



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

**ក្រុមប្រឹក្សាអន្តរាជ្ញាកណ្តាល**

**THE ARBITRATION COUNCIL**

**Case number and name: 19/08 & 20/08 – Quint Major Industrial**

**Date of Award: 14 March 2008**

### **ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

#### **ARBITRATION PANEL**

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

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

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

#### **DISPUTING PARTIES**

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

Name: **Quint Major Industrial Co. Ltd.**

Address: Trayeung village, Peuk Commune, Ang Snoul District, Kandal

Telephone: 016 493 277

Fax: N/A

Representative:

- |                    |                  |
|--------------------|------------------|
| 1- Mr. Peter Pan   | Assistant of OIC |
| 2- Mr. Kim Mora    | SR Supervisor    |
| 3- Mr. Ros Sokpeak | Interpreter      |
| 4- Mr. Hang Panha  | SR Compliance    |
| 5- Mr. David Liu   | SR Manager       |

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

Name: **Cambodian Union Federation (CUF), Cambodian Workers Labour Federation of Trade Union (CWLFU), and Cambodian Labour Union Federation (CLUF)**

Address: Trayeung village, Peuk Commune, Ang Snoul District, Kandal

Telephone: 012 785 890, 012 915 417

Fax: N/A

Representative:

**Cambodian Union Federation:**

- |                 |                              |
|-----------------|------------------------------|
| 1- Pen Sophea   | Official of CUF              |
| 2- Som Sam Oeun | President of CUF at QMI      |
| 3- Lao Sam Ath  | Vice-president of CUF at QMI |
| 4- Mom Thorn    | Official of CUF              |

**Cambodian Workers Labour Federation of Trade Union:**

- |                 |                                |
|-----------------|--------------------------------|
| 1- Chen Sony    | Vice-President of CWLFU        |
| 2- Ek Socheat   | Official of CWLFU              |
| 3- Un Net       | Official of CWLFU              |
| 4- Meas Savoeun | President of CWLFU at QMI      |
| 5- Pon Sophea   | Vice-president of CWLFU at QMI |

**Cambodia Labour Union Federation:**

- |                    |                               |
|--------------------|-------------------------------|
| 1- Leang Sun Heang | Vice-President of CLUF        |
| 2- Va Sath         | President of CLUF at QMI      |
| 3- Voir Sophal     | Vice-president of CLUF at QMI |
| 4- Sour Leang Eng  | Union Secretary               |
| 5- Seng Sambath    | Treasurer                     |
| 6- Sak Chan        | Union Advisor                 |
| 7- Chen Sok Noy    | Union Advisor                 |
| 8- Seng Meng Hong  | CLUF's Assistant              |

**ISSUES IN DISPUTE**

(In the Non-Conciliation Report)

- 1- Workers demand 2,000 riel from the company when they have to work overtime from 6:00 pm to 8:30 pm. The employer did not agree allowing overtime work only until 6:00 pm.
- 2- Workers demand that the company not deduct their annual bonus when workers take special leave. The employer follows the law.
- 3- Workers demand double payment when working overtime on holidays and Sundays. The employer does not agree.
- 4- Workers demand the company allow them to take one day off per month to have a medical check or vaccination. The employer follows the law.
- 5- Pregnant workers demand that the company pay them 50 percent starting from August. The employer follows the law.
- 6- [Workers] demand the company pay their wages and attendance bonus for the strike [period].
- 7- [The workers] requested that the company increase team leaders' wages to \$80.

- 8- [The workers] requested a position bonus of \$10, \$15, and \$20.
- 9- [The workers] requested a skill bonus of \$10, \$15, and \$20.
- 10- [The workers] requested that the company provide an equal monthly bonus of \$10, \$15, and \$20 for all team leaders in all units.
- 11- [The workers] requested that the company increase Assistants' wages to \$60.
- 12- [The workers] requested that the company provide a bonus of \$10, \$15, and \$20 to Assistants.
- 13- [The workers] requested that the company provide a position bonus of \$10, \$15, and \$20 for Assistants.
- 14- [The workers] requested a skill bonus of \$5, \$8, and \$10 for those [workers] who can operate 2 or 3 [different types of] machines.
- 15- [The workers] requested that the company set a specific amount for the weekly bonus and [the bonus apply to work undertaken] from 7:00 am to 4:00 pm and [there be a] different calculation for [work undertaken until] 6:00 pm. The bonus shall be paid [to workers] regularly.
- 16- [The workers] requested the company increase mechanics' wages to \$70.
- 17- [The workers] requested a position bonus of \$10, \$15, and \$20.
- 18- [The workers] requested the company increase tailors' wages to \$70 or \$80.
- 19- [The workers] requested a skill bonus of \$10, \$15, \$20.
- 20- [The workers] requested a \$90 of wage for team leaders and \$70 for team members.
- 21- [The workers] [requested a] skill bonus.
- 22- [The workers] requested a] bonus.

#### **JURISDICTION OF THE ARBITRATION COUNCIL**

*The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B of the Labor 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 hearing was unsuccessful, and the non-conciliation report No. 057/08 dated 1 February 2008 and the non-conciliation report No. 066/08 dated 11 February 2008 were submitted to the Secretariat of the Arbitration Council on 4 and 11 February 2008 respectively.*

## **HEARING AND SUMMARY OF PROCEDURE**

**Place of hearing:** The Arbitration Council, Phnom Penh Center, Building A, Sothearos Blvd., Sangkat Tonle Basak, Khann Chamkarmorn, Phnom Penh.

**Date of hearing:**

- Pre-hearing meeting: 7 February 2008 (from 8:00am to 9:30am)
- First hearing: 18 February 2008 (from 2:00pm to 5:30pm)
- Second hearing: 29 February 2008 (from 10:00am to 12:30pm)

**Procedural issues:**

On 1 February 2008, the Kandal Department of Labour and Vocational Training conciliated a dispute involving 16 issues but none of the issues was conciliated because both the union and workers' representatives walked out of the negotiation. On the same day, the Kandal Department of Labour and Vocational Training sent non-conciliation report No. 057/08 dated 1 February 2008 with 16 issues and submitted it to the Secretariat of the Arbitration Council on 4 February 2008.

On 4 February 2008, after receiving the case, the Secretariat of the Arbitration Council was informed by the Kandal Department of Labour and Vocational Training and the company that the workers were on strike. Having received the news, the Secretariat invited both parties to select their arbitrators to resolve this dispute with the aim of protecting both the parties' interests and the public order. Both parties came to select their arbitrators as requested by the Secretariat.

After the Arbitration Panel was formed on 4 February 2008, the Arbitration Council issued an order asking workers to stop their strike immediately and return to work on 5 February 2008. However, the workers did not stop striking.

After receiving this news, the Arbitration Council asked the Secretariat to summon both parties to a pre-hearing meeting on 7 February 2008. Both parties were present as summoned by the Secretariat.

On 7 February 2008, the pre-hearing meeting day, the Arbitration Council was informed that the worker party raised another 11 issues. The [workers] continued to strike because there was no solution to these new demands. The Arbitration Council requested that the company negotiate in relation to new demands and requested that the workers postpone the strike immediately otherwise the arbitration proceeding would not continue. Both parties agreed with the Council's request and set up a negotiation date at the factory for 9 February 2008, with the presence of a conciliator from the Kandal Department of Labour and Vocational Training.

Based on the non-conciliation report No. 066/08 dated 11 February 2008, the parties conciliated five out of 11 issues. The remaining six non-conciliated issues were submitted to the Secretariat of the Arbitration Council on 11 February 2008.

After receiving the new case, on 11 February 2008 the Secretariat invited both parties to select arbitrators immediately to resolve this dispute. Both parties came to select their arbitrators as requested by the Secretariat and agreed to select the same panel to continue resolving the two disputes at the same time.

After selecting the same panel to continue the arbitration proceeding, the Secretariat informed the Arbitration Panel and requested the panel to set the hearing date. The Arbitration Panel informed the Secretariat to summon both employer and worker parties to a hearing and conciliation on the 22 non-conciliated issues (16 issues in non-conciliation report No. 057/08 dated 1 February 2008 and 6 issues in non-conciliation report No. 066/08 dated 11 February 2008) on 18 February 2008 at 2:00pm. Both parties were present as summoned by the Arbitration Council.

In the hearing, the Arbitration Council tried to conciliate the 22 remaining issues and as a result issues 1 and 3 in non-conciliation report No. 066/08 dated 11 February 2008 were conciliated; only issues 2, 4, 5 and 6 were not conciliated. The worker party agreed to withdraw issue 16 from the non-conciliation report No. 057/08 dated 1 February 2008 and the 15 remaining issues were categorised into three main issues:

- 1 (new) - demand for pay rise for team leaders, Assistants, Mechanics, Tailors, Electricians, Blacksmiths, and team members (issue 1, 5, 10, 12, and 14);
- 2 (new) - demand for skill and position bonuses of \$10, \$15, and \$20 for team leaders, Assistants, Mechanics, Tailors, Electricians, and Blacksmiths (issues 2, 3, 7, 8, 11, 13, and 15);
- 3 (new) - demand for additional attendance bonus of \$5, \$10, and \$15 per month and weekly attendance bonus (issues 4, 6, and 9).

Therefore, in this case the Arbitration Council will consider only issue 1 (new), issue 2 (new), and issue 3 (new) listed in non-conciliation report No. 057/08 dated 1 February 2008 and issues 2, 4, 5, and 6 listed in non-conciliation report No. 066/08 dated 11 February 2008 based on the evidence and parties' testimonies in the hearings as follows:

## **EVIDENCE**

**Witnesses and experts:** N/A

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

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

- 1- Internal Work Rules No. 003/07 of QMI Company dated 10 May 2007.

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

- 1- Letter requesting a resolution to workers' demand dated 1 February 2008.
- 2- Four-page thumb-print of workers.

Provided by the Ministry of Labour and Vocational Training [MoLVT]:

- 1- Report No. 057/08 on the collective labour dispute settlement at QMI Company dated 1 February 2006.
- 2- Minutes of the collective labour dispute conciliation at QMI Company dated 1 February 2008.
- 3- Report No. 066/08 on the collective labour dispute settlement at QMI Company dated 11 February 2006.
- 4- Minutes of the collective labour dispute conciliation at QMI Company dated 11 February 2008.

Provided by the Secretariat of the Arbitration Council:

- 1- Invitation letter No. 101 dated 6 February 2008 to the company party to provide information.
- 2- Invitation letter No. 102 dated 6 February 2008 to the worker party to provide information.
- 3- Invitation letter No. 115 dated 14 February 2008 to the company party to provide information.
- 4- Invitation letter No. 116 dated 14 February 2008 to the worker party to provide information.
- 5- Invitation letter No. 144 dated 25 February 2008 to the company party to attend the hearing.
- 6- Invitation letter No. 145 dated 25 February 2008 to the worker party to attend the hearing.

**FACTS**

- Having examined report of the collective labour dispute conciliation;
- Having reviewed other documents submitted by parties;
- Having listened to the statements of worker and employer parties;

**The Arbitration Council finds that:**

- QMI Company employs approximately 2,100 workers.
- CUF, CWLFU, and CLUF are the claimants. According to the workers, CUF has 550 members, CWLFU has approximately 640 members, and CLUF has approximately 530 workers. Therefore, the total number of workers in the dispute represented by the three unions is 1,720 out of a total of 2,100 workers.
- None of the three unions has representative status or most representative status.
- In the hearing, the employer did not refute the number of members of each union.

**Issue 2: Workers demanded that the company not deduct their annual leave when they take special leave**

- The workers and employer agreed that when the workers took some of their seven days special leave, as provided for under the Labour Law, the company deducted their annual leave if they still had annual leave owing. If the worker did not have any annual leave or had used it all, the company allowed them to [take the leave in advance] and deducted it from next year's [annual leave] balance.
- Workers demanded that the company not deduct their annual leave when they take special leave and also demanded that the company not deduct their wages when they take special leave; they want to maintain their annual leave so that they can receive more payment. Moreover, special leave is the kind of leave whereby workers [typically] need to spend a lot of money either for medical treatment or for funeral [costs].
- The employer did not agree with the demand and asked to implement the law by deducting the special leave from the workers' annual leave.
- The workers stated that approximately 1,000 workers demanded on this issue.
- According to the [companies] Internal Work Rules, special leave shall be deducted from the remaining annual leave of workers.

**Issue 4: Workers demanded that the company allow pregnant workers to take 1 days' leave per month to have a medical check and vaccination**

- The workers demanded that the company allow workers who are 4 months pregnant to take one days leave per month to have a medical check and vaccination, without deducting their wages, because pregnant workers are required to have a check-up once a month to ensure mother and child are healthy. Pregnant workers need to be checked by the same doctor so that it is easy for them during labour. The workers claimed that some factories nearby allow pregnant workers to take one day's paid leave per month to have a medical check.
- The employer party said the company allows workers to take one days' leave per month for a medical check but their wages are deducted. The company could not maintain their wages as it is not stated in the law.
- The company agreed that it is not stated in the law but on humanitarian and morality grounds, pregnant workers should be allowed to have medical check every month. The employer party said there were approximately 30 pregnant workers.

**Issue 5: The workers demand that the company pay workers who are eight months pregnant maternity leave payment equivalent to half their wages**

- The workers demanded that the company pay workers who are eight months pregnant a maternity leave payment equivalent to half their wages. Under the Labour Law, a worker is entitled to take maternity leave only after they have worked for one year. Four or five workers took maternity leave before having worked for [the company] for one year as they were pregnant before they commenced work. The workers stated that the reason they made the demand was because workers needed a lot of money during their maternity leave.
- The employer did not agree and asked to implement the Labour Law by paying workers half their wages when they took three months maternity leave for those [workers] who had worked for 12 months.

**Issue 6: The workers demand that the company provide them with their wages and attendance bonus for the period they were on strike**

- The workers demanded that the company pay their wages and attendance bonus for the period they were on strike from 1 to 16 February 2008. The company did not agree because the workers went on strike unlawfully without providing prior notice and the company suffered a loss during the strike.
- The worker and employer parties were not able to specify the exact number of workers who joined the strike but said that most of the workers joined the strike and returned to work on different dates.
- Those workers, who were members of the union, said they tried to return to work but the company prevented them from returning to work. The workers did not explain how they tried to return to work.
- The employer party said the company would deduct [workers'] wages and attendance bonus in proportion to the number of days the workers went on strike.

**Issue 1-new: [The workers] demanded that the company increase the wages of team leaders, assistants, mechanics, tailors, electricians, blacksmith, and team members (Issue 1, 5, 10, 12, and 14)**

- The workers demanded that the company increase the wage of team leaders to \$80. Currently, team leaders receive \$60.
- The workers demanded that the company increase the wage of assistants to \$60. Currently, assistants receive \$50.
- The workers demanded that the company increase the wages of mechanics to \$70. Currently, mechanics receive \$50.
- The workers demanded that the company increase the wages of tailors to \$70-\$80. Currently, tailors receive \$50.

- The workers demanded that the company increase the wage of electricians and blacksmiths to \$90. Currently, electricians and blacksmiths receive \$60.
- The workers demanded that the company increase the wage of team members to \$70. Currently, team members receive \$50.
- The worker party did not provide the exact number of workers who demanded a wage increase. The company was not able to recall the number of workers in the union, who made the demand.
- The workers said they made the demand because the price of goods had increased and they had a high level of skill.
- The company said that it could not afford to increase [workers'] wages because it had not made any profit recently.
- The worker party stated that the Internal Work Rules did not state anything about a wage increase.

**Issue 2-new: [The workers] demanded a skill and position bonus of \$10, \$15, and \$20 for team leaders, assistants, mechanics, electricians and blacksmiths (Issue 2, 3, 7, 8, 11, 13, and 15)**

- The workers demanded that the company provide a skill and position bonus of \$10, \$15, and \$20 to team leaders, assistants, Mechanics, Electricians, and Blacksmiths because the price of goods had increased and to motivate them as they all have technical skills. Currently, the company does not provide a skill or position bonus to them.
- The company stated that it could not afford to provide a skill and position bonus to the workers because the company had not make any profit recently. Previously, the company used to organize an evaluation to determine the skill bonus [for workers] but it had stopped this.
- The worker party said that the Internal Work Rules did not state anything about a skill bonus.

