



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

**ក្រុមប្រឹក្សាពន្យារកណ្តាល**  
**THE ARBITRATION COUNCIL**

**Case number and name: 113/13-Global Apparel**

**Date of award: 3 July 2013**

### **ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

#### **ARBITRAL PANEL**

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

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

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

#### **DISPUTANT PARTIES**

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

Name: **Global Apparel Limited.**

Address: Tropaing Krosang Village, Sangkat Chom Chao, Khan Posen Chey, Phnom Penh

Telephone: 088 991 886

Fax: N/A

Representatives:

- |                    |                                    |
|--------------------|------------------------------------|
| 1. Mr Soung Phorn  | Communications Officer             |
| 2. Mr Keom Sam Ang | Head of Human Resources Department |

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

Name: - **Workers Union Federation (WUF)**

- **The Local Union of WUF (the union)**

Address: Tropaing Krosang Village, Sangkat Chom Chao, Khan Posen Chey, Phnom Penh

Telephone: 012 210 317

Fax: N/A

Representatives:

- |                   |                             |
|-------------------|-----------------------------|
| 1. Mr Sorn Prak   | Secretary-General of WUF    |
| 2. Ms Yim Sam Ath | President of the union      |
| 3. Ms Suon Vanna  | Vice-President of the union |

### **ISSUES IN DISPUTE**

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

1. The workers demand that the employer provide a bonus to workers who work eight hour shifts.
2. The workers demand that the employer provide them with their payslips three days before payday.
3. The workers demand that the employer provide a US\$15 transportation allowance.
4. The workers demand that the employer provide an 4,000 riel overtime meal allowance.
5. The workers demand that the employer permit sick, elderly, and less mobile workers to leave five minutes early.
6. The workers demand that the employer provide a monthly allowance to worker representatives.
7. The workers demand that the employer refrain from docking their wages when they arrive late to work (in the morning or afternoon).
8. The workers demand the employer provide them with 10-15 minutes extra time to arrive at and depart from work

### **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. 121 dated 7 June 2012 (Tenth 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. 638 dated 31 May 2013 was submitted to the Secretariat of the Arbitration Council on 4 June 2013.

### **HEARING AND SUMMARY OF PROCEDURE**

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

**Date of hearing:** 13 June 2013 at 8:30 a.m.

#### **Procedural issues:**

On 27 June 2013, the Department of Labour Disputes (the department) received a complaint from the union, outlining the workers' demands for the improvement of working

conditions. Upon receiving the claim, the department assigned an expert officer to resolve the labour dispute and the last conciliation session was held on 22 May 2013. None of the eight issues was resolved. The eight non-conciliated issues were referred to the Secretariat of the Arbitration Council (SAC) on 31 May 2013.

The Arbitration Panel was formed on 6 June 2013, upon receipt of the case. The SAC summoned the employer and the workers to a hearing and conciliation of the eight non-conciliated issues, held on 13 June 2013 at 8:30 a.m. Both parties were present. At the hearing, the conciliation resulted in the workers' withdrawal of Issue 6 and the workers merging issues 7 and 8 into a single issue.

The Arbitration Council divided the issues into two types: rights disputes and interests disputes. In this case, the parties are signatories to the Memorandum of Understanding on Improving Industrial Relations in the Garment Industry (MoU), dated 3 October 2012. According to the MoU, both parties have agreed to binding arbitration for rights disputes. However, the MoU does not create binding obligations regarding interest disputes. The parties are able to choose non-binding arbitration for interest disputes, and can object to an arbitral award issued in relation to such disputes. Such an objection will not affect the parties' obligation to implement an award on rights issues in accordance with the MoU. In this case, the parties choose non-binding arbitration for their interests disputes.

The parties agreed to defer the issuance of the Arbitral Award from 27 June 2013 to 3 July 2013.

Therefore, the Arbitration Council will consider the issues in dispute in this case based on the evidence and reasons below:

### **EVIDENCE**

*This section has been omitted in the English version of this arbitral award. For further information regarding evidence, please refer to the Khmer version.*

### **FACTS**

- Having examined the report on collective labour dispute resolution;
- Having listened to the statements of the representatives of the employer and the workers, and;
- Having reviewed the additional documents;

### **The Arbitration Council finds that:**

- Global Apparel Limited is a garment manufacturer. It received certificate of registration no. 3984 on 13 July 2011. It employs a total of 2,230 workers.

