



**KINGDOM OF CAMBODIA**  
**NATION RELIGION KING**

**ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល**

**THE ARBITRATION COUNCIL**

**Case number and name: 36/11-Cambo Advertising**

**Date of award: 20 April 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: **Ann Vireak**

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

#### **DISPUTANT PARTIES**

##### **Employer party:**

Name: **Cambo Advertising Co., Ltd. (the employer)**

Address: Number three Village, Svay Rolum Commune, S'ang District, Kandal Province

Telephone: 012 211 126                      Fax: N/A

Representative at the first and second hearing:

1. Mr Yin Sophy                      Lawyer

##### **Worker party:**

Name: **Cambodian Labour Confederation (CLC)**

##### **The Local Union of CLC**

Address: Number 3 Village, Svay Rolum Commune, S'ang District, Kandal Province

Telephone: 012 868 309                      Fax: N/A

Representatives at the first hearing:

1. Mr Earn Kimhun                      Dispute Resolution Officer from CLC
2. Mr Yem Pov                              President of the Local Union of CLC
3. Mr Pan Mengla                         Activist of the Local Union of CLC
4. Mr Nop Sambath                        Activist of the Local Union of CLC
5. Mr Set Sin                                Activist of the Local Union of CLC
6. Mr Soung Channa                       Activist of the Local Union of CLC

Representatives at the second hearing:

1. Mr Earn Kimhun Dispute Resolution Officer from CLC
2. Mr Yem Pov President of the Local Union of CLC
3. Mr Pan Mengla Activist of the Local Union of CLC
4. Mr Nop Sambath Activist of the Local Union of CLC
5. Mr Set Sin Activist of the Local Union of CLC
6. Mr Soung Channa Activist of the Local Union of CLC
7. Mr Bic Sina Activist of the Local Union of CLC
8. Mr Ar Phearom Activist of the Local Union of CLC

### **ISSUES IN DISPUTE**

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

1. The workers demand that the employer regularly pay their monthly wages.
2. The workers demand that the employer calculate 200% of their wages for work on Sundays and public holidays.
3. The workers demand that the employer allow them to establish a union to deal with the workers' complaints.
4. The workers demand that the employer not make deductions from wages when workers take leave for personal commitments.
5. The workers demand that the employer calculate 200% of their wages when they work overtime late at night.
6. The workers demand that employer's management refrain from insulting them.
7. The workers demand that the employer give them verbal warnings when they have committed minor misconduct.

The employer refuses to accommodate the abovementioned demands on the grounds that its business focuses on commercial advertisement services, not garment and shoe production. Furthermore, the employer has difficulty paying regular monthly wages to the workers because employer's services depend on piece work and the employer receives payment for the completed piece work from the clients in a specific period of time. Regarding work on Sundays, public holidays, and overtime work at night, the employer asks workers to work at these times depending on the needs of clients. With respect to the union issue, if the employer allows the workers to establish a union, the union leaders will cause disruption to the employer's work. The employer agrees to deal with the issue of management insulting workers when they have committed minor misconduct.

The employer will continue its existing practices as follows:

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**THIS IS AN UNOFFICIAL ENGLISH TRANSLATION OF THE AUTHORITATIVE KHMER ORIGINAL.**

1. The employer provides three meals a day to the workers.
2. The employer provides accommodation to workers and pays their electricity and water bills.
3. The employer provides 900,000 riel to workers when their mothers or fathers pass away.
4. The employer provides 900,000 riel to workers when their wives take maternity leave.
5. The employer allows the workers to finish work at 4:00 p.m.
6. The employer provides medication to workers when they are sick.
7. The employer provides a 15,000 riel meal allowance for each day that workers are assigned to work in the provinces.
8. The employer provides a 24,000 riel accommodation allowance for each night that workers are assigned to work in the provinces.