**Issue 3-new: [The workers] demanded [that the company] increase their attendance bonus by \$5, \$10, and \$15 per month and [pay a] weekly bonus (issue 4, 6, and 9)**

- Workers demanded that the company increase their attendance bonus by \$5, \$10, and \$15 per month in addition to the existing \$5 attendance bonus.
- Workers demanded that the company set a specific amount for the weekly bonus of 5,000 riel, 6,000 riel, and 7,000 riel that the company provided for those who met the target and requested that the company pay this bonus regularly each week.

- The company stated that it could not afford to increase the attendance bonus by \$5, \$10, and \$15 per month because it had not made any profit recently and the company will set a specific amount for the weekly bonus and try to pay workers regularly although sometime the accountant could not prepare it on time.
- The Arbitration Council ordered both parties to provide additional evidence to support their demand and statements by 3 March 2008. However, neither party provided any evidence to the Council.

## **REASONS FOR DECISION**

### **Issue 2: The workers demanded the company not deduct their annual leave when they take special leave**

Article 171 of the Labour Law states that, *“The employer has the right to grant his worker special leave during the event directly affecting the worker's immediate family. If the worker has not yet taken his annual leave, the employer can deduct the special leave from the worker's annual leave.”*

Based on the content of above article, the Arbitration Council considers that this demand is above the law. Therefore, it is an interests demand. Generally, regarding an interest dispute, the Arbitration Council always considers the most representative status of the union, who is a disputing party. In previous cases, the Arbitration Council found that if a union does not have most representative status, it does not have legal standing to represent workers to resolve the collective interest dispute for all workers in the company.

Moreover, Claus 43 of Prakas 099 dated 21 April 2004 states that, *“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 finds that none of the three unions has the most representative status. The Arbitration Council considers that the most representative status provides legal standing to negotiate a collective bargaining agreement in a company and a legal right to bring an interests dispute before the Arbitration Council for resolution. In order to achieve most representative status, Article 277 of the 1997 Labour Law states that the union must be registered and meet other requirements stated in that article.

If a union does not have most representative status, it does not have the legal right to create a collective bargaining agreement on behalf of all workers (See Article 96 (2B) and Clause 9 (1) Prakas 305). This legal right belongs to the registered union that has most members and meets other requirements stated in Article 277 of the Labour Law.

Clause 9 (2) of Prakas 305 dated 22 November 2001 states that, *“In any enterprise or establishment where there is no union holding status as most representative, all the unions with members at the enterprise or establishment, or a number of them, may Join together to submit a Joint draft of a collective bargaining agreement. The employer shall be required to negotiate if all these unions represent the majority of workers in the enterprise or establishment, or category of personnel that the collective bargaining agreement seeks to cover. In the event of a challenge as to whether representativeness is established with regard to a majority of workers in an enterprise or establishment, a vote shall be held in accordance with the rules of Article 6 above.”*

Based on this Prakas, the Arbitration Council considers that in the case where there is no union holding most representative status, all the unions with members at the enterprise or establishment, or a number of them, may join together to submit a joint draft of a collective bargaining agreement, if the number of their members creates a majority among the total number of workers. Therefore, the Arbitration Council considers that if none of the unions has the most representative status, a collection of unions with a majority of members can bring an interests dispute before the Arbitration Council for resolution. Based on the above interpretation when the Arbitration Council decides an interest dispute, parties will not be able to strike or lock-out or bring another interest disputes before the Arbitration Council within one year.

This case is different from previous cases that the Arbitration Council had decided related to interest disputes. In this case the claimants are CUF, CWLFU, and CLUF; they jointly brought the interests dispute before the Arbitration Council. According to the workers, CUF has approximately 550 members. CWLFU has approximately 640 members and CLUF has approximately 530 members. Therefore, the total number of workers in the dispute represented by the three unions is 1,720 out of 2,100 workers, which equals 81.9 percent. That means the number of members is more than 50% of the total number of 2,100 workers in the factory.

Therefore, based on Clause 9 (2) of Prakas 305 dated 22 November 2001, the Arbitration Council considers that the three unions have the right to create a collective bargaining agreement with the employer that covers all workers in the company and have the right to bring an interests dispute before the Arbitration Council for determination.

In this case, the worker party demanded in the hearing that the company not deduct their annual leave when they take special leave as they wanted to maintain their annual leave so that they could receive more wages; moreover, they take special leave when they

face burdens [in their personal life] and they need to spend a lot of money on medical treatment or funeral [expenses].

The Arbitration Council considers that the reason the worker's demand not to have their annual leave deducted is not valid is because the Labour Law does not allow the [employer] to pay in lieu of annual leave except on expiration of [workers'] labour contracts (Article 167 of the Labour Law). Furthermore, the worker party did not provide evidence to prove that they need to spend a lot of money as claimed. Therefore, the Arbitration Council decides to reject the workers' demand that the company not deduct their annual leave when they take special leave.

**Issue 4: The workers demand that the company to allow pregnant workers to take one days leave per month to have a medical check and vaccination**

In this case the workers demanded the company allow pregnant workers to take one days paid leave per month to have a medical check and vaccination. According to the facts, the employer party agreed to allow pregnant workers to take one day's leave to have a medical check but the company deducted their wages. The Arbitration Council will consider whether or not workers are entitled to paid leave.

Article 71 (5&6) of the Labour Law states that, *"The labor contract shall be suspended under the following reasons:*

- 5. The leave granted to a female worker during pregnancy and delivery, as well as for any post-natal illness.*
- 6. Absence of the worker authorized by the employer, based on laws, collective agreements, or individual agreements."*

Article 72 (1) of the Labour Law states that, *"The suspension of a labor 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."*

Based on the above article, the Arbitration Council consider that when a worker is absent with permission from the employer, the labour contract is suspended. When the labour contract is suspended, the worker is not required to work for the employer and the employer is not required [to pay the worker] unless there are provisions to the contrary that require the employer to pay the worker.

In conclusion, the Arbitration Council considers that employer is not required to pay a worker on the day a worker is absent with permission. In this case, the workers demanded that the company provide wages to pregnant workers when they take leave to have a

medical check. Therefore, the Arbitration Council considers that the workers' demand is beyond what the law provides. Therefore, the Arbitration Council considers that this dispute is an interest dispute.

Generally for interest disputes the Arbitration Council considers whether the claimant union has most representative status. Based on the findings of fact of the Arbitration Council, the three unions do not have most representative status. However, based on the above interpretation, the Arbitration Council considers that the three unions have the right to create a collective bargaining agreement with the employer, which can be applied to all workers in the company, and have the right to bring an interests dispute before the Arbitration Council for determination because they have 81.9 percent of members, more than half of the total number of workers. (Please see Reason for Decision, Issue 2)

The worker party said in the hearing that they demanded one day's paid leave for pregnant workers because pregnant workers need to take care of their health and their babies' health. Moreover, some neighbouring factories allow pregnant workers to take one days paid leave to monitor their health and the health of the fetus. The employer party said the company could not afford to pay wages to pregnant workers who need to have a medical check because the company would lose a lot [of profit].

Regarding the above statement of worker party, the Arbitration Council considers that the worker party has the burden to provide evidence to support its claim so that the Arbitration Council could consider the claim. However, the worker party did not provide any evidence related to this demand to the Council.

Therefore, the Arbitration Council decides to reject the workers' demand that the company allow pregnant workers to take one day's [paid leave] per month to have a medical check and vaccination.

**Issue 5: The workers demand that the company pay workers who are eight months pregnant maternity leave payment equivalent to half their wages**

Article 183 of the Labour Law states that, *"During the maternity leave as stipulated in the preceding article, women are entitled to half of their wage, including their perquisites, paid by the employer.*

*Women fully reserve their rights to other benefits in kind, if any.*

*Any collective agreement to the contrary shall be null and void.*

*However, the wage benefits specified in the first paragraph of this article shall be granted only to women having a minimum of one year of uninterrupted service in the enterprise."*

Based on the above article, the Arbitration Council considers that a female worker is entitled to the benefit of half wages including other perquisites only after they have worked for the company for at least one year.

