



KINGDOM OF CAMBODIA

NATION RELIGION KING

ក្រុមប្រឹក្សាអង្គជំនុំជម្រះ

THE ARBITRATION COUNCIL

Case number and name: 04/07-Cambodia Apparel

Date of Award: 25 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 party:

Name: **Cambodia Apparel Industry (Cambodia Apparel Company)**

Address: National Road No. 4, Cham Bak Village, Vor Sor Commune, Samrong Torng District, Kampong Speu Province

Telephone: 016 866 089

Fax: N/A

Representative:

1. Ms. Oun Heang

Head of Administration

Worker party:

Name: **Khmer Youth Federation Trade Union (KYFTU) and local Khmer Youth Trade Union (KYTU)**

Address: National Road No. 4, Cham Bak Village, Vor Sor Commune, Samrong Torng District, Kampong Speu Province

Telephone: 092 902 569

Representative: Absent

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- The workers demand that the Company reinstate Oun Many, Houn Phany and Kao Thea, Local Union Leaders of KYFTU, whom the company dismissed on 28 December 2007.
- 2- The workers demand that the Company take disciplinary measures against Mrs. Oun Heang, head of administration, who takes US\$30 from each worker when they start working at the Company and US\$10 for ID cards, and pay back the amount to workers.
- 3- The workers demand that the Company arrange a doctor to standby during working hours and supply sufficient medicine.
- 4- The workers demand that the Company maintain their wage and attendance bonus when they take sick leave with a proper medical certificate from a doctor.
- 5- The workers demand that the Company convert the workers who have been working for over 2 months to be permanent workers and provide other benefits under the Labour Law.
- 6- The workers demand that the Company pay their wage on the fifth of each month and finish this at 04:00pm.
- 7- The workers demand that the Company take disciplinary measures against Ly Long Yi, Chinese Supervisor, who always uses insulting words toward workers.
- 8- When the Company makes an employment contract with a worker, the Company must provide him/her with one copy of this contract; and at the termination of the contract the company must provide severance pay in accordance with the Labour Law.
- 9- The workers demand that the Company build a day care center and nursing room in the Company. If the Company is unable to build them, it should provide workers with payment for 3 cans of formula milk per moth (1.50 Kg per can) and US\$ 25 per month for a carer.
- 10- The workers demand that the Company deduct 1,000 riels from each worker to pay the union contribution fees of the local KYTU.
- 11- The workers demand that the Company implement voluntary overtime work without coercion.
- 12- The workers demand that the Company implement special leave.
- 13- The workers demand that the Company must not warn the workers when a machine breaks down or when workers do not sew to the company's satisfaction.
- 14- When workers work overtime for more than 2 hours, the Company must transport them back home.
- 15- When Company does not have work for workers to do and asks the workers to take a break, the Company must provide them with full wages (back pay).

- 16- The workers demand that the Company reimburse their annual leave that was deducted during the periods that there was no work in the past.
- 17- The workers demand that when they lose their (ID) card, the Company must not deduct 5,000 riels from their wage to make a new card and it should back pay this.

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. 005 KBV/KSp, dated 04 January 2008 was submitted to the Secretariat of the Arbitration Council on 08 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: 23 January 2008 (From 8:30 a.m. to 10:00 a.m.)

Procedural issues:

Cambodia Apparel Company is located along National Road No. 4, in Cham Bak Village, Vor Sor Commune, Samrong Torng District, Kampong Speu Province and employs approximately 675 workers.

