



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអន្តរាជ្យាករ

THE ARBITRATION COUNCIL

Case number and name: 02/08 – Cambodia Apparel

Date of Award: 15 January 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: **Sin Kim Sean**

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

DISPUTING PARTIES

Employer:

Name: **Cambodia Apparel Industry Ltd.**

Address: National Road No. 4, Chombok Village, Vorsor Commune, Somrong Tong District,
Kompong Speu Province

Telephone: 016 866 089

Fax: N/A

Representatives:

1. Ms. Un Heang Administrator;
2. Mr. Mom Thon Administrative Assistant.

Workers:

Name: **Khmer Youth Federation Trade Union (KYFTU)**

Address: National Road No. 4, Chombok Village, Vorsor Commune, Somrong Tong District,
Kompong Speu Province

Telephone: 092 902 569

Representatives:

1. Mr. Nov Titha KYFTU official;
2. Mr. Huy Sopharith KYFTU official;
3. Mr. Un Dara KYFTU official;

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|-------------------|---|
| 4. Ms. Un Many | President of KYTU at Cambodia Apparel; |
| 5. Ms. Huon Phany | Vice-president of KYTU at Cambodia Apparel; |
| 6. Ms. Kao Thea | Secretary of KYTU at Cambodia Apparel. |

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- Issue 2. The workers demanded that the company take measures against Administrative Chief Un Heang and Administrative Assistant Meas Sopheap who accepted a bribe of US\$ 30 for each new worker.
- Issue 5. The workers demanded that the company pay the workers on the fifth day of the month and the payment shall be ready by 4:00 p.m.
- Issue 8. The workers demanded that the company provide each of them with a copy of the contract when the company employs them. They also demanded that the company deduct 5% severance pay for workers whose contracts are terminated every six months.
- Issue 9. The workers demanded that the company build a daycare center for the working mothers who bring along their kids.
- Issue 11. The workers demanded that the company issue them employment cards without charging US\$10 and return the US\$ 10 to those workers who were already charged by the company.

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B of the Labour Law (1997); the Prakas on the Arbitration Council No. 099 dated 21 April 2004; the Arbitration Council Procedural Rules which form an Annex to the same Prakas; and the Prakas on the Appointment of Arbitrators No. 076 dated 10 May 2007 (Fifth Term).

An attempt was made to conciliate the collective dispute that is the subject of this Award, as required by Chapter XII, Section 2A of the Labour Law. The conciliation hearing which took place on 31 December 2007 was unsuccessful, and the non-conciliation report No. 596 was submitted to the Secretariat of the Arbitration Council on 2 January 2008.

HEARING AND SUMMARY OF PROCEDURE

- Place of hearing:** The Arbitration Council, Phnom Penh Centre, Building A, Sothearos Blvd., Sangkat Tonle Bassac, Khan Chamkarmon, Phnom Penh.
- Date of hearing:** 10 January 2008 (from 3:30pm to 4:30pm)

Procedural issues:

Cambodia Apparel Industry, which is located on national road No. 4, Chombok Village, Vorsor Commune, Somrong Tong District of Kompong. Speu Province, employs 675 workers.

On 24 October 2007, Kampong Speu Department of Labour and Vocational Training received a request from a trade union and workers to resolve 11 issues. Having received the complaint, Kampong Speu Department of Labour and Vocational Training designated its officials to resolve the dispute at Kampong Speu Department of Labour and Vocational Training on 17 December 2007. Five (Issues 1, 3, 4, 6 and 10) out of a total of 11 issues were successfully conciliated in the last conciliation session held on 21 December 2007. Regarding Issue 7, both parties agreed not to resolve it because the company had already taken measures against Chinese worker Lao Khor, who hit another worker with a drinking water bottle, since he had already resigned from the company. Thus, based on the non-conciliation report of Kampong Speu Department of Labour and Vocational Training, five issues (Issues 2, 5, 8, 9 and 11) remained unresolved. The five non-conciliated issues were submitted to the Secretariat of the Arbitration Council on 2 January 2008.

On 2 January 2008, the Secretariat of the Arbitration Council was informed by Kampong Speu Department of Labour and Vocational Training and the employer that the workers were going on strike, and they requested the Arbitration Council to issue an order to stop the workers' strike. On 2 January 2008, Secretariat of the Arbitration Council invited the disputing parties to select an arbitrator from their respective lists in order to establish an Arbitration Panel to resolve the issues in the case. The employer picked its arbitrator directly while the workers picked their arbitrator via telephone. After the Arbitration Panel was established, on 3 January 2008 the Arbitration Panel issued an order to have the workers stop the strike and required the workers to return to work on 4 January 2008 in order to wait for the fact finding of the Arbitration Council regarding the dispute. On 4 January 2008, the Arbitration Panel was informed by the Secretariat of the Arbitration Council that the workers had still not returned to work as ordered by the Arbitration Council. They said they were continuing to strike because the employer had not reinstated the three dismissed union leaders.