In this case, the Arbitration Council finds that the Labour Law does not entitle female workers, who have worked for less than one year, [to a maternity leave payment] equivalent to half wages benefit including perquisites. There is nothing in the [company's] Internal Work Rules or any agreement between the workers and the employer which states anything about this issue either. Therefore, the Arbitration Council considers that the demand of workers is an interests dispute.

Generally for interest disputes the Arbitration Council considers whether the claimant union has most representative status. Based on the findings of fact of the Arbitration Council, the three unions do not have most representative status. However, based on the above interpretation, the Arbitration Council considers that the three unions have the right to create a collective bargaining agreement with the employer, which can be applied to all workers in the company, and have the right to bring an interests dispute before the Arbitration Council for determination because they have 81.9 percent of members, more than half of the total number of workers. (Please see Reason for Decision, Issue 2)

However, in this case worker party did not provide evidence to support their claim. Therefore, the Arbitration Council decides to reject this demand.

**Issue 6: The workers demand that the company provide them with their wages and attendance bonus for the period they were on strike**

Article 332 of the Labour Law states that, *“A strike suspends the labor contract. During a strike, the allowance for work is not provided and the salary is not paid.”*

Regarding the content of this article, in previous cases the Arbitration Council has consistently rejected the demand of workers for their wages and attendance bonus during a strike and during the striking period, allowances and wages will not be paid. (Please see Arbitral Awards 04/03 – Lida, Issue 1; 63/07 – Phnom Penh Garment, Issue 1)

In this case, the Arbitration Council also agrees with the previous interpretations of the Arbitration Council. Moreover, according to Article 331 of the Labour Law, the Arbitration Council can order the employer to pay wages and bonuses to workers, when workers show evidence that employer recruited new workers to replace them during the strike. In this case, the employer did not recruit new workers to replace the striking workers. Therefore, the Arbitration Council decides to reject this demand.

**Issue 1-new: [The workers] demanded that the company increase the wages of team leaders, assistants, mechanics, tailors, electricians, blacksmith, and team members (Issue 1, 5, 10, 12, and 14)**

In this case, the workers demanded that the company increase the wages of team leaders, assistants, mechanics, tailors, electricians, blacksmiths, and team members. Regarding this demand, the Arbitration Council finds that none of the provisions in the Labour Law, Internal Work Rules, or agreement between workers and employer state anything about this issue. Therefore, the Arbitration Council considers that the demand of the workers is an interests dispute.

Generally for interest disputes the Arbitration Council considers whether the claimant union has most representative status. Based on the findings of fact of the Arbitration Council, the three unions do not have most representative status. However, based on the above interpretation, the Arbitration Council considers that the three unions have the right to create a collective bargaining agreement with the employer, which can be applied to all workers in the company, and have the right to bring an interests dispute before the Arbitration Council for determination because they have 81.9 percent of members, more than half of the total number of workers. (Please see Reason for Decision, Issue 2)

In previous wage increase claims, the Arbitration Council only considered [the issue] when the union provided enough evidence to support their claim such as:

- 1- *Company's capacity to increase wages*
- 2- *Industrial standards in Cambodia: Do other companies provide such wages? Does that company also produce garments or produce something else besides garments?*
- 3- *Inflation: How much should [the wage] be increased to meet the inflation rate?*
- 4- *Past practice of wage payment: Has the company paid such wages before?*
- 5- *Law and state's public policy: What does the law or public policy say about this issue?*
- 6- *Company's productivity: Has the company's productivity increased or not? (Please see Arbitral Awards 14/04 – June Textile, Issue 1, 07/06 –Dai Young, Issue 4)*

However, in this case the worker party did not provide enough evidence to support their claim and allow the Arbitration Council to decide their claim for a wage increase. Therefore, the Arbitration Council decides to reject this demand.

**Issue 2-new: [The workers] demanded a skill and position bonus of \$10, \$15, and \$20 for team leaders, assistants, mechanics, electricians and blacksmiths (Issue 2, 3, 7, 8, 11, 13, and 15)**

In this case, the workers demanded a skill and position bonus of \$10, \$15, and \$20 for team leaders, assistants, mechanics, tailors, electricians and blacksmiths. In this demand, the Arbitration Council finds that none of the provisions in the Labour Law, Internal Work Rules, or agreement between workers and employer states about this issue. Therefore, the Arbitration Council considers that the demand of workers is an interests dispute.

