



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

**ក្រុមប្រឹក្សាសវនកម្មជាតិ**

**THE ARBITRATION COUNCIL**

**Case number and name: 01/08- GDM**

**Date of Award: 23 January 2008**

### **ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

#### **ARBITRATION PANEL**

Arbitrator chosen by the employer party: **Lee Tayseng**

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

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

#### **DISPUTING PARTIES**

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

Name: **GDM Enterprise, Co.**

Address: National Road No. 5, Sang Kat Russey Keo, Khann Russey Keo, Phnom Penh

Telephone: 012 400 819

Fax: N/A

Representative:

1. Mr. Am Mony      Head of Administration
2. Mr. Tang Meng      Staff of Administration

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

Name: Cambodia Workers Labour Federation of Trade Union (CWLFU)

Address: National Road No. 5, Sang Kat Russey Keo, Khann Russey Keo, Phnom Penh

Telephone: 012 195 32 36

Fax: N/A

Representative:

1. Mr. Vong Sovann      President of CWLFU
2. Mr. Ek Sokchea      Acting General Secretary of CWLFU
3. Mr. Keut Sophea      President of local CWLFU
4. Mr. Yeu Rosak      Vice-president of local CWLFU
5. Mr. Tha Yorn      Secretary of local CWLFU

6. Mr. Nhet Vanny

Trainer of CWLFU

### **ISSUES IN DISPUTE**

(In the Non-Conciliation Report)

1. Mr. Keut Sophea, head of local CWLFU at GDM, demands the Company reinstate him because the termination was as a result of union discrimination. The Company, on the other hand, says it cannot reinstate him because it has already given notice that it has terminated the contract.

### **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. 1403 K.B./AK/VK, dated 28 December 2007 was submitted to the Secretariat of the Arbitration Council on 02 January 2008.*

### **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:** 9 January 2008 (8:00 a.m. to 10:00 a.m.)

**Procedural issues:**

On 18 December 2007, the Department of Labour Disputes received a complaint by phone from the Cambodia Workers Labour Federation of Trade Union regarding a demand for the Company to improve its working conditions. After receiving the complaint, the Department of Labour Disputes designated an officer to conciliate the dispute and the last conciliation was held on 20 December 2007. [As a result] 13 out of [a total] 14 issues were conciliated. The one non-conciliated issue was referred to the Secretariat of the Arbitration Council on 2 January 2008.

After the receipt of the case, the Secretariat of the Arbitration Council summoned the employer and the workers to the hearing and conciliation on the one non-conciliation issue on 9 January 2008 at 8:00 a.m. Both parties were present [at the hearing] as requested by the Arbitration Council.

On the hearing day, the Arbitration Council attempted to further the conciliation on the one non-conciliation issue stated in the non-conciliation report from the Department of Labour Disputes, but was unsuccessful. Thus, the Arbitration Council will consider this issue in dispute based on evidence and clarification of the parties in the hearing as follows:

## **EVIDENCE**

**Witnesses and experts:** N/A

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

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

1. Patent of GDM No. LTU 009756.2006, dated 26 April 2006.
2. Certificate of commercial registration of GDM No. 007 PN.NTK, dated 02 January 2004.
3. Letter No. 3879/06 KVK regarding request to expand washing production in a new location, dated 24 October 2006.
4. Letter to request for exemption of tax for the importation of generator machines and some chemical substances for the process or expanding production of garment and washing factory for exportation, dated 13 October 2006.
5. Minutes of collective dispute conciliation of GDM, dated 20 December 2007.
6. Notification to the Company regarding strike on 21 December 2007 dated 14 December 2007.
7. Probationary employment contract of Keut Sophea, dated 20 April 2007.
8. Regular employment contract of Keut Sophea, dated 20 June 2007.
9. Request for visa on Internal Work Rules of GDM and Internal Work Rules of GDM, dated 26 October 2006.
10. Letter by the Company regarding non-continuation of contract of Keut Sophea.

#### **Provided by the workers:**

1. Summary statement by CWLFU, dated 03 January 2008.
2. Notification regarding election to establish local CWLFU at GDM, dated 12 December 2007.
3. Minutes of meeting to elect head, vice-head and secretary of local CWLTU at GDM, dated 11 December 2007.
4. List of names of leaders of local CWLTU at GDM, dated 12 December 2007.
5. Declaration of CWLFU, dated 21 December 2007.
6. Notification regarding strike on 14 December 2007.
7. Minutes of collective labour conciliation at GDM, dated 20 December 2007.

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

1. Report of the collective labour dispute resolution at GDM, No. 1403 K.B/AK/VK dated 28 December 2007
2. Minutes of collective labour dispute conciliation of GDM, dated 20 December 2007.

Provided by the Secretariat of the Arbitration Council:

1. Invitation letter No. 030 K.K.B.V/AK/VK/LKA dated 30 January 2008 to invite the workers to attend the hearing.
2. Invitation letter No. 031 K.K.B.V/AK/VK/LKA dated 30 January 2008 to invite the employer to attend the hearing.

