

KINGDOM OF CAMBODIA
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ARBITRATION COUNCIL

Case number and name: 01/06-Goldtex Hing Shing

Date of Award: 23 January 2006

ARBITRAL AWARD

Issued under Article 313 of the Labour Law

ARBITRATION PANEL

Arbitrator chosen by the employer party: **Kao Thach**
Arbitrator chosen by the worker party: **An Nan**
Chair Arbitrator (chosen by the two Arbitrators): **Kong Phallack**

DISPUTING PARTIES

Employer party:

Name: Goldtex Hing Shing (Cambodia) Co., Ltd.
Address: Ang Keo villegae; Kantok commune; Ang Snoul district, Kandal province.
Telephone: 023 845 450
Fax: 023 219 968

Representative:

1. Mr. Bat Thoun Administration Officer of the company;
2. Mr. Srenn Kimsreng Administrative Assistant.

Worker party:

Name: Union Federation of Independent and Democratic (UFID) of Goldtex Hing Shing
Address: Ang Keo villegae; Kantok commune; Ang Snoul district, Kandal province
Telephone: 012 945 116 Fax: n/a

Representative:

1. Mr. Phoung Motrey President of UFID
2. Liv Thary Official of UFID
3. Ms. Von Sokheng Leader of sewing line at Goldtex Hing Shing company
4. Ms. Ly Sopha Leader of trimming line at Goldtex Hing Shing company
5. Ms. Kheng Sreydy Leader of combination line at Goldtex Hing Shing company
6. Ms. Chhon Savenn Worker at Goldtex Hing Shing company
7. Ms. Kim Vann Worker at Goldtex Hing Shing company.

ISSUES IN DISPUTE

According to the minute of the non-conciliation report, the below issues are the workers' demands in this case:

- 1- The workers demand that the company dismiss the company's administrator.
- 2- The workers demand that the company apply overtime work based on a voluntary basis.
- 3- The workers demand the company not dismiss any workers without a reason.
- 4- The workers demand the company take responsibility for any sick worker.
- 5- The workers demand that the company arrange for a doctor to stand-by during every working hour.
- 6- The workers demand that the company provide casual workers the same wage as permanent workers.
- 7- The workers demand that the company keep all the workers working as usual.
- 8- The workers demand that the company consider female workers who have worked for more than 2 months as permanent workers.
- 9- The workers demand that the company pay wages not later than the 10th of the month.
- 10- The workers demand that the company pay wages according to the Labour Law.

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B of the Labour Law (1997); the Prakas on the Arbitration Council 99/04 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 513/05 (third 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. However both parties did not reach an agreement and the non-conciliation report No. 007/05/MoVLT dated 29 December 2005 was submitted to the Secretariat of the Arbitration Council on 03 January 2006.

HEARING AND SUMMARY OF PROCEDURE BEFORE THE ARBITRATION COUNCIL

Place of hearing: Arbitration Council, Phnom Penh Center, Building A, Sothearos Blvd, Tonle Bassac, Chamkamorn, Phnom Penh.

Date of hearing:

- Inquiry prior to hearing: 10 January 2006 (at 9:30 a.m. to 12:00 p.m.)
- Hearing date: 12 January 2006 (2:00 to 5:00 p.m.)

Procedural issues:

On 27 December 2005, the Labour and Training Officer in Kandal province conducted a conciliation of ten collective labour demands, but the issues could not be successfully conciliated because negotiations over the first issue, related to the dismissal of the administrator, Bat Thourn, failed.

On 3 January 2006, the Arbitration Council received the case and the non-conciliation report No. 007/05-MoLVT, dated 28 December 2005, from Mr. Thong Neang, Chief of Labour and Vocational Training in Kandal province.

After receiving the case, the Arbitration Council invited both the employer and worker parties to obtain more information and to conduct a conciliation over the ten remaining issues on 10 January 2006 at 9:30 a.m. and to open a hearing on 12 January 2006 at 2:00 p.m. Both parties attended the Arbitration Council on both occasions. On the dates of inquiry, for the conciliation and the hearing, the Arbitration Council attempted to conciliate [the issues] and successfully conciliated 8 of the 10 issues: the 2nd, 3rd, 4th, 5th, 6th, 8th, 9th and 10th issues. Thus in this Arbitral Award the Arbitration Council will consider only the remaining issues, namely the 1st and 7th issues based on the evidence and findings of facts below:

EVIDENCE

Witnesses and experts: n/a

DOCUMENTS, EXHIBITS AND OTHER EVIDENCE CONSIDERED BY THE ARBITRATION COUNCIL**A. Provided by the employer party:**

1. Delegating letter from director of the company to Mr. Bat Thoun dated 12 January 2006.
2. Notice dated 27 December 2005 on the information for workers from Goldtex [Hing Shing] factory at Chack Ang Re coming to collect money and for workers at the new factory to return to work.
3. Internal Work Rules of the company registered on 24 July 2005.

B. Provided by the worker party:

1. Minute on conciliation of the collective labour dispute dated 27 December 2005.
2. Supporting letter to ask the company dismiss the administration officer.

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

1. Report dated 29 December 2005 on the resolution of the collective labour dispute at Goldtex Hing Shing company No. 007/05/MoLVT of Mr. Thong Neang, Chief of the Labour and Vocational Training Office at Kandal province.
2. Minute on the conciliation of the collective labour dispute dated 27 December 2005.

D. Provided by the Secretariat of the Arbitration Council:

1. Invitation letter No. 007 dated 5 January 2006 to invite the workers to appear in the hearing.
2. Invitation letter No. 006 dated 5 January 2006 to invite the employer to appear in the hearing.
3. Invitation letter No. 005 dated 4 January 2006 to invite the employer to select an Arbitrator.

FACTS

- Having examined all documents submitted to the Arbitration Council.
- Having listened to the arguments of the workers and employer.
- Having checked the report on conciliation of the collective labour dispute.

The Arbitration Council finds that:

2nd and 7th issues: The workers demand that the company dismiss Mr. Bat Thoun and reinstate the former workers of Chak Angrei Le.

- The workers demand that the company dismiss Mr. Bat Thoun because he does not know the Labour Law as demonstrated by his dismissal of 34 workers by reason of his own will, detaining the worker named Kim Vann and her two friends from 11:00 a.m. to 12:00 p.m. on 26 December 2005 and his poor health.
- The worker party clarified and agreed that Mr. Bat Thoun never committed any act of violence or inflicted injury upon any workers.
- Mr. Bat Thoun said that if he does not know the Labour Law how was he able to assist in solving these issues. Regarding the dismissal of 34 workers who joined a strike on 26 December 2005 and were already paid, they were probationary workers who could not perform well. As for the detention of the worker named Kim Van and her two friends from 11:00 a.m. to 12:00 p.m. on 26 December 2005, this was not true. He did not detain them, but just asked them to wait for their piece rate coupons. Finally, his health is good, he has had it checked already.
- Kim Van said that the company took her and her friends' receipts and dismissed them without valid reason. Thirty-four workers subsequently conducted a strike to support them.
- The strike took place on 26 December 2005, following the alleged detention of the three workers. Then on 27 December 2005, the company made an announcement for all workers from Goldtex Chak Angrei Le to cash the money arranged by the

company, but did not allow them to return back to work. The company allowed only new workers who were recruited near the factory to work.

- The employer did not provide evidence to show that the 34 workers committed any misconduct that led to their dismissal.
- The 34 workers are former workers from Goldtex Chak Angrei Le. These workers were persuaded by the boss named Thang Ping to work for Goldtex Hing Shing Company, which was a new company, by promising to provide the same salary as the previous company in addition to paying for accommodation in the amount of US\$8 per month.
- There were about 60 workers from Goldtex Chak Angei Le, but the company has now dismissed most of them and there are only two remaining workers. Some workers resigned because they found the new workplace to be too far from their homes.
- The company did not provide any evidence to show that workers could not perform well or that they are probationary workers.

REASONS FOR DECISION

1st Issue:

Based on the evidence and facts set out above, the Arbitration Council finds that the workers' demand that the company dismiss Mr. Bat Thoun is not proper and is not in accordance with principles related to employment contracts. Generally the Arbitration Council finds that it does not have the right to order that the employer dismiss any workers by virtue of [other] workers' demands. (See cases 04/03-Lida, 14/03- Chou Sing, 17/03 and 18/03- Ho Hing, 06/04- Chousing, 15/04- Lucky Zone, 16/04-Yada Printing, 32/04- Esin, 34/04- Full Value and 76/05- Global Footwear).

The Arbitration Council notes that there are some exceptions where the Arbitration Council may order an employer to dismiss or transfer workers, for example if workers endanger the health and safety of other workers. However, based on the facts above, it has been shown that Mr. Bat Thoun never hit any workers and also never used abusive language or looked down on other workers. Thus, the Arbitration Council cannot order the employer to dismiss or transfer the worker (see 14/03- Chou Sing).