Generally for interests disputes the Arbitration Council considers whether the claimant union has most representative status. Based on the findings of fact of the Arbitration Council, the three unions do not have most representative status. However, based on the above interpretation, the Arbitration Council considers that the three unions have the right to create a collective bargaining agreement with the employer, which can be applied to all workers in the company, and have the right to bring an interests dispute before the Arbitration Council for determination because they have 81.9 percent of members, more than half of the total number of workers. (Please see Reason for Decision, Issue 2)

Based on the Reasons for Decision in Issue 1-new, a decision to increase wages requires concrete evidence related to the production process of the company. (Please see Reasons for Decision, Issue 1-new)

However, in this case worker party did not provide enough evidence to support their claim; therefore, the Arbitration Council decides to reject this demand.

**Issue 3-new: [The workers] demanded [that the company] increase their attendance bonus by \$5, \$10, and \$15 per month and [pay a] weekly bonus (issue 4, 6, and 9)**

In this case, the workers demanded [that the company] increase their attendance bonus by \$5, \$10, and \$15 per month and that the company regularly pay their weekly bonus and establish a clear policy for determining the weekly bonus.

Regarding the demand for the weekly bonus, the company responded that it would determine this weekly bonus and try to pay workers regularly, but sometimes it might be late because the accounting department could not prepare the payment on time. The Arbitration Council considers that employer party has already responded to the demand related to the weekly bonus; therefore, the Arbitration Council will not consider this issue.

Regarding the demand to increase [the workers] attendance bonus, the Arbitration Council finds that none of the provisions in the Labour Law, Internal Work Rules, or agreement between workers and employer state anything about this issue. Therefore, the Arbitration Council considers that the worker's demand is an interests dispute.

Generally for interest disputes the Arbitration Council considers whether the claimant union has most representative status. Based on the findings of fact of the Arbitration Council, the three unions do not have most representative status. However, based on the above interpretation, the Arbitration Council considers that the three unions have the right to create a collective bargaining agreement with the employer, which can be applied to all workers in the company, and have the right to bring an interests dispute before the Arbitration Council for determination because they have 81.9 percent of members, more than half of the total number of workers. (Please see Reason for Decision, Issue 2)

Based on the Reasons for Decision, Issue 1-new, a decision to increase wages requires concrete evidence related to the production process of the company. (Please see Reasons for Decision, Issue 1-new)

However, in this case worker party did not provide enough evidence to support their claim; therefore, the Arbitration Council decides to reject this demand.

Based on the findings of fact, legal principles, and reasons above, the Arbitration Council decides as follows:

### **DECISION**

**Issue 2:** Reject the workers' demand that the company not deduct their annual leave when they take special leave.

**Issue 4:** Reject the demand that the company provide one day of paid leave for pregnant workers to have a medical check and vaccinations.

**Issue 5:** Reject the demand that the company provide female workers with a maternity leave payment equivalent to 50 percent of wages from the eighth month of pregnancy.

**Issue 6:** Reject the demand that the company pay [workers'] wages and attendance bonus for the period the workers were on strike.

**Issue 1-new:** Reject the demand that the company increase wages for team leaders, assistants, mechanics, tailors, electricians, blacksmiths and team members.

**Issue 2-new:** Reject the demand that the company provide a skill and position bonus of \$10, \$15, and \$20 for team leaders, assistants, mechanics, tailors, electricians and blacksmiths.

**Issue 3-new:**

- 1- Reject the demand that the company increase [workers'] attendance bonus by \$5, \$10, and \$15 per month.
- 2- Order the employer to establish a [clear] policy for the weekly bonus and pay this weekly bonus regularly as stated in the hearing.

**Type of Award: Non binding**

*This Award will become binding after 8 days of the date of its notification unless one of the parties lodges a written opposition to the Minister of Labour through the Secretariat of the Arbitration Council within this time period.*

**SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:**

Arbitrator chosen by the employer party:

Name: **Ing Sothy**

Signature: .....

Arbitrator chosen by the worker party:

Name: **Ann Vireak**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: .....