Based on the non-conciliation report by the Ministry of Labour which was referred to the Arbitration Council on the morning of 02 January 2008, the Department of Labour and Vocational Training of Kampong Speu Province was informed that the workers had gone on strike to demand [an improvement in] employment conditions at Cambodia Apparel Company. Immediately after receiving such information, the chief of the Department of Labour and Vocational Training of Kampong Speu Province ordered a group of specialist officers to conduct an inquiry according to its procedures; and after making inquiries with the employer the specialist officers attempted to get the workers and the Company to understand each other and to resolve this problem peacefully. The attempted to conciliate the matter until 10:30 a.m. but did not receive any [conciliation] result. The specialist officers came back to the Department of Labour to find a solution. At 9:25am of 03 January 2008, the Department of Labour received a request to help resolve the workers' demand at Cambodia

Apparel Company. After receiving this request, the Department of Labour and Vocational Training of Kampong Speu Province wrote a letter to invite the Company and the union and representatives of workers to come to [try to] resolve the 17 issues in dispute at the Department of Labour and Vocational Training of Kampong Speu Province on 04 January 2008 at 8:30 a.m.; but the conciliation did not resolve any issues because the Company party did not attend and the worker party did not agree to resolve the issues without the presence of the employer. Hence, the Department of Labour and the specialist officers decided to invite the parties to a second meeting on 04 January 2008 at 2:00 p.m.

On that same day, at 2.30pm neither party had appeared at the Department of Labour to resolve their problems, thus the conciliator decided to refer the case to the Arbitration Council to make a decision so that the work could be completed on time.

Based on the non-conciliation report by the Department of Labour and Vocational Training of Kampong Speu Province, there are 17 issues in this case. The non-conciliation report was referred to the Arbitration Council on 08 January 2008. On that same day, the Secretariat of the Arbitration Council learned from the Department of Labour and Vocational Training of Kampong Speu Province and from the employer that the workers were on strike. At the same time, the Arbitration Council was handling case no. 02/07-Cambodia Apparel, involving the same parties, i.e., the employer party of Cambodia Apparel Factory and the local union of KYTU. Some of the issues in dispute in case 02/08 are the same as the issues in dispute in 04/08-Cambodia Apparel. In case of 02/08-Cambodia Apparel, the Arbitration Council issued an award on 15 January 2008 deciding not to continue the arbitral proceedings because both parties continued to strike and lock-out during the arbitration procedure.

In handling case 04/08-Cambodia Apparel, the Arbitration Council also ordered the Secretariat of the Arbitration Council to invite both parties to attend a pre-hearing meeting of the Arbitration Council. On 21 January 2008, the Secretariat of the Arbitration Council invited the employer party and the worker union to attend a pre-hearing meeting on 23 January 2008 at 08:00 a.m. mentioning that the Arbitration Council intended to inquire about the situation of the strike and lock-out and to advise the parties that the Arbitration Council could only proceed to resolve the labour dispute when the parties stopped their strike or lock-out and other activities that can aggravate the situation during the arbitration process. However, when informed about the invitation to the pre-hearing meeting, the union mentioned to the Secretariat of the Arbitration Council that they would not attend this meeting for the reason that to travel from Kampong Speu Province to the Arbitration Council is very far and they would have to spend a lot of time travelling. The union party also mentioned that the union was filing a complaint to Kampong Speu court to find a solution to this labour dispute. The union also stated that the union had already attended a pre-hearing meeting in case 02/08-

Cambodia Apparel and the Arbitration Council did not have a power to order to Company to allow all the workers to return to work. Thus, the union would let the Arbitration Council decide case 04/08-Cambodia Apparel according to its procedure.

The employer party was present at the pre-hearing meeting at the Arbitration Council on 23 January 2008. However the union did not attend this meeting even though the Secretariat of the Arbitration Council telephoned to remind them about the pre-hearing meeting at the Arbitration Council. Therefore, the Arbitration Council could not ask for detailed information from either party regarding case 04/08-Cambodia Apparel.

On Thursday, 24 January 2008, both parties informed the Secretariat of the Arbitration Council that the workers did not agree to return to work but continued to strike because the employer did not agree to reinstate the 3 union leaders.

Therefore the Arbitration Council will consider this case as follows:

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party: N/A

Provided by the worker party: N/A

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

- Report of the collective labour dispute at Cambodia Apparel Company, No. 005 KBV/KSp, dated 04 January 2008
- Minutes of collective labour dispute conciliation at Cambodia Apparel Company, dated 04 January 2008.