- The union is the claimant in this case. It has a total of 65 members. It does not hold a certificate of most representative status (MRS).

**Issue 1: The workers demand that the employer provide a bonus to workers who work eight hour shifts.**

- The workers clarify their demand that the employer provide a daily bonus for team work to workers who reach their production targets within eight hours and leave work before other members in the same team who reach production target within ten hours.
- The workers claim other companies provide daily bonuses to their workers as long as they reach their production targets. Moreover, the workers leave work before 3:15 p.m. because they have other commitments.
- The workers and the employer agree that working hours are from 6:30 a.m. to 10:30 a.m. and 11:15 a.m. to 3:15 p.m.
- The workers claim their current daily bonus ranges from 1,500 riel to 4,000 riel. The employer pays this bonus once a week in the amount of 10,000 riel to 30,000 riel. The workers claim if they do not work overtime, between 3.15 a.m. to 5.15 a.m. on any work day. they don't receive the daily bonus on that day.
- The workers claim during 2010 and 2011, the employer provided a 1,000 riel daily bonus, though the workers did not work up to 10 hours per day. The workers claim that the employer stopped providing this bonus to them in 2012 and 2013.
- The employer claims that there are two types of daily bonus. The first type is provided when work is performed from Monday to Friday, production targets are met, and ten-hour work has been completed per day. Secondly, it is provided when overtime work has been performed on weekdays, Saturdays and Sundays with the conditions of a production target and eight hour's work day having been met.
- The workers do not reject the employer's claim.
- The employer claims that to receive the daily bonus provided from Monday to Friday, the workers are required to reach production targets and work up to ten hours from 6:30 a.m. to 5:15 p.m. per day.
- On 17 June 2013, the employer submits to the Arbitration Council the meeting minutes on the provision of daily bonus, dated 31 December 2013. The employer's representative, the head of each section and the union's representatives all took part in the meeting. The minutes read:

...The company applies the daily bonus to two types of production targets: a ten-hour and an eight-hour production target on Saturdays, paydays and holidays.

  1. In order to achieve the ten-hour production target, and to be eligible to receive the daily bonus, the workers in each team must work up to 10 hours. They are not eligible to receive it if they work only 8 hours...

- In addition to the minutes, the parties agree that though some workers fail to work for 10 hours, they will receive the bonus as long as the workers in the same team reach the production target all together and leave work at the same time at 3:15 p.m. (8 hours) or 5:15 p.m. (10 hours).
- The workers and the employer agree that the daily bonus is a team bonus. The employer will not provide this bonus if two or three workers leave work before 3:15 p.m., which is earlier than other members in the team.

**Issue 2: The workers demand that the employer provide them with their payslips three days before payday.**

- The workers clarify their demand that the employer provide them with their payslips three days before payday.
- The workers and the employer agree that workers' monthly wages will be paid on the 7<sup>th</sup> of the month. If there is any miscalculation in the wages, the employer will reimburse the workers on the 22<sup>nd</sup> of the same month, at the latest. The employer provides 7 to 15 days for the workers to protest against wage loss. If the workers protest after the said 7 to 15 days, the employer will reimburse them the following month. The parties agree that the lost amounts range from US\$ 1 to US\$5.
- The workers claim they have never demanded the employer provide back pay of parts of wages lost in miscalculation.
- The employer claims that it does not agree to the demand as its accountancy department is too busy to take care of the matter. Moreover, though the workers claim that they have lost wages, the employer cannot reimburse them on the 7<sup>th</sup> (payday) because it needs to double check whether or not a wage loss has actually occurred.
- The workers claim that in a team of 46 workers, 10 to 15 workers lose part of their wages each month.
- The employer objects to the claim and contends that there are only approximately 10 workers losing parts of their wages per month.

**Issue 3: The workers demand that the employer provide a US\$15 transportation allowance.**

- The employer currently provides a US\$7 transportation allowance per month.
- The workers clarify their demand that the employer provide an additional US\$8 allowance on top of the existing US\$7 allowance to the sum of US\$15 per month as transportation and accommodation costs are rising.
- The employer claims that it cannot afford to meet the demand because it recently increased the workers' minimum wage.

**Issue 4: The workers demand that the employer provide a 4,000 riel overtime meal allowance.**

- The employer currently provides a 2,000 riel overtime meal allowance to workers during the performance of overtime work.
- The workers clarify their demand that the employer provide an additional 2,000 riel overtime meal allowance as the cost of living is rising and other factories located in the Kampong Speu province have increased the allowance.
- The employer claims that it cannot afford to meet the demand.

**Issue 5: The workers demand that the employer permit sick, elderly, and less mobile workers to leave five minutes early.**

- The workers clarify their demand that the employer permit elderly workers who have joint pain, numb limbs and who have experienced limb injuries to leave work five minutes early.
- The workers claim that elderly workers cannot walk as fast as younger workers in order to catch the truck.
- The employer claims that as long as the workers have medically certified health-related issues, it will allow them to leave early every day.
- The employer claims that it discourages workers who have health-related issues to attend work.
- The workers claim that there have been accidents where workers with health-related issues have been pushed while they were leaving, however the workers cannot recall the date of the incident or injured workers' names. The Arbitration Council orders the workers to submit a list of workers injured during the incident, and any other workers with health-related issues, on 17 June 2013. The workers failed to submit the list.

**Issues 7 and 8: The workers demand that the employer refrain from docking their wages when they are late to work (in the morning or afternoon) and provide 10-15 minutes extra time to arrive at and depart from work.**

- At the hearing, the workers clarify their demand that the employer refrain from docking the wages of workers who leave work 15 minutes early and that the demand has nothing to do with late work attendance.
- The workers and the employer agree that in the past, the employer docked only wages of workers who leave work 15 minutes early, but not other benefits.
- The workers claim the employer has previously tolerated workers who leave early, by not docking their wages. The employer started to dock wages for lateness from February 2013. The workers agree that the employer has often warned them in meetings to stop leaving work early or that it will otherwise dock their wages.
- The workers did not provide any argument to support the demand.

- The employer claims it permits the workers to attend work 15 minutes late but that it does not see any reason to allow them to leave work 15 minutes early.

## **REASONS FOR DECISION**

### **Issue 1: The workers demand that the employer provide a bonus to workers who work eight hour shifts.**

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

Paragraph 2, Article 312 of the Labour Law states:

The Council of Arbitration legally decides on disputes concerning the interpretation and enforcement of laws or regulations or of a collective bargaining agreement. The Council's decisions are in equity for all other disputes.

Clause 43, Prakas no. 099 of the Arbitration Council dated 21 April 2004 stated:

“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.”

Paragraph 2, Article 312 of the Labour Law and Clause 43 of Prakas no. 099 states that disputes must be settled on the basis of the interpretation and enforcement of laws or regulations or of a collective bargaining agreement, and that the Council's decisions are in equity for all other disputes.

In previous cases, the Arbitration Council decided that disputes concerning the interpretation and enforcement of laws or regulations, or of a collective agreement are rights disputes (*see Arbitral Award no. 98/13-Ming Fu Garment*). Any kinds of disputes that are not stipulated in an agreement or collective agreement are interests disputes and the Arbitration Council settles interests disputes based on equity (*see Arbitral Award no. 98/13-Ming Fu Garment and 92/13-SL Garment Processing, Reasons for Decision, Issue 5 and 6*).

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

In this case, the workers demand that the employer provide the same daily bonus for team work to workers who reach their production targets and attend work for eight hours as to those workers who reach the production target and attend a 10-hour work. The workers find that the demand gives rise to a rights dispute because this demand is stated in the meeting minutes on provision of the daily bonus dated 31 December 2012 of the company.

The workers make the demand as other factories provide the bonus to their workers when they reach production targets and have justifiable reasons for leaving work at 3:15 p.m. The employer does not agree to the demand because in order to be eligible for the daily bonus, workers are required to reach production targets and attend work for 10 hours from 6:30 a.m. to 5:15 p.m. If the workers fail to attend work for 10 hours, they are still eligible to

receive their daily bonuses as long as they reach their production targets and leave work at the same time altogether; either at 3:15 p.m. (an 8-hour shift) or 5:15 p.m. (a 10-hour shift).

Therefore, the Arbitration Council considers whether the workers have the right to demand the employer provide a daily bonus for team work to workers who reach their production targets, and perform an 8-hour shift but who leave work before other workers in the same team who reach their production targets and attend perform a 10-hour shift.

The meeting minutes on the daily bonus, dated 31 December 2012, and attended by the employer's representatives, various heads of section, and the union's representative, read:

...The company applies a daily bonus to two types of production targets: a ten-hour and an eight-hour production target on Saturdays, pay days and holidays.

1. In a ten-hour production target, to be eligible to receive the daily bonus, the workers in each team shall work up to 10 hours. They are not eligible to receive it if they work for only 8 hours...

According to the meeting minutes and the agreement between the parties at the hearing, the Arbitration Council finds that in order to receive the bonus for a 10 hours' work, the workers are required to attend work for either 10 hours or less than 10 hours as long as the workers in the same team reach the production target and leave work together either at 3:15 p.m. (an 8-hour work) or 5:15 p.m. (a ten-hour work), they are eligible to receive the bonus.

The Arbitration Council finds that the daily bonus in the dispute is conditional. Therefore, the workers who reach the production target, perform an 8-hour shift, and leave work earlier than other workers in the same team are not entitled to receive the bonus.

Therefore, the Arbitration Council rejects the workers' demand that the employer provide the same daily bonus for team work as to the workers who reach their production targets, perform an 8 hour shift, and leave work earlier than other workers in the same team who reach production target but who perform 10-hours of work.

**Issue 2: The workers demand that the employer provide them with their pay slips three days before payday.**

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

Article 112 (b) of the Labour Law states:

The employer must take measures to inform the workers in a precise and easily comprehensible fashion of the items that make up their wage for every pay period when there is a change to the items.

According to the provision above, when there is a change in the workers' wage, the employer shall notify the workers about their wages in precise fashion. This article does not

mention when workers must be notified. The Arbitration Council finds that this Article does not require the employer to provide the workers with their pay slips prior to pay day.

The Arbitration Council finds that a part from Article 112 of the Labour Law which requires the employer to take measures to inform the workers when there is any change on the items that make up their wage, no Articles require a pay slip to be provided to the workers before pay day. Moreover, the Arbitration Council finds that there is no provision in the Labour Law, agreement, collective agreement, or internal work rules or past practice stipulating that the employer is under an obligation to provide a pay slip to the workers three days before their pay day. Therefore, the Arbitration Council finds that the dispute is an interests dispute.

The Arbitration Council considers the MRS of parties involved in interests disputes, Union must possess MRS to negotiate a collective agreement in the enterprise and bring an interests disputes to the Arbitration Council.

Clause 43 of Prakas no.099 of the Ministry of Social Affairs, Veterans and Youth Rehabilitation states:

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

Based on Clause 43 above, the Arbitration Council finds that an Arbitral Award made by the Arbitration Council on interests disputes will become a collective agreement to be implemented for all workers in the company. This will also strip the workers of their right to strike over interests disputes in the future. Therefore, the Arbitration Council cannot resolve interests disputes unless the union possess the MRS in the enterprise or a collective of unions has a membership of over half the total workers in the enterprise (*see the Arbitral Award no.81/04-Evergreen, Issue 4 and 98/04-Great Union, Issue 3*).

In case no.169/11- Fortune Teo, Issue 5, the Arbitration Council declined to consider the interests disputes because the union that brought the dispute did not hold MRS (*see the Arbitral Award no.02/11-Pou Yuen, Issue 2 and 66/11-In Han Sung, Issue 1*).

In this case, the union, the claimant, does not hold a certificate of the MRS at the company. Therefore, the Arbitration Council decides that the union does not have the right to bring an interests dispute to the Arbitration Council.

Therefore, the Arbitration Council decides to decline to consider the workers' demand that the employer provide workers with their pay slips three days before pay day.

**Issue 3: The workers demand that the employer provide an additional US\$8 transportation allowance.**

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

The Arbitration Council finds that there is no provision in the Labour Law, agreement, collective agreement, or internal work rules or past practice stipulating that the employer is under an obligation to provide an additional US\$8 transportation allowance to the workers. Therefore, the Arbitration Council finds that the dispute is an interests dispute (*see the interpretation of interests dispute in Issue 2 above*).

Therefore, the Arbitration Council decides to decline to consider the workers' demand that the employer provide an additional US\$8 transportation allowance.

**Issue 4: The workers demand that the employer provide workers with an additional 2,000 riel overtime meal allowance.**

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

The Arbitration Council finds that there is no provision in the Labour Law, agreement, collective agreement, or internal work rules or past practice stipulating that the employer is under an obligation to provide an additional 2,000 riel overtime meal allowance to the workers. Therefore, the Arbitration Council finds that the dispute is an interest dispute (*see the interpretation of interest dispute in Issue 2 above*).

Therefore, the Arbitration Council declines to consider the workers' demand that the employer provide an additional 2,000 riel payment in lieu of lunch to the workers.

**Issue 5: The workers demand that the employer permit sick, elderly and less mobile workers to leave five minutes early.**

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

The dispute is about the employer's practice of permitting the workers who have health-related issues to leave work 5 minutes early every day. Therefore, the Arbitration Council finds that the dispute is a rights dispute.

In this case, the employer claims that it arranges for workers with health-related issues to leave early every day as long as their illnesses have been certified by doctors. At the hearing, the Arbitration Council ordered the workers to submit evidence, including a list of workers who were involved in a pushing incident and those who have health-related issues by 17 June 2013. The workers fail to submit the evidence by the set date.

The Arbitration Council always declines to consider the workers' demands when there is not enough evidence (*see Arbitral Awards no. 63/04- Shine Well, Issue 4, no. 99/06-South Bay, Issue 5, no. 74/07-Global Apparel, Issue 2, no. 91/07-J K, Issue 2, no. 94/07-Fortune Garment, Issue 6 and 8 and no. 65/09-Nugget, Issue 2*).

In this case, the Arbitration Panel agrees with the interpretation made in the previous cases because the Arbitration Council has no sufficient basis such as documents and evidence to consider the workers' demand.

Therefore, the Arbitration Council decides to decline to consider the workers' demand that the employer permit sick, elderly, and less mobile workers to leave five minutes early every day.

**Issue 7 and 8: The workers demand that the employer refrain from reducing their wage when they leave work 15 minutes early.**

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

Since the demand is about wages provided by the employer to the workers in exchange for services rendered by the workers, as stated in Article 102 of the Labour Law, the Arbitration Council finds that the dispute is a rights dispute.

The Arbitration Council will consider whether the workers have the right to demand that the employer refrain from docking their wages when they leave work 15 minutes early.

Article 102 of the Labour Law in 1997 states:

“For the purposes of this law, the term "wage", irrespective of what the determination or the method of calculation is, means the remuneration for the employment or service that is convertible in cash or set by agreement or by the national legislation, and that shall be given to a worker by an employer, by virtue of a written or verbal contract of employment or service, either for work already done or to be done or for services already rendered or to be rendered”

In the Arbitral Award no. 107/13-Sun Well Shoe, Issue 4, the Arbitration Council interprets:

“According to Article 102 of the Labour Law above, the Arbitration Council finds that the meaning or definition of “wage” is the remuneration that the employer provides to the workers in exchange for the workers' performance of specific work for the employer.”

The Arbitration Council in this case agrees with the interpretation in the previous cases. Therefore, the Arbitration Council finds that the employer shall pay wages to the workers for particular work performed by the workers for the employer.

At the hearing, the workers claim that in the past, the employer did not dock their wages when they left work early. The employer started to dock their wages in February 2013. In this case, the workers demand full wage payment if they depart work 15 minutes early. This means that the workers do not provide their services to the employer during the 15 minutes. Therefore, based on Article 102 of the Labour Law above, the workers are not entitled to receive wages for that 15-minute period. The Arbitration Council finds that the employer is not under any obligation to provide wages to the workers who do not fulfill their work by leaving 15 minutes early.

Therefore, the Arbitration Council rejects the workers' demand that the employer refrain from docking their wages when they leave work 15 minutes early.

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

### **DECISION AND ORDER**

#### **Part I. Rights dispute:**

##### **Issue 1:**

Reject the workers' demand that the employer provide the same daily bonus for team work to workers who reach the production target within an 8-hour period of work, and leave work earlier than other workers in the same team who reach the production target within a 10-hour period of work.

##### **Issue 5:**

Decline to consider the workers' demand that the employer permits sick, elderly, and less mobile workers to leave work five minutes early every day.

##### **Issue 7 and 8:**

Reject the workers' demand that the employer refrain from docking their wages when they leave work 15 minutes early.

#### **Type of award: binding award**

The award of the Arbitration Council in Part I will be final and is enforceable by the parties in accordance with the MoU dated 3 October 2012.

#### **Part II. Interests dispute:**

##### **Issue 2:**

Decline to consider the workers' demand that the employer provide payslips three days before payday.

##### **Issue 3:**

Decline to consider the workers' demand that the employer provide an additional US\$ 8 transportation allowance.

##### **Issue 4:**

Decline to consider the workers' demand that the employer provide workers with an additional 2,000 riel overtime meal allowance.

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

The award in Part II will become binding eight days after the date of 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: **Ing Sothy**

Signature: .....

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: .....