#### **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. 100/11 KB/KN dated 10 March 2011 was submitted to the Secretariat of the Arbitration Council on 15 March 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 Quarter, Tuol Kork District, Phnom Penh

**Date of hearing:** First hearing: 21 March 2011 at 8:30 a.m.  
Second hearing: 24 March 2011 at 2:30 p.m.

#### **Procedural issues:**

On 9 March 2011, the Department of Labour Disputes of Kandal province held a conciliation session on 18 issues in dispute after the workers went on strike. At the session, the workers revised their claim to comprise only seven issues. The Department of Labour Disputes attempted to conciliate the issues, but none were resolved. The seven non-

conciliated issues were referred to the Secretariat of the Arbitration Council on 15 March 2011 via non-conciliation report No. 100/11 KB/KN dated 10 March 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 seven non-conciliated issues, held on 21 March 2011 at 8:30 a.m. A second hearing was held on 24 March 2011 at 2:30 p.m.

Both parties were present at the hearing. The Arbitration Council conducted a further conciliation of the seven issues, resulting in issues 3, 6, and 7 being withdrawn by the workers. The remaining issues in dispute are issues 1, 2, 4, and 5.

Normally, parties who appear before the Arbitration Council have the right to choose between a binding or non-binding award, regardless of whether the issues give rise to interests or rights disputes. However, in the Memorandum of Understanding On Improving Industrial Relations in the Garment Industry (MoU) signed by the Garment Manufacturers Association in Cambodia (GMAC) and six leading union confederations on 28 September 2010, the signatories agreed to submit their rights disputes to binding arbitration. The signatories are still able to choose either binding or non-binding arbitration of interests disputes.

In this case, as the employer is not a signatory to the MoU, the MoU will not apply to the parties. Thus, the parties can choose either binding or non-binding arbitration. The parties have chosen non-binding arbitration of both rights and interests dispute.

The Arbitration Council will consider the remaining issues in dispute based on the evidence and reasons below.

## **EVIDENCE**

**Witnesses and Experts:** N/A

**Documents, Exhibits, and other evidence considered by the Arbitration Council:**

### **A. Provided by the employer party:**

1. Authorisation letter from the employer for Yin Sophy, dated 21 March 2011.

### **B. Provided by the worker party:**

1. Brief statement on the labour dispute, No. 028/11 dated 24 March 2011.
2. Statute of the Local Union of CLC, dated 13 February 2011.
3. List of participants in the election for the local union, dated 13 February 2011.
4. Receipt of acknowledgement of the application for union registration, dated 11 March 2011.
5. Notice from CLC to the employer regarding the election to establish the Local Union of CLC, No. 013/11 dated 22 February 2011.

6. Notice from CLC to the employer regarding the outcome of the election, No. 013/11 dated 22 February 2011.
7. Record of insults to workers by the employer's management, dated 4 March 2011.
8. Record of abusive language used towards workers by the employer's management, dated 7 March 2011.
9. Record of collective labour dispute conciliation, dated 9 March 2011.

C. Provided by the Ministry of Labour and Vocational Training:

1. Report on collective labour dispute resolution at Cambo Advertising Co., Ltd., No. 100/11 KB/KN dated 10 March 2011.
2. Record of collective labour dispute resolution at Cambo Advertising Co., Ltd., dated 9 March 2011.

D. Provided by the Secretariat of the Arbitration Council:

1. Notice addressed to the employer to attend the session for the selection of arbitrators, No. 205 KB/AK/VK/LKA dated 16 March 2011.
2. Record of the selection of an arbitrator from the employer list, dated 17 March 2011.
3. Notice to attend the first hearing addressed to the employer, No. 217 KB/AK/VK/LKA dated 17 March 2011.
4. Notice to attend the first hearing addressed to the workers, No. 218 KB/AK/VK/LKA dated 17 March 2011.
5. Notice to attend the second hearing addressed to the employer, No. 223 KB/AK/VK/LKA dated 21 March 2011.
6. Notice to attend the second hearing addressed to the workers, No. 224 KB/AK/VK/LKA dated 21 March 2011.

**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:**

- Cambo Advertising Co., Ltd employs approximately 130 workers. Eight workers from the auto colour section, four mechanics, eight blacksmiths, and 20 workers from the exhibition section are involved in the issues in dispute in this case.
- The Local Union of CLC, the claimant in this case, represents 55 workers and is the only union at the enterprise.
- The employer does not have any internal work rules.

**Issue 1: The workers demand that the employer regularly pay their wages each month.**

- Each worker receives monthly wages ranging from US\$ 70 to US\$ 250 depending on their skill.
- In addition to their monthly wages, the employer provides workers with accommodation and meals.
- The workers are employed under verbal contracts.
- The workers' wages are paid every two to three months. At the commencement of employment, the employer informs workers that the delay in wage payment depends on when it receives payment from clients.
- Most of the workers involved in this case are blacksmiths or workers in the auto colour, mechanical, and exhibition sections.
- The workers state that the employer withholds their wages from previous months, and pays them two or three months late. The employer acknowledges having paid wages late but not underpaying workers.
- The workers acknowledge being informed upon commencement of employment of the potential delay in wage payments. However, they still demand that their wages be paid on a monthly basis because the delay in payment of their wages causes difficulties in their daily life and makes it difficult to send money to their families.
- The employer argues that its business relies on payments from clients. If the clients have not paid for the employer's service, the employer does not have enough money to pay its workers.
- The employer refuses to accommodate the demand because the workers have already been informed of the potential delay in wage payments. Moreover, the employer has provided benefits, i.e. accommodation and meals, which are superior to the benefits provided in the Labour Law.

**Issue 2: The workers demand that the employer pay their wages at a rate of 200% for work on Sundays and public holidays.**

- The workers' normal working days are from Monday to Sunday morning (i.e. six and a half days per week) from 7:00 a.m. to 12:00 a.m. and from 1:00 p.m. to 5:00 p.m. On Sundays, the working hours are from 7:00 a.m. to 12:00 p.m.
- Workers who work overtime from 6:00 p.m. to 10:00 p.m. are paid US\$ 2.50. Workers are paid normal wages for work on Sundays and public holidays; they do not receive additional wages for work on those days.

- The employer allows workers to take six or seven days off for Chinese New Year, seven days off for Khmer New Year, and three days off for Water Festival. The workers demand double wages on Sundays and public holidays as required by the law.
- The employer argues that it cannot afford to accommodate the workers' demand as it is already providing benefits superior to the law, that is, accommodation and three meals per day.

**Issue 4: The workers demand that the employer refrain from deducting from their wages when they take leave for personal commitments.**

- The workers state that the employer does not a formal leave request procedure. Some workers are required to make leave requests only to the chief of section, but some must make requests to the chief of section, chief of work site, and the director.
- The employer maintains the wages of some workers and deducts from the wages of some workers when they take leave.
- For example, in October 2010, Set Sin, an auto colour worker, took one day of leave authorised by his chief of section. The employer deducted four days' worth of wages instead of one day after he returned to work. The employer's reason was that he failed to make a request to his supervisor and the chief of work site. On a separate occasion, Pan Mengla and Ar Phearom did not have their wages deducted even though they took one day of leave authorised by only their chiefs of section. The workers further state that they make this demand on the basis of Article 28 of the Labour Law.
- The employer states that it allows the workers to take leave and maintains their wages if they make proper leave requests. The employer did not explain the procedure for making leave requests, nor did it raise any legal arguments in response to the workers' claim.

**Issue 5: The workers demand that the employer pay 200% of their wages for overtime late at night.**

- Workers who work overtime late at night when they work on exhibition arrangements, are paid only an additional US\$ 2.50.
- The workers state that they are required to work from 7:00 a.m. to 6:00 a.m. with normal pay when required to work on exhibition arrangements. They are allowed to take a break from 6:00 to 9:00 a.m., after which they have to return to work until late at night. The workers contend that this is the employer's routine practice during exhibition arrangements, in which they have to set up and dismantle stages. They are

then granted a half day break. The employer does not object to the workers' contention.

- The workers demand that the employer pay workers at a rate of 200% for overtime work until late at night on the basis of the Labour Law.
- The employer contends that it cannot afford to accommodate the workers' demand as it has limited business projects. The employer also states that it has allowed workers to take long breaks instead.

### **REASONS FOR DECISION**

#### **Issue 1: The workers demand that the employer regularly pay their wages each month.**

Article 116 of the Labour Law states that “[l]aborers' wages shall be paid at least two times per month, at a maximum of sixteen-day intervals. Employees' wages must be paid at least once per month.”

On 24 November 2008, the Ministry of Labour and Vocational Training issued Directive No. 1903 on wage payment, which states that:

The Ministry of Labour and Vocational Training would like to inform owners and managers of factories, enterprises, and establishments covered by the Labour Law that in accordance with Article 116 of the Labour Law, the owners and managers of those factories, enterprises, and establishments are required to make wage payments as follows:

- Wages are to be paid twice monthly at a maximum interval of 16 days.
- Workers' representatives and employers at each factory, enterprise, and establishment can establish a collective agreement providing for different methods of making wage payments. The collective agreement must be registered with the Ministry of Labour and Vocational Training.

Based on the article and directive set out above, the employer is required to make wage payments twice a month to labourers and once a month to employees.

The Arbitration Council will consider whether the workers involved in the issues in this case are labourers or employees.

Article 5 of the Labour Law states that “[e]mployees or helpers' are those who are contracted to assist any person in return for remuneration, but who do not perform manual labour fully or who do so incidentally.”

Article 6 of the Labour Law states that “[l]aborers' are those workers who are not household servants or employees, namely those who perform mostly manual labour in return for remuneration, under the direction of the employer or his representative.”

In Arbitral Award 126/09-Emperor Garment, reasons for decision, issue 2, the Arbitration Council ruled that:

labourers are those who perform mostly manual labour in return for remuneration, under the direction of the employer or his or her representative. Based on this interpretation, in the garment sector the term “labourer” refers to any worker who has a direct [role] in the production line. The term, “employee” or “helper/assistant” refers to any individual who technically assists or sometimes assists but who does not perform manual labour fully or who does so only incidentally. In this case, those individuals mostly use their intellect as the basis of performing tasks for the employer and to be paid through the labour contract.

The workers involved in this case are skilled workers in the auto colour, mechanical, steel, and exhibition sections. They technically assist and play a direct role in their sections. Therefore, the Arbitration Council considers that they are employees and not labourers.

Based on the abovementioned article and jurisprudence, the employer is required to make wage payments once a month to the workers involved in this issue. In this case, the Arbitration Council considers that the employer’s practice of paying wages is inappropriate and inconsistent with Article 116 of the Labour Law. Although the employer is providing other benefits to the workers, it is not entitled to defer wage payments beyond a period of one month.

The Arbitration Council considers that the workers’ demand is legally founded and reasonable.

In conclusion, the Arbitration Council orders the employer to make regular wage payments each month to workers, and that the period for payment of wages does not extend beyond one calendar month.

**Issue 2: The workers demand that the employer pay their wages at a rate of 200% for work on Sundays and public holidays.**

Article 137 of the Labour Law states:

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.

In Arbitral Award 114/08-Whitex, reasons for decision, issue 5, the Arbitration Council ruled that “Article 137 of the Labour Law set out above means that workers’ normal working hours should not exceed eight hours per day or 48 hours per week. [If workers] volunteer to work on Sundays it is overtime work.”

The Arbitration Council will apply the said ruling in this case.

Article 139 of the Labour Law states:

In case of special urgency which requires 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 weekly time off, shall be additionally paid at an increased rate of 100% (one hundred percent).

In Arbitral Award 14/03-Chu Hsing, reasons for decision, issue 2, the Arbitration Council ruled that “if workers agree to work overtime... during the weekly day off the rate should be 100% more than normal rate, as set out in Article 139 of the Labour Law.”

According to the article and ruling set out above, the Arbitration Council considers that the maximum weekly working hours are 48 hours; if workers are required to work overtime for exceptional jobs, overtime hours must be paid at the rate of 150% of normal hours during day shift and 200% of normal hours during night shift or on Sundays or on public holidays.

In this case, the Arbitration Council finds that the hours of work surpass 48 hours per week due to the fact that the workers are required to work six and a half days, i.e. from Monday to Sunday. Sunday afternoon is their weekly time off. Based on the said article, the Arbitration Council considers that the work on Sundays is additional work required to complete the employer’s business projects; therefore, the workers must be paid at the rate of 200% of normal hours.

Under the law, if workers are paid a monthly US\$ 100, their daily wages are calculated by dividing 100 by 26 (the maximum number of working days per month as determined by the law, which also stipulates a maximum of 48 hours per week) which equals US\$ 3.85. Thus, if workers work for half of Sunday, they must be paid US\$ 3.85 multiplied by two [to determine 200%] and then halved, i.e. US\$ 3.85. According to the facts the workers, who are paid from US\$ 70 to US\$ 250 and work overtime from 6:00 to 10:00 p.m., are paid an overtime payment of US\$ 2.50, but for work on Sundays they do not receive any additional pay.

Based on the facts and the law, the Arbitration Council considers that the employer’s practice in relation to work on Sundays is not consistent with the law. Therefore, the Arbitration Council orders the employer to pay the workers 200% of the rate for normal hours.

## Case of work on public holidays

The workers demand that the employer pay their wages for work on public holidays at the rate of 200%. They contend that workers are entitled to full wages on public holidays. Thus, if they work on these days, the employer must pay an additional 100% of their wages.

Article 164 of the Labour Law states:

In establishments or enterprises where work cannot be interrupted because of the nature of their activities requiring the workers to [be] occup[ied] 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* No. 10 dated 4 February 1999 states:

In special cases when an establishment or enterprise cannot interrupt its activities during holidays promulgated in the *Prakas* of the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation, the owner or director of the establishment or enterprise can come to an arrangement with its workers and employees to work during these holidays.

Clause 4 of the same *Prakas* states that “[e]mployees working on holidays are entitled to remuneration equivalent to that of a normal working day.”

In Arbitral Award 76/05-Global Footwear, reasons for decision, issue 3, the Arbitration Council ruled that:

Article 4 of *Prakas* No. 10 of 1999 reads that “*workers who work on holidays are entitled to an indemnity equaling to one time of normal wage.*” On the basis of this *Prakas*, the Arbitration Council finds that workers are entitled to 200% of their normal wages when they work on holidays.

Based on the foregoing, the Arbitration Council considers that the workers must receive remuneration equal to 100% of their wages if they work on public holidays as determined by *Prakas* issued by the Ministry of Labour and Vocational Training.

According to the facts, the Arbitration Council finds that the workers are allowed to take paid days off during Khmer New Year and Water Festival in accordance with the *Prakas* on paid public holidays No. 196 dated 17 September 2010, as well as during Chinese New Year. Chinese New Year is not deemed a public holidays in the said *Prakas*. On days other than those mentioned above, the workers attend work as usual and receive flat monthly wages even if they work on other public holidays set by the said *Prakas*.

Based on the facts and the law, the Arbitration Council considers that the employer’s practice in relation to wage payment and remuneration for work on public holidays is not

consistent with the law, and the provision of accommodation and daily meals to workers cannot substitute for payment for work on public holidays.

In conclusion, the Arbitration Council orders the employer to pay workers at the rate of 100% of normal hours for work on public holidays determined by the *Prakas* issued by the Ministry of Labour and Vocational Training. As those public holidays are paid days off, the workers are entitled to 200% of their normal wages if they work on public holidays.

**Issue 4: The workers demand that the employer refrain from deducting from their wages when they take leave for personal commitments.**

This issue concerns leave for personal commitments, and not annual leave or special leave. The Arbitration Council will consider the issue below.

Article 71, paragraph six of the Labour Law states:

The labour contract shall be suspended under the following reasons:...

6. Absence of the worker authorised by the employer, based on laws, collective agreements, or individual agreements.

Article 72(1) of the Labour Law states:

The suspension of a labour contract affects only the main obligations of the contract, that are those under which the worker has to work for the employer, and the employer has to pay the worker, unless there are provisions to the contrary that require the employer to pay the worker.

In Arbitral Award 128/08-Wei Hua, the Arbitration Council ruled that:

when workers are absent with permission from the employer, their employment contracts are suspended and the workers are not required to work for the employer and the employer is not required to pay wages, unless there are provisions to the contrary that require the employer to pay the workers.

The Arbitration Council will apply the abovementioned ruling in this case. Based on Article 72 of the Labour Law and previous rulings, the Arbitration Council considers that the employer has the right not to pay workers when they take authorised leave other than annual leave because they are not working for the employer [on those days].

The Arbitration Council finds that, according to the facts, the employer does not pay workers when they take authorised leave, and deducts more from their monthly wages than the number of days of authorised leave taken. The Arbitration Council considers that the employer has the right not to pay workers when they take authorised leave, but it is not entitled to deduct an amount from their wages an amount that is more than the number of days of authorised leave taken.

The Arbitration Council also finds that the Internal Work Rules do not set out a proper procedure for leave requests and that the procedure varies from one section to another, making it difficult for workers to take leave. Thus, the employer must have a proper procedure for leave requests and inform the workers of this procedure.

According to the facts, the workers demand that the employer maintain their wages when they take authorised leave. Based on the foregoing, the Arbitration Council considers that the workers are not entitled to receive wages when they take authorised leave.

In conclusion, the Arbitration Council rejects the workers' demand that the employer maintain workers' wages when they take authorised leave, orders the employer to refrain from deducting more from the workers' wages than the number of days of authorised leave taken and orders the employer to arrange a proper procedure for leave requests and to inform workers of this procedure.

**Issue 5: The workers demand that the employer pay 200% of their wages for overtime late at night.**

Based on Article 139 of the Labour Law, the Arbitration Council considers that if workers are required to work on exceptional jobs, they will be paid at the rate of 150% of their wages for normal hours during day shift and 200% of their wages for normal hours during night shift.

Clause 5 of *Prakas* No. 80 dated 1 March 1999 states:

Owners or managers of enterprises and establishments shall pay overtime to workers and employees as following: ...

- b) an amount equal to 200% of wages (or double time) during normal working hours for overtime work performed at night time (from 10:00 p.m. to 5:00 a.m.).

In Arbitral Award 14/03-Chu Hsing, reasons for decision, issue 2, the Arbitration Council ruled that "if workers agree to work overtime...during the weekly day off the rate of pay should be 100% more than the normal rate, based on Article 139 of the Labour Law."

The Arbitration Council finds that, according to the facts, when workers in the exhibition section work on exhibition arrangements, they are required to work normal hours from 7:00 a.m. to 5:00 p.m. and then work overtime from 6:00 p.m. to 5:00 a.m. They are paid US\$ 2.50 for the overtime from 6:00 p.m. to 10:00 p.m. They do not receive any pay for the overtime from 10:00 p.m. to 5:00 a.m. At the hearing, the workers stated that they are paid only US\$ 2.50 even though they work overtime late at night. They are allowed to take a half a day break when the exhibition has finished if they are tired, but during the exhibition

they are only allowed a break of three hours from 6:00 a.m. to 9:00 a.m. The employer did not object to the workers' statement.

Based on the facts and the law, the Arbitration Council considers that the employer's practice of providing pay for overtime work from 10:00 p.m. to 5:00 a.m. is not consistent with the law and that the workers' demand is legally founded. Workers who work overtime from 10:00 p.m. to 5:00 a.m. must be paid 200% of the normal rate and those who work from 5:00 a.m. to 6:00 a.m. must be paid 150% of the normal rate for those hours.

In conclusion, the Arbitration Council orders the employer to pay workers who work overtime from 10:00 p.m. to 5:00 a.m. 200% of the normal hourly rate for those hours.

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 make regular wage payments each month to workers, and that the period for payment of wages does not extend beyond one calendar month.

**Issue 2:**

- Order the employer to pay the workers 200% of the normal rate for work on Sundays.
- Order the employer to pay the workers 200% of the normal rate if they work on public holidays.

**Issue 4:**

- Reject the workers' demand that the employer maintain workers' wages when they take authorised leave.
- Order the employer to refrain from deducting more from the workers' wages than the number of days of authorised leave taken.
- Order the employer to arrange a proper procedure for leave requests and to inform workers of this procedure.

**Issue 5:**

- Order the employer to pay workers who work overtime from 10:00 p.m. to 5:00 a.m. 200% of the normal hourly rate for those hours.

**Type of award: non-binding award**

This award 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: **Mar Samborana**

Signature: .....

Arbitrator chosen by the worker party:

Name: **Ann Vireak**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: .....