**FACTS**

- Having examined the documents the parties submitted to the Arbitration Council
- Having reviewed the report of the collective labour dispute conciliation
- Having listened to statements by representatives of the workers and the employer

**The Arbitration Council finds that:**

- GDM employs about 420 workers.
- According to the claim by the workers, the local CWLFU at GDM who is the claimant in this case has not yet [received a certificate of] union registration. However, the union applied for registration on 13 December 2007.
- According to the workers, CWLFU held an election to elect leaders for the local CWLFU at GDM on 11 December 2007 and notified the employer of the result of the election to elect the leaders of the local CWLFU at GDM by letter dated 12 December 2007. The workers did not provide any evidence to prove that the Company received the notification regarding the election of the leaders of the local CWLFU at GDM on 12 December 2007.
- The employer said that the Company did not know about the establishment of the union on 13 December 2007. The workers do not object to this.

**The issue in dispute: The workers demand that the Company reinstate Mr. Keut Sophea, president of local CWLFU at GDM**

- The workers state that Mr. Keut Sophea commenced work in the ironing section on 20 April 2007 as a probationary worker. The Company made him a regular worker on 20 June 2006.

- Mr. Keut Sophea's was employed on a two month probationary contract, commencing on 20 April 2007 and expiring on 20 June 2007.
- Mr. Keut Sophea was employed on a six month fixed duration contract (as a regular worker), commencing on 20 June 2007 and expiring on 20 December 2007.
- The total duration of Mr. Keut Sophea's work at the Company was eight months including the periods as a probationary and regular worker.
- The Company gave notice about the expiration and the non-renewal of the contract on 12 December 2007. Mr. Keut Sophea claims that as at the hearing day he had not received the 5% severance pay [due to him on contract expiration].
- Mr. Keut Sophea demands that the Company reinstate him because the non-renewal of his contract was [as a result of] union discrimination and he wants to help to resolve workers' problems. Mr. Keut Sophea does not provide any evidence regarding union discrimination besides mentioning that he is an elected union leader.
- The Company maintains that the decision not to continue Mr. Keut Sophea's contract was not union discrimination. The Company mentions that it gave notice to end Mr. Keut Sophea's contract on 12 December 2007 and the Company was [only] aware of the union establishment on 13 December 2007 - one day after the Company gave notice to terminate the contract. The workers do not object to this.
- The Company mentions that the reason that the Company decided not to continue the contract of Mr. Keut Sophea was because recently his productivity has decreased continually. In the hearing the Company claimed Mr. Keut Sophea's productivity decreased; that he used to produce high output during the first two months when he was a probationary worker during which his productivity was always among the highest (productivity counted within eight hours). After he completed his probationary period and became a regular worker, his productivity lowered from the first [rank] to second [rank]. For example, on 21 September 2007, the first rank person produced 219 and the second rank (Mr. Keut Sophea) produced 181 and the third person, 141. During the last two months before his contract expired, his productivity decreased further.
- Mr. Keut Sophea mentions that his productivity decreased because the Company did not allow him to work overtime and it had him working in multiple locations, not only in the ironing section. In addition, he adds that his productivity was really down but he always reached the number determined by the Company. Mr. Keut Sophea adds that the reason that he did not work overtime was because he had a dispute with [his] supervisor during Pchum Ben. The Chinese supervisor requested him to work overtime but he did not agree. Thereafter the supervisor never allowed him to work

overtime again. He states that the supervisor always used him to help with work in other places.

- The employer mentions that he did not know about the dispute between the supervisor and Mr. Keut Sophea. For productivity, the Company does not take overtime work into consideration, but only counts productivity during eight hours. It may be possible that the supervisor had him work in other places when there was no work in the ironing section. The supervisor was not present at the hearing.
- The Company mentions that it has never given a warning to Mr. Keut Sophea.

### **REASONS FOR DECISION**

#### **The issue in dispute: The workers demand that the Company reinstate Mr. Keut Sophea, president of local CWLFU at GDM**

In this case, the workers demand the Company reinstate Mr. Keut Sophea, union president, because the non-renewal of his contract was [as a result of] union discrimination and he wants to help to resolve workers' problems. The Company mentions that it already gave notification to terminate Mr. Keut Sophea's contract on 12 December 2007 and the non-renewal of the contract is not union discrimination. The Arbitration Council will consider this [issue] as follows:

1. Is the decision not to renew Mr. Keut Sophea's contract union discrimination?
2. Is the notification to end the contract valid?

#### **1. Is the decision not to renew Mr. Keut Sophea's contract union discrimination?**

In this case, the workers claim that the decision not to renew the contract is union discrimination because Mr. Keut Sophea is a newly elected union president. The Company, on the other hand, states that the non-renewal of the contract was because the contract expired and the Company did not continue Mr. Keut Sophea's contract because his productivity had decreased, not because of union discrimination.

Regarding union discrimination, in previous cases the Arbitration Council ordered employers to reinstate workers because the terminations [were as a result of] union discrimination; in violation of Articles 12 and 279 of the Labour Law, which prohibits the employer from using union membership or union activities as a reason to hire, discipline, or terminate an employee's employment contract. (See also the Arbitral Awards 28/07-Dae Kwang, Issue 3; and 123/07-E Garment, Issue 1).

In this case, the Arbitration Council agrees with the decision of the Arbitration Panel in previous cases; the employer has to reinstate a worker if the termination is due to union discrimination; that violates Article 12 and 279 of the Labour Law, which prohibits the employer from using union membership or union activities as a reason to hire, discipline, or terminate an employee's employment contract.

In addition, in previous awards the Arbitration Council determined that the workers have the burden of proof when claiming that the employer has discriminated based on union status. (See Arbitral Awards 90/06-Evergreen, Issue 1; 112/06-River Rich, Issue 1; and 01/07-Supreme, Issue 1). This means that for a specific case, in order to review the evidence, there must be enough evidence to support the workers' demand that there is union discrimination. (See Arbitral Awards 19/04-Kbal Koh, Issue 1; 17/07-Charm Textile, Issue 1).

In this case, the Arbitration Council agrees with the decision of the Arbitration Panel in previous cases that the workers have the burden of proof when accusing the employer of union discrimination.

In this case, based on the above mentioned evidence, the workers mentioned that the decision not to renew the contract was due to union discrimination because the union had already given notice about the result of the election on 12 December 2007. The Company party, on the other hand, says that its actions did not amount to union discrimination because the Company learned about the result of the election on 13 December 2007 and the Company gave notice about the expiration of the contract on 12 December 2007. In the hearing the union did not object to the Company's claim and the union did not provide any evidence to prove that the Company received notification on 12 December 2007.

Thus, the Arbitration Council considers that the workers do not have enough evidence to prove that the decision not to renew the employment contract is due to union discrimination. In conclusion, the Arbitration Council considers that the decision not to renew the employment contract of Mr. Keut Sophea is not union discrimination.

## **2. Is the notification to end the contract valid?**

Article 73, paragraph 1, of the Labour Law states, "A labor contract of specific duration normally terminates at the specified ending date..."

In case 100/07-Hoyear Cambodia, the Arbitration Council interpreted this Article to mean that *"a fixed duration employment contract should expire automatically at the [specified end date]. This means that the obligations of the employer and the workers end. Thus, a party cannot force the other party to continue the contract if there is no agreement."* (See Arbitral Award 100/07-Hoyear Cambodia, Issue 2).

In this case, the Arbitration Council agrees with the decision of the Arbitration Panel in the previous award that the fixed duration [contract] automatically expires at the specified end date and the obligations of the employer and the workers end. Thus, a party cannot force the other party to continue the contract, if there is no agreement.

Article 73, paragraph 5, of the Labour Law states, *"If the contract has a duration of more than six months, the worker must be informed of the expiration of the contract or of its non-renewal ten days in advance. This notice period is extended to fifteen days for contracts*

*that have a duration of more than one year. If there is no prior notice, the contract shall be extended for a length of time equal to its initial duration or deemed as a contract of unspecified duration if its total length exceeds the time limit specified in Article 67.”*

*The above mentioned Article means that if the fixed duration contract has a duration exceeds 6 months [the employer] has to give 10 days notification prior to the expiration of the contract and it can be interpreted that if the fixed duration contract has a duration less than 6 months, it does not requires prior notification.*

In this case, Mr. Keut Sophea became a regular worker following the [signature of an] employment contract from 20 June 2007 to 20 December 2007, which was the expiration date of the fixed duration contract of 6 months duration. Thus, based on the content of Article 73, paragraph 5, of the Labour Law as mentioned above, the Company does not have an obligation to notify Mr. Keut Sopeha regarding the non-renewal of the contract. However, in this case the Company gave notification regarding the expiration of the contract on 12 December 2007. Thus, the Arbitration Council considers that the Company did more than required by the law. Thus, Mr. Keut Sophea’s contract is considered to have expired at the end date specified in the contract.

Therefore, the Company does not have an obligation to reinstate Mr. Keut Sophea. However, according to the findings of fact, Mr. Keut Sophea has not received the 5% severance pay, so the Company has to provide this 5% severance pay to Mr. Keut Sophea as [required] by the Law.

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

**DECISION**

Reject the workers’ demand for the Company to reinstate Mr. Keut Sophea.

**Type of Award: Non binding awards**

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 Secretariat of the Arbitration Council within this time period.

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

Arbitrator chosen by the employer:

Name: **Lee Tayseng**

Signature: .....

Arbitrator chosen by the workers:

Name: **Ann Vireak**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: .....