from the monthly wage.

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: **You Suonty**

Signature: .....

Arbitrator chosen by the worker party:

Name: **Ann Vireak**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: .....