Provided by the Secretariat of the Arbitration Council:

- Letter No. 059 KB/AK/VK/LKA, dated 21 January 2008 to invite the worker party of Cambodia Apparel Garment Company to attend meeting to provide information.
- Letter No. 060 KB/AK/VK/LKA, dated 21 January 2008 to invite the director of Cambodia Apparel Garment Company to attend meeting to provide information.

FINDING OF FACTS

There are no findings of fact regarding the issues in dispute listed in the non-conciliation report, which the Ministry of Labour referred to the Arbitration Council, because the arbitration hearing could not proceed.

REASONS FOR DECISION

In this case, the Arbitration Council decides to discontinue the arbitration process of case 04/07-Cambodia Apparel for the following reasons:

Clause 20 of Prakas 099, dated 21 April 2004, regarding the Arbitration Council states:

“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.”

In this case, the Secretariat of the Arbitration Council received information from the worker party and the employer party that the worker party was still on strike during the Arbitration Council process because the employer did not allow three union leaders to return to work. The Arbitration Council also ordered the Secretariat to invite both parties to come to a pre-hearing meeting with the intention of asking for further information from both parties about the strike or lock-out so that it could proceed to resolve the labour dispute in this case.

An officer of the Secretariat of the Arbitration Council contacted the union and received information that the union party would not attend the arbitration hearing because the distance from Kampong Speu Province to the Arbitration Council in Phnom Penh was too far and it would take a lot of time to travel and, in addition, the Arbitration Council did not have power to order the Company to direct all workers to return to work. The union party also mentioned that the union had come to attend the pre-hearing meeting at the Arbitration Council in case 02/08-Cambodia Apparel; so it would let the Arbitration Council decide this case 04/08-Cambodia Apparel according to its procedure. At the pre-hearing meeting on 23 January, the employer party was present but the worker party was not.

In this case, the Arbitration Council considers that the worker party, who is the claimant in this case, did not comply with Clause 20 of Prakas 099, dated 21 April 2004 regarding the Arbitration Council as mentioned above because it did not stop its strike during the arbitration process and did not participate in the pre-hearing meeting which it was invited to by the Secretariat of the Arbitration Council.

In addition, the Arbitration Council interprets the above mentioned Clause 20 of Prakas 099, dated 21 April 2004 regarding the Arbitration Council [to mean] that the Arbitration Council will not continue the arbitration process when the worker party is on strike or the employer party locks out.

The Arbitration Panel finds the following jurisprudence of the Arbitration Council about workers' strikes during the arbitration process of the Arbitration Council:

In Arbitral Award 04/04-MSI, the Arbitration Council issued a notification, dated 29 January 2004; paragraph 4 of this notification states that *“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 what was referred to the Council. The Council can begin to resolve this collective labor dispute again when the union and workers stop striking.”

In case 28/06-GDM and case 34/06-Goldfame, the Arbitration Council also issued awards to close the cases because the workers continued their strike during the arbitration process of the Arbitration Council. Based on this interpretation, the Arbitration Council considers that the union did not show a genuine intention to resolve this labour dispute at the Arbitration Council because the union continued to strike during the Arbitration Council process; [further the union] did not attend the pre-hearing meeting as invited by the Arbitration Council [the purpose of which was] to find a resolution to the labour dispute in good-faith in this case.

In addition, regarding the lock-out of the employer during the arbitration process, the Arbitration Panel in this case notes the jurisprudence of the Arbitration Council in the previous case 22/07-Park View; in this case the Arbitration Council issued an award to close the case for the reason that the workers continued to strike and the employer continued to lock-out during the arbitration process of the Arbitration Council.

Based on the above mentioned interpretation, the Arbitration Council considers that neither parties showed a genuine intention to bring this labour dispute for resolution at the Arbitration Council, and in this situation, the Arbitration Council cannot continue the arbitration procedure because both parties are firm in their positions and do not agree to cooperate to resolve this labour dispute. Thus, to be