Having received the information of the workers' strike, the Arbitration Panel requested the Secretariat of the Arbitration Council to invite both the employer and the workers to attend a hearing on 10 January 2008. Both parties were present at the hearing as summoned by the Arbitration Council. In the pre-hearing meeting, the Arbitration Panel inquired about the work stoppage and whether the employer would allow all workers to return to work. The workers claimed that they would have returned to work if the three dismissed union leaders had been reinstated. The company claimed it had opened its doors for all workers to return to work but the workers themselves did not agree to return to work.

Regarding the three union leaders, the company claimed that it had terminated their labour contracts already. Having listened to both parties, the Arbitration Council requested all workers to return to work and asked the employer to allow all workers to return to work to allow the Arbitration Council to continue to resolve the dispute based on the Labour Law. The Arbitration Council gave the disputing parties until 14 January 2008 to decide if they were willing to have the Arbitration Council resolve the non-conciliated issues. If both parties did not agree to the offer, the Arbitration Council would have to discontinue the proceedings in the case.

On 14 January 2008, the Secretariat of the Arbitration Council was informed that the workers had not returned to work even though the company had opened its doors to welcome all workers back to work, except the three union leaders. The workers reiterated that they did not return to work because the employer did not reinstate the three union leaders.

Therefore, in this case the Arbitration Council considers [this issue] as follows:

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer:

1. Notification on the expiration of labour contracts on 31 December 2007 dated 28 December 2007 of Huon Phany, Kao Thea and Un Many;

Provided by the workers: N/A

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

1. Report No. 596 on the collective labour dispute settlement at Cambodia Apparel dated 31 December 2007;
2. Minute of the collective labour dispute conciliation at Cambodia Apparel dated 28 December 2007.

Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 010 to the workers at Cambodia Apparel Company to provide information dated 8 January 2008;
2. Invitation No. 011 to the director of Cambodia Apparel Company to provide information dated 8 January 2008;
3. Arbitral Award No. 001 dated 3 January 2008.

FACTS

No facts were found regarding the disputing issues stated in the non-conciliation report submitted by the Ministry of Labour to the Arbitration Council because the hearing of the Arbitration Council could not proceed.

REASONS FOR DECISION

Article 20 of Prakas No. 099 dated 21 April 2004 on the Arbitration Council states that, *“During the arbitration process, the parties to the dispute must abstain from any strikes or lockouts (as defined in Article 318 of the Labor Law), or any other action likely to aggravate the situation. The parties must attend all meetings to which the arbitration panel calls them.”*

Furthermore, in the previous awards, the Arbitration Council interpreted this article to mean that the Arbitration Council can not proceed with the arbitration process when the workers were striking or the employer was locking them out.

Regarding workers’ strike during the arbitration process, in previous cases the Arbitration Council has held as follows:

In Award 04/04 – MSI, the Arbitration Council issued a Notification dated 29 January 2004 in which clause 4 of the notification states, *“Considering that the party to a labour dispute has no right to strike during the Arbitration Council process, the Council cannot resolve or issue an award on this collective labor dispute that was referred to the Council. The Council can begin to resolve this collective labor dispute again when the union and workers stop striking or the employer requests to the Council to continue resolving this collective dispute.”*

In Award 77/05 – Franco Knitting Garment, the Arbitration Council issued the second Order dated 24 December 2005 by stating under Issue 4 that, *“In the case that the worker party continues striking, the Arbitration Council will not proceed with the collective labour dispute settlement.”*

In Awards 28/06 – GDM and 34/06 – Gold Fame, the Arbitration Council also issued awards to close the case because the workers continued striking during the arbitration process. (See Award 97/07 – Suit Way)

Regarding the employers’ lockouts during the arbitration process, in this case the Arbitration Council finds its approach in the previous cases as follows:

In Award 22/07 – Park View, the Arbitration Council issued an award to close the case because the workers were still striking and the employer was locking them out during the arbitration process.

Based on the above interpretation, the Arbitration Council finds that both parties did not show any intention to resolve the labour dispute at the Arbitration Council because both parties did not follow the Arbitration Council’s order. Therefore, to be consistent with the law

as well as the previous Arbitral Awards, the Arbitration Council decides not to proceed with the arbitration process of this case.

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

DECISION

Discontinue the arbitration process of case 02/08 – Cambodia Apparel.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer:

Name: **Ing Sothy**

Signature:

Arbitrator chosen by the workers:

Name: **Sin Kim Sean**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: