KINGDOM OF CAMBODIA

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THE ARBITRATION COUNCIL

**Case number and name: 19/11-8 Star Sportswear**

**Date of award: 22 February 2011**

# ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

## ARBITRAL PANEL

Arbitrator chosen by the employer party: **Mar Samborana**

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

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

## DISPUTANT PARTIES

**Employer party:**

Name: **8 Star Sportswear Ltd. (the employer)**

Address: Damnak Thom Village, Stung Meanchey Commune, Meanchey District, Phnom Penh

Telephone: 077 778 616 Fax: N/A

Representatives:

1. Mr Nou Mon Head of Administration

**Worker party:**

Name: **Coalition Union of Movement of Khmer Workers (CUMW)**

**Local Union of CUMW**

Address: Trapang Thloeng Village, Chom Chao Commune, Dangkor District, Phnom Penh

Telephone: 012 482 284 Fax: N/A

Representatives:

1. Mr Ou Sophat Vice-President of CUMW
2. Mr Long Taisan Officer of CUMW
3. Mr Tuon Saven Officer of CUMW
4. Ms Som Sarom President of the Local Union of CUMW
5. Ms Yong Sokry Vice-President of the Local Union of CUMW

6. Ms Noy Rin — Secretary of the Local Union of CUMW
7. Ms Suos Channak — Deputy Secretary of the Local Union of CUMW

## ISSUES IN DISPUTE

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

1. The workers demand that the employer refrain from transferring workers between sections at will because they feel that the employer may be doing so with bad intentions (i.e. the employer has enough work for workers their current section but still forces them to transfer to another section). The employer states that it transfers the workers between sections due to production needs and the workers' skills and technique. When a worker has finished an assignment, they will be allowed to return to their previous section.
2. The workers demand that the employer allow them to go home when they have finished sewing, as it did previously. Currently, the employer does not allow workers to leave work unless their products have been checked by quality control officers, who are often busy checking the products in another section when asked by the workers to check their products. The employer states that it will allow the workers to go home as long as their products have been checked by quality control officers, who are on standby in each section.
3. The workers demand that the employer maintain the US$ 7 cooperation bonus when they arrive at work one minute late, feel faint in the workplace, are stuck in traffic jams, or their vehicles have flat tyres. The workers assert that the former director did not deduct from the bonus. The employer states the US$ 7 is an incentive bonus for workers who attend work regularly and follow the work times set out in the Internal Work Rules. The employer asserts that the US$ 7 bonus is not the attendance bonus provided for in Notification No. 017 SKBY dated 18 July 2000.
4. The workers demand that the employer refrain from discriminating against the Local Union of CUMW. The employer denies the allegation of union discrimination, stating that it follows the Internal Work Rules and Labour Law and treats all workers fairly.
5. The workers demand that the employer provide an additional meal allowance of 500 riel or a free meal during overtime work from 4:00 to 6:00 p.m. The employer states that it is complying with Notification No. 017 SKBY dated 18 July 2000.
6. The workers demand that the employer provide more dining tables. The employer states that it is planning to provide more dining tables as required by buyers.

7. The workers demand that the employer provide them with sufficient amounts of cold and hot water because female workers who have stomach aches or period pain during working hours need hot water to warm their stomachs. The employer refuses to accommodate the demand because they made previous demand for provision of medicine. The employer agrees to put hot and cold water dispensers in the infirmary.

8. The workers demand that the employer maintain their wages and benefits during periods where they fall sick or feel faint at the workplace. The workers assert that the former director did not deduct wages and benefits at these times. The employer states that if workers fall sick or feel faint, it will maintain their daily wages in accordance with the Internal Work Rules.

9. The workers demand that the employer maintain their wages and benefits during sick leave certified by either private or public hospitals. The workers assert that the former director did not deduct their wages and benefits. The employer states that if the workers become sick or faint at the workplace, it will maintain their daily wages in accordance with the Internal Work Rules.

## JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this award from Chapter XII, Section 2B of the Labour Law (1997); the *Prakas* on the Arbitration Council No. 099 dated 21 April 2004; the Arbitration Council Procedural Rules which form an Annex to the same *Prakas*; and the *Prakas* on the Appointment of Arbitrators No. 133 dated 9 June 2010 (Eighth Term).

An attempt was made to conciliate the collective dispute that is the subject of this award, as required by Chapter XII, Section 2A of the Labour Law. The conciliation was unsuccessful, and non-conciliation report No. 125 KB/RK/VK dated 27 January 2011 was submitted to the Secretariat of the Arbitration Council on 28 January 2011.

## HEARING AND SUMMARY OF PROCEDURE

**Hearing venue:** The Arbitration Council, No. 72 Street 592, Corner of Street 327 (Opposite Indra Devi High School), Boeung Kak II Commune, Tuol Kork District, Phnom Penh

**Date of hearing:** 9 February 2011 at 8:30 a.m.

**Procedural issues:**

On 28 December 2010, the Department of Labour Disputes received a complaint, No. 019/010 dated 24 December 2010, from CUMW outlining the workers' demands for the improvement of working conditions by the employer. Upon receiving the claim, the

Department of Labour Disputes assigned an expert officer to conciliate the dispute and the last conciliation session was held on 19 January 2011. None of the issues were resolved. The nine non-conciliated issues were referred to the Secretariat of the Arbitration Council on 28 January 2011 via non-conciliation report No. 125 KB/RK/VK dated 27 January 2011.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer and the workers to a hearing and conciliation of the nine non-conciliated issues, held on 9 February 2011 at 8:30 a.m.

Both parties were present at the hearing. The Arbitration Council conducted a further conciliation of the non-conciliated issues, resulting in five issues being resolved. The remaining issues in dispute are 3, 5, 8, and 9. The workers agreed to combine issues 3, 8, and 9. The Arbitration Council will consider and decide on the remaining issues in this case below.

## EVIDENCE

## 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:**

- 8 Star Sportswear Ltd. commenced operation in 2006 and employs approximately 1,100 workers.
- There are two unions at the factory: the Local Union of CUMW and the Local Union of FTUWKC. Neither holds a certificate of most representative status (MRS). The Local Union of CUMW, representing 148 workers, is the claimant in this case.

**Issues 3, 8, and 9: The workers demand that the employer maintain the monthly US$ 7 bonus when workers come to work late or are faint.**

- The workers combined their demands [in issues 3, 8, and 9]. They demand that the employer maintain the US$ 7 bonus when workers arrive at work late or feel faint.
- The workers argue that the employer should maintain the monthly US$ 7 bonus if workers arrive at work late due to flat tyres or if they feel faint during working hours

and must be hospitalised. The employer states that it will not deduct from the bonus if workers can return to work on the date of hospitalisation.

- The section of the employer's written policy regarding wages, benefits, and overtime payments dated 24 November 2007, contains the following regarding a special bonus: "workers who attend work regularly for a month without being late, leaving early, or taking leave, will receive a US$ 7 special bonus."
- The workers contend that the employer did not deduct from the US$ 7 bonus of one female worker who was faint and had to leave work early. The employer objects to this contention, arguing that its policy applies to all workers. It reaffirms that the special bonus will be provided to workers who do not attend work late, leave work early, or take leave. The employer allows an exception where workers are late due to traffic jams. The employer relies on normal working hours as the basis of determining whether workers are late or leave work early. If workers are late or leave early, it means that they have worked less than eight hours per day. Therefore, the employer refuses to maintain the bonus. The employer asserts that the bonus is conditional.

**Issue 5: The workers demand that the employer provide an additional 500 riel meal allowance or a free meal for overtime work from 4:00 to 6:00 p.m.**

- The workers and the employer agree that the employer's practice is to pay US$ 0.28, which is equal to 1,200 riel, to workers who volunteer to work two hours of overtime in one day day.
- The workers demand that the employer provide an additional 300 riel as the employer has already increased the allowance by 200 riel. Otherwise, the employer must provide a free meal. The workers make this demand because the price of consumer goods has increased and workers cannot afford to buy meals with the current meal allowance.
- The employer refuses to provide an additional 300 riel in favour of its existing practice. The employer asserts that it provides a meal allowance superior to that provided for in Notification No. 017 dated 18 July 2000. The employer claims that a majority of workers prefer an allowance to a meal.

## REASONS FOR DECISION

**Issues 3, 8, and 9: The workers demand that the employer maintain the monthly US$ 7 bonus when workers come to work late or are faint.**

In this case, the workers demand that the employer maintain the monthly US$ 7 bonus when workers arrive at work late or feel faint and have to leave early. The employer refuses to accommodate the demand because the bonus is conditional. If workers fail to

comply with the employer's conditions, it will not pay the bonus. The Arbitration Council considers the issue below.

With regards to this demand, the Arbitration Council finds that there is no provision in the Labour Law (1997) stipulating a monthly US$ 7 bonus. However, the employer's written policy regarding wages, benefits, and overtime time payments dated 24 November 2007 provides for a special bonus as follows: "workers who attend work regularly for a month without being late, leaving early, or taking leave, will receive a US$ 7 special bonus."

Based on this policy, the employer asserts that the bonus is conditional. The employer uses normal working hours as the basis of determining whether workers are late or leave work early. If workers are late or leave early, it means that they have worked less than eight hours per day and therefore, the employer refuses to maintain the bonus. The employer's practice is to make an exception if workers are late due to traffic jams.

Based on the policy and the employer's statements, the Arbitration Council finds that the employer will not maintain the US$ 7 bonus if workers arrive at work late, with the exception of lateness due to traffic jams, leave early, or are hospitalised due to faintness.

In this case, the workers demand that the employer maintain the monthly US$ 7 bonus if workers arrive at work late or are faint and have to leave early. The Arbitration Council considers that the employer is not obliged to accommodate the workers' demand as the bonus is conditional. In this case, the employer will only provide the bonus to workers who attend work regularly without being late or leaving early, with the exception of lateness due to traffic jams.

In conclusion, the Arbitration Council rejects the workers' demand that the employer maintain the monthly US$ 7 bonus if workers arrive at work late or are faint and have to leave early, with the exception lateness due to traffic jams.

**Issue 5: The workers demand that the employer provide an additional 500 riel meal allowance or a free meal for overtime work from 4:00 to 6:00 p.m.**

In this case, the employer's practice is to pay US$ 0.28, equal to 1,200 riel, for each day that workers volunteer to work overtime for two hours. The workers demand that the employer provide an additional 300 riel, as the employer has already increased the allowance by 200 riel. Otherwise, the employer must provide a free meal. The employer refuses to accommodate the demand as it currently provides benefits superior to those provided for Notification No. 017 dated 18 July 2000. The employer asserts that workers prefer a meal allowance to a free meal, and therefore, it refuses to provide a free meal. As the workers' demand specifies two options; 1. an additional 300 riel meal allowance, and 2. a free meal, the Arbitration Council will consider each demand separately:

A. **Demand for an additional 300 riel meal allowance:**

Point 3 of Notification No. 745 dated 23 October 2006 provides that "[b]enefits to which workers are entitled in accordance with points 3, 4, 5, and 6 of Notification No. 017 SKBY dated 18 July 2000 shall be retained."

Point 4 of Notification No. 017 dated 18 July 2000 states that "workers who volunteer to work overtime at the employer's request will receive a 1,000 riel meal allowance per day or be provided with a free meal."

In this case, the Arbitration Council finds that the employer has provided US$ 0.28, equal to 1,200 riel, for each day that workers work two hours of overtime. As such, the Arbitration Council considers that the employer has fulfilled its obligation under Notification No. 017. Apart from the said notification, the Arbitration Council finds that there is no article in the Labour Law, an agreement, or a collective agreement requiring the employer to accommodate the workers' demand.

In previous arbitral awards, the Arbitration Council has ruled that:

> when workers volunteer to work overtime, they are entitled to receive a 1,000 riel meal allowance or one free meal per day. This means that regardless of whether the overtime work is more or less than two hours' duration, workers are still entitled to receive a 1,000 riel meal allowance or a free meal because the *Prakas* only specifies a period of 'per day' *(see Arbitral Awards 53/05-Finegis, reasons for decision, issue 3 and 39/07-San San, reasons for decision, issue 1)*.

In previous arbitral awards, the Arbitration Council has declined to consider workers' demands for 2000 riel for two hours of overtime work each day *(see Arbitral Awards 66/06-Gold Lida, reasons for decision, issue 3; 51/07-Goldfame, reasons for decision, issue 4; and 53/07-E-Garment, reasons for decision, issue 5)*.

The Arbitration Council will apply the abovementioned rulings in this case.

The Arbitration Council considers that the workers' demand is not legally founded, making this an interests dispute.

With respect to interests disputes, the Arbitration Council considers whether the disputant union holds most representative status (MRS). According to the findings of fact, the Local Union of CUMW does not hold a certificate of MRS. The Arbitration Council considers that having MRS gives a union the legal capacity to negotiate with an employer to establish a collective agreement and gives it legal standing to bring an interests dispute before the Arbitration Council for resolution. In order to possess MRS, a union must be registered and fulfil the other conditions stipulated in Article 277 of the Labour Law (1997).

Clause 43 of *Prakas* No. 099 dated 21 April 2004 states:

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

The Arbitration Council considers that a union without MRS does not have the legal capacity to establish a collective agreement which applies to all workers at a factory (see Article 96(2)(b) of the Labour Law and Clause 9, paragraph one of *Prakas* No. 305). The right [to make a collective agreement on behalf of workers] belongs to the registered union with MRS and which has complied with the other criteria under Article 277 of the Labour Law.

In previous arbitral awards, the Arbitration Council has considered that if it issues an arbitral award to settle an interests dispute, the award will become a one-year collective agreement. Generally, a collective agreement must be applicable to all workers at the enterprise and the right to strike cannot be exercised for the purposes of revising an unexpired collective agreement *(see Arbitral Awards 57/04-Evergreen; 60/04-United Arts, reasons for decision, issue 3; 08/07-Siu Quinh, reasons for decision, issue 3; 33/07-Goldfame, reasons for decision, issue 2; and 51/07-Goldfame, reasons for decision, issue 4)*.

In previous arbitral awards, the Arbitration Council has ruled that a union without MRS does not have legal standing to bring a dispute before the Council for resolution *(see Arbitral Awards 57/04-Evergreen; 60/04-United Arts, reasons for decision, issue 3; and 08/07-Siu Quinh, reasons for decision, issue 3).*

In previous arbitral awards, the Arbitration Council has declined to consider an interests dispute if the union bringing the dispute to the Council does not have MRS *(see Arbitral Awards 81/04-Evergreen, reasons for decision, issue 4; 09/05-Kin Tai, reasons for decision, issue 2; 84/07-Yung Wah (Branch 1), reasons for decision, issue 1; 108/07-8 Star Sportswear, reasons for decision, issue 3; 135/07-Wilson Garment, reasons for decision, issue 1; 14/08-Quicksew, reasons for decision, issue 3; 101/08-GDM, reasons for decision, issue 3; and 108/08-Hugo International, reasons for decision, issue 2).*

Based on the facts, the Arbitration Council finds that the Local Union of CUMW does not hold a certificate of MRS. Therefore, the union does not have the legal capacity to make a collective agreement at the factory.

In conclusion, the Arbitration Council declines to consider the workers' demand that the employer provide an additional 300 riel for overtime work of two hours.

B. **Demand for a free meal:**

The Arbitration Council considers the phrase "will receive a 1,000 riel meal allowance per day or be provided with a free meal" to be ambiguous. It does not specify whether the employer has the option of providing either one or the workers are entitled to choose either

one of them. The Arbitration Council will consider the content and purpose of the notification, and relevant reasons.

In previous arbitral awards, the Arbitration Council has ruled that:

> Consistent with the intention of this notification, the Arbitration Council finds that the employer has an obligation to provide one free meal to those workers who work overtime. The provision of a free meal is a motivation for workers to continue working overtime because the [meal] is a daily necessity for people and cannot be avoided, and it is what the employer is required to give *(see Arbitral Award 47/07-Chung Fai, reasons for decision, issue 5)*.

The Arbitration Council will apply the aforesaid ruling in this case. The Arbitration Council is of the view that the employer has the option of providing a 1,000 riel meal allowance in lieu of a free meal, but the provision of a meal allowance is not the underlying intention of the notification.

The Arbitration Council notes that workers cannot afford to buy meals with the 1,000 riel meal allowance that the notification provided for in 2000. As such, the workers have the right to demand a free meal and their demand is not inconsistent with the content of Notification No. 017. The Arbitration Council will consider whether their demand is legally founded.

Based on the foregoing, the Arbitration Council considers that the workers' demand is legitimate and consistent with the purpose of Notification No. 017 *(see Arbitral Award 115/08-Top One, reasons for decision, issue 3 and 117/08-Sky Nice International, reasons for decision, issue 2)*.

In conclusion, the Arbitration Council orders the employer to provide a free meal to workers on each day they work two hours of overtime.

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

## DECISION AND ORDER

**Issues 3, 8, and 9:** Reject the workers' demand that the employer maintain the monthly US$ 7 bonus if workers arrive at work late, with the exception of lateness due to traffic jams, or are hospitalised due to faintness and cannot return to work on that day.

**Issue 5:**

- Decline to consider the workers' demand that the employer provide an additional 300 riel meal allowance for overtime work of two hours.

- Order the employer to provide a free meal to workers on each day they work two hours of overtime.

**SIGNATURES OF MEMBERS OF THE ARBITRAL PANEL**

Arbitrator chosen by the employer party:

Name: **Mar Samborana**

Signature: .....

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: .....