According to Article 65 of the 1997 Labour Law on employment contracts, the employment contract establishes working relations between the worker and the employer. It is subject to ordinary law and can be made in a form that is agreed upon by the contracting parties. Because this contract is under common law, thus a labour contract also is covered by the Decree No. 38 on Contracts and Liabilities dated 28 October 1988. Article 22 of the Decree No. 38 states that "A contract is a legally binding agreement between the parties. Amendments to the contract can only be made with the consent of both contracting parties".

Therefore, only the contracting parties have the right to terminate the employment contract. This means that the hiring or dismissal of any employee in the company is the sole right of the employer who is a party to the contract. Even if a worker commits serious misconduct as mentioned in Article 83 of the Labour Law; and the Labour Law does not require the employer to dismiss the worker in this case, the Labour Law only gives the employer the right to dismiss the worker (see 14/03-Chou Sing, 17/03 and 18/03-Hu Hing and 18/05-AIA).

In conclusion the Arbitration Council finds that the workers' demand that the company dismiss Mr. Bat Thoun is not appropriate and does not conform with the law Therefore the Arbitration Council decides to reject the workers' demand to dismiss Mr. Bat Thoun.

7th Issue:

In this case, the workers demand that the company reinstate 34 workers who were dismissed after they moved from the company's other workplace, Chak Angrei Le. In the hearing, Mr. Bat Thoun, the company's representative, said that the company cannot reinstate those workers because they joined the strike on 26 December 2005, and also were paid already in accordance with the announcement of the company made on 27 December 2005, and those workers are probationary workers who cannot perform well. The Arbitration Council considers the following issues:

1. The Labour Law with respect to strikes
2. Probationary workers who do not perform well
3. The company's announcement on 27 December 2005

1. Labour Law with respect to strikes

In this case the employer said the reason the company dismissed 34 workers was because they joined the strike on 26 December 2005 [which began] after learning that the employer detained three workers without a valid reason.

Article 332 paragraph 2 of the Labour Law states that "The worker shall be reinstated in his or her job at the end of the strike."

Article 333 of the Labour Law states that "The employer is prohibited from imposing any sanction on a worker because of his or her participation in a strike. Such sanction shall be nullified and the employer shall be punishable by a fine in the amount set in Article 369 of Chapter XVI."

In addition, in the hearing the employer did not provide any evidence demonstrating those workers committed any serious misconduct that led to their dismissal.

In conclusion the Arbitration Council finds that the act of the employer against [the 34 workers] was a punishment that contradicted the Articles of the Labour Law above. Thus, the Arbitration Council finds that the employer must reinstate these workers.

2. Probationary workers with poor work performance

In the hearing the employer party said that the reason the company does not reinstate these workers is because they are probationary workers with poor work performance. But in this case the Arbitration Council finds that most of the workers previously worked at Goldtex Chak Angrei Le factory where they were persuaded by their boss named Thang Ping to work at the new factory, Goldtex Hing Shing, by a promise to provide the same salary along with an accommodation allowance of US\$8 per month. In addition, the company did not show any evidence that the workers could not perform their work well or that they were probationary workers. Thus, the Arbitration Council finds that the argument of the employer is not credible because most workers are former workers from Chak Angrei Le.

3. Company's announcement on 27 December 2005

The company's announcement on 27 December 2005 states that *"the company will allow all workers who are present to return to work at 12:00 p.m. (on 27 December 2005) and the company will not inquire into any past issues and also will not cut wages or attendance bonus"*.

The Arbitration Council finds that the announcement of the company made on 27 December 2005 was discriminatory and was intended to dismiss workers who had previously worked at Chak Angrei Le because this announcement states clearly that the company will allow only workers present at the factory to return to work.

In conclusion the Arbitration Council finds that the dismissal of the 34 workers from Chak Angrei Le factory was at the unilateral will of the company [and without reason], and was not because the workers committed misconduct or could not perform work well.

Therefore the Arbitration Council decides that the company must reinstate these workers who joined the strike to support other dismissed workers.

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

DECISION

1. Reject the workers' demand that the company dismiss Mr. Bat Thoun.
2. Order the employer reinstate all former workers from Chak Angrei Le after this award comes into effect.

Type of Award: non binding award

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

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Kao Thach**

Signature:

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature:

Chair of arbitration panel:

Name: **Kong Phallack**

Signature: