KINGDOM OF CAMBODIA

NATION RELIGION KING

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THE ARBITRATION COUNCIL

Case number and name: 74/09-Fortune Garment

Date of award: 13 July 2009

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRAL PANEL

Arbitrator chosen by the employer party: **Ly Tayseng**

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

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

DISPUTANT PARTIES

Employer party:

Name: **Fortune Garment & Woolen Knitting Factory Ltd. (the employer)**

Address: Sitbo Village, Sitbo Commune, S'ang District, Kandal Province

Telephone: 012 522 266 Fax: N/A

Representatives:

1. Mr Fong Kinchhor — President of Fortune Garment
2. Mr Sok Hak — Vice-President of Fortune Garment
3. Mr Long Heang — GMAC Official
4. Mr Kong Kim Chy — Advisor to Fortune Garment

Worker party:

Name: **Coalition of Cambodian Apparel Worker Democratic Union (C.CAWDU)**
Local Union of C.CAWDU

Address: No. 6C, Street 476, Toul Tompoung 1 Commune, Chamkarmorn District, Phnom Penh

Telephone: 012 282 653 Fax: N/A

Representatives:

1. Ms Meas Vanny — Officer of C.CAWDU
2. Mr Em Sopheak — Officer of C.CAWDU

3.	Mr Lon Sameth	President of the Local Union of C.CAWDU
4.	Mr John Vantha	Secretary of the Local Union of C.CAWDU
5.	Mr Hol Salim	Union Activist
6.	Ms Houch Sreymon	Union Activist

ISSUES IN DISPUTE

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

1. The workers demand that the employer provide them each with a set of clothes. The employer states that it cannot afford to provide a uniform to all workers because it has been affected by the global economic crisis.

2. The workers demand that the employer provide an additional sum of up to 4,000 riel for each worker as a Khmer New Year bonus. The employer is unable to provide this.

3 & 4. The workers insist on the inclusion of issues 3 and 4 in the collective labour dispute because the demand involves two people who are union activists. The employer does not agree because it considers that issues 3 and 4 are individual labour disputes subject to a different legal procedure. (The conciliator considers that issues 3 and 4 are individual labour disputes).

5. The workers demand that the employer spray water each day on the roof of the building where workers do washing work. The employer does not understand this demand.

6. The workers demand that the employer fix the smoke pipe on the dyeing tank as it causes whirls of smoke in the washing section and that it add more fans in the room where chemical substances are stocked. The employer does not have a response to this demand.

7. The workers demand that the employer provide a daily meal allowance of 4,000 riel to all group heads. The employer states that it is unable to provide this because it has been affected by the economic crisis and is considering withdrawing the current meal allowance.

8. The workers demand that the employer include a mission fee in the main wages of group heads and translators. The employer is not able to provide this.

9. The workers demand that the employer back pay the attendance bonus for March 2009. The employer does not agree to the demand.

10. The workers demand that the employer pay Sunday and public holiday rates to piece rate workers. The employer states that it has calculated the rates correctly in accordance with the law.

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. 076 dated 10 May 2007 (Fifth 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. 210 dated 9 June 2009 was submitted to the Secretariat of the Arbitration Council on 12 June 2009.

HEARING AND SUMMARY OF PROCEDURE

Hearing venue: The Arbitration Council, Phnom Penh Center, Building A, Sothearos Blvd., Tonle Bassac Commune, Chamkarmorn District, Phnom Penh

Date of hearing: 24 June 2009 at 8:00 a.m.

Procedural issues:

On 24 April 2009, the Department of Labour and Vocational Training of Kandal Province received a complaint from C.CAWDU dated 21 April 2009 outlining the workers' demands for the improvement of working conditions by the employer. Upon receiving the claim, the Department of Labour and Vocational Training of Kandal Province assigned an expert officer to conciliate the labour dispute and a conciliation session was held on 18 May 2009. The Department of Labour and Vocational Training initially conducted a conciliation of five of the issues, resolving two. The remaining seven issues could not be discussed as it was already 4:30 p.m. The conciliator asked for those issues to be settled at a later date. A final conciliation was conducted on 4 June 2009 but none of the seven issues were resolved. In conclusion, two issues were resolved and ten issues remained. The ten non-conciliated issues were referred to the Secretariat of the Arbitration Council on 12 June 2009.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer and the workers to a hearing and conciliation of the 10 non-conciliated issues, held on 24 June 2009. Both parties were present as summoned by the Arbitration Council.

At the hearing, the Arbitration Council conducted a further conciliation of the 10 non-conciliated issues, resulting in issues 2, 5, 6, 7, 8 and 10 being resolved. The Arbitration Council will consider issues 1, 3, 4, and 9 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:

- Fortune Garment & Woolen Knitting Factory Ltd. currently employs approximately 2,700 workers.
- The claimant union in this case is the Local Union of C.CAWDU.
- The Local Union of C.CAWDU holds a certificate of most representative status (MRS), No. 002/08 dated 8 January 2008.

Issue 1: The workers demand that the employer provide clothing to each worker.

- The employer and workers recognise that in the past the employer has neither provided clothing to the workers nor signed any agreement to provide clothing.
- The workers demand that the employer provide clothing for them in accordance with *Prakas* No. 307 dated 14 December 2007. The workers believe that *Prakas* No. 307 requires the employer to provide a set of clothing to each worker free of charge.
- The employer claims that there are only a few factories where the workers are offered a set of clothing. Generally, employers do not provide workers with items of clothing. The employer asserts that *Prakas* No. 307 is not aimed at garment factories. Moreover, since the economic slump has hit the enterprise, it cannot afford to provide each worker with a set of clothes as demanded.

Issues 3 and 4.

- The workers and the employer present conflicting interpretations of issues 3 and 4. The workers interpret the two issues as a collective dispute, and ask that they be resolved accordingly because the two workers involved are union activists. The employer interprets it as an individual dispute, which should be resolved accordingly.

- The non-conciliation report dated 5 June 2009 issued by the Department of Labour and Vocational Training of Kandal Province and submitted to the Arbitration Council states:

  > The workers insist on the inclusion of issues 3 and 4 in the collective labour dispute because the demand involves two people who are union activists. The employer does not agree because it considers that issues 3 and 4 are individual labour disputes subject to a different legal procedure. (The conciliator considers that issues 3 and 4 are individual labour disputes).

- The minutes of collective labour dispute resolution dated 4 June 2009 state in regard to issues 3 and 4 that "the workers asked that the dispute be included with the collective issues because the two workers involved are union activists."

- The Arbitration Council finds that issues 3 and 4 of the non-conciliation report dated 5 June 2009 submitted by the Ministry of Labour and Vocational Training contain irregularities which suggest that they were mistakenly sent to the Council. Notably, they are not like the other issues in the non-conciliation report, and the content of the demand is not specified. Moreover, the conciliation officer found that issues 3 and 4 gave rise to individual disputes. Thus, the Arbitration Council will consider whether or not the Ministry of Labour and Vocational Training submitted issues 3 and 4 to the Arbitration Council for resolution as collective labour disputes.

Issue 9: The workers demand that the employer provide the attendance bonus for March 2009 to workers who returned to work later than the date specified in the employer's notification.

- The workers demand that the employer provide the attendance bonus to workers who returned to work behind schedule in accordance with Clause 2 of the agreement dated 7 December 2007, as follows:

  Attendance bonus:

  - For one day's leave with permission: attendance bonus will be cut by US$ 1.
  - For two days' leave with permission: attendance bonus will be cut by US$ 2.
  - For three days' leave with permission: attendance bonus will be cut by US$ 3.
  - For four days' leave with permission: attendance bonus will be cut by US$ 4.
  - For five days' leave with permission: whole US$ 5 attendance bonus will be cut

- The employer argues that Clause 2 of the agreement dated 7 December 2007 regarding the attendance bonus applies to workers taking leave with permission from the employer, thus it does not apply to workers who returned late to work.
- The workers admit that the employer paid the attendance bonuses of the majority of workers because they returned to work on time in accordance with the notification dated 21 February 2009, following the one month work suspension implemented by the employer. However, workers who returned late had their attendance bonuses deducted. For instance, 20 workers in the packing section who returned to work behind schedule had their attendance bonuses deducted.
- The workers acknowledge that when they returned to work they had not worked for a full month, as the employer had suspended their employment contracts for two months from 1 February to 31 March 2009. On 23 January 2009, the employer issued a notification of a one month work suspension from 1 February 2009. The union claims that when the employer sought a two month suspension it held a discussion with the union, but when it sought a one month suspension it did not discuss it with the union. The employer merely posted a notification on an information board, but the workers did not pay attention to the information board. Moreover, when the employer notified the workers on 21 February 2009 that work would resume in each section, it again posted the information on a board without the union's knowledge, resulting in some workers returning to work behind schedule.
- The employer claims that on 23 January 2009, during the working day, it issued a notification of a one month work suspension from 1 February 2009 onward. It also ordered the team leaders and supervisors to notify all the workers. Thus, on 21 February 2009, when the employer notified the workers of the resumption of work, around 80% of the workers returned as scheduled. Therefore, the employer cannot provide the attendance bonus to those workers who returned to work behind schedule as is demanded.

REASONS FOR DECISION

Issue 1: The workers demand that the employer provide clothing to each worker.

In this case, the employer has never provided a set of clothing to the workers, nor has it made an agreement to provide clothing to the workers. However, the workers demand that the employer provide a set of clothing in accordance with Clause 6 of *Prakas* No. 307 dated 14 December 2007. The Arbitration Council will consider the issue as follows:

Clause 6 of *Prakas* No. 307 dated 14 December 2007 states:

> An employer must provide at least two sets of clothing per year free of charge. The first set of clothing must be provided within 15 days of a worker commencing work. Each set of clothing must contain at least two pieces: a skirt or a pair of trousers and a shirt in the correct size appropriate to the working activities of the worker.

Based on Clause 6 of *Prakas* No. 307, the employer is obligated in accordance with the *Prakas* to provide at least two sets of clothing free of charge each year. Thus, the Arbitration Council finds that the employer is obliged to provide a set of clothing to the workers free of charge in accordance with Clause 6 of *Prakas* No. 307 dated 14 December 2007.

In this case, the Arbitration Council finds that the employer has never provided a set of clothing to its workers since the Ministry of Labour and Vocational Training issued *Prakas* No. 307, which entered into force on 14 December 2007. The employer claims that the reason it did not provide the workers with a set of clothing was not because it was unaware of the notification of the Ministry of Labour, but because the global economic downturn has affected its financial situation. As a result, it cannot afford to provide a set of clothing as demanded by the workers. However, regardless of whether the employer can afford to provide a set of clothing to workers, it cannot be exempted from the obligation because the *Prakas* issued by the Ministry of Labour and Vocational Training is of a legally binding nature and the employer and workers must strictly implement it.

Thus, the Arbitration Council decides that the employer should provide a set of clothing to the workers in accordance with *Prakas* No. 307 dated 14 December 2007.

Issues 3 and 4.

In this case, although the non-conciliation report dated 5 June 2009 [sic] submitted to the Arbitration Council by the Ministry of Labour contained 10 issues in total, issues 3 and 4 had irregularities unlike the other issues in the report, and there was no content to clarify the demand. Furthermore, the conciliation officer found that issues 3 and 4 gave rise to individual disputes, in which case they should not be sent to the Arbitration Council.

Thus, the Arbitration Council will consider whether or not the Ministry of Labour and Vocational Training should have submitted issues 3 and 4 for resolution as collective labour disputes.

Article 312, paragraph one of the Labour Law (1997) provides that "[t]he Council of Arbitration has no duty to examine issues other than those specified in the non-conciliation report or matters which arise from events subsequent to the report, are the direct consequence of the current dispute."

Based on Article 312 above, the Arbitration Council has no duty to examine issues other than those specified in the non-conciliation report or matters which result from events subsequent to the report and are the direct consequence of the current dispute.

The non-conciliation report submitted by the Department of Labour and Vocational Training of Kandal Province to the Arbitration Council states:

> The workers insist on the inclusion of issues 3 and 4 in the collective labour dispute because the demand involves two people who are union activists. The employer does not agree because it considers that issues 3 and 4 are individual labour disputes subject to a different legal procedure. (The conciliator considers that issues 3 and 4 are individual labour disputes).

The minutes of collective labour dispute resolution dated 4 June 2009 state in regard to issues 3 and 4 that "the workers asked that the dispute be included with the collective issues because the two workers involved are union activists."

Based on the non-conciliation report and the minutes of collective labour dispute resolution above, the Arbitration Council finds that the Ministry of Labour and Vocational Training did not intend to send issues 3 and 4 (the demand that the employer reinstate Huoch Sreymom and Horn Salim) to the Arbitration Council for resolution as collective labour disputes on the basis that both the non-conciliation report and the minutes of collective labour dispute resolution fail to clearly state the issue for the Arbitration Council to resolve, only that the workers asked that the issues be included as collective labour disputes and that the conciliation officer found that the issues gave rise to individual disputes.

Therefore, the Arbitration Council finds that the Ministry of Labour and Vocational Training did not send issues 3 and 4 to the Arbitration Council for resolution as collective labour disputes.

Thus, the Arbitration Council has no jurisdiction to settle a dispute that the Ministry of Labour did not send to it.

Issue 9: The workers demand that the employer provide the attendance bonus for March 2009 to workers who returned to work later than the date specified in the employer's notification.

Point 3 of Notification No. 745 KKBV 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 3 of Notification No. 017 SKBY dated 18 July 2000 states that "workers who attend work regularly in accordance with the number of working days in each month will receive a bonus of at least US$ 5 per month."

Based on the above notifications, workers are entitled to an attendance bonus when they attend work regularly in accordance with the number of working days in a month.

In previous awards, the Arbitration Council has found that the US$ 5 attendance bonus provided in the notification is intended as an incentive for workers to attend work for a full month. However, the notification does not state clearly how many days must be worked to be considered as attending work "regularly". The Arbitration Council considers:

> There are two interpretations of "regular" attendance at work:
>
> A. 26 days per month if there are no national holidays or breaks determined by the state;
>
> B. Less than 26 days per month if there are national holidays or breaks determined by the state, and those holidays are permitted by the employer.
>
> *(See Arbitral Award 44/07-Winner Knitting, issue 2).*

In this case, the workers demand that the employer provide the attendance bonus to workers who returned to work behind schedule, in accordance with Clause 2 of the agreement dated 7 December 2007:

> Attendance bonus:
>
> - For one day's leave with permission: attendance bonus will be cut by US$ 1.
> - For two days' leave with permission: attendance bonus will be cut by US$ 2.
> - For three days' leave with permission: attendance bonus will be cut by US$ 3.
> - For four days' leave with permission: attendance bonus will be cut by US$ 4.
> - For five days' leave with permission: whole US$ 5 attendance bonus will be cut

The Arbitration Council finds that based on Clause 2 of the agreement dated 7 December 2007, the attendance bonus is payable to workers who are absent with permission from the employer. However, it is not payable to the workers who returned to work late in violation of the notification dated 21 February 2009. Thus, the Arbitration Council finds that the workers' demand that the employer provide the attendance bonus in accordance with the agreement dated 7 December 2007 to those workers who returned late to work is inappropriate.

Moreover, the workers acknowledged at the hearing that some workers returned to work late and did not work for the entire month, and that this was a minority of the workers. For instance, 20 of the 100 workers in the packing section returned late to work and had their attendance bonuses deducted.

Thus, the Arbitration Council finds that the workers who returned to work behind schedule are not entitled to the attendance bonus.

In previous arbitral awards, the Arbitration Council has found that workers who return to work behind the schedule set by the employer are not entitled to the attendance bonus *(see Arbitral Awards 94/04-Eternity, issue 9 and 08/07-Siu Quinh, issue 4)*.

In this case, the Arbitration Council agrees with the interpretation in previous awards; the attendance bonus is an incentive for workers to attend work regularly in accordance with the regular working days in a month.

Thus, the Arbitration Council decides to reject the workers' demand that the employer provide the attendance bonus to workers who returned to work late in March 2009.

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

DECISION AND ORDER

Issue 1: Order the employer to provide a set of clothing to the workers in accordance with *Prakas* No. 307 dated 14 December 2007.

Issues 3 and 4: Decline to consider issues 3 and 4.

Issue 9: Reject the workers' demand that the employer provide the attendance bonus to workers who returned to work late in March 2009.

Type of award: non-binding award

This award of the Arbitration Council 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: **Ly Tayseng**

Signature: .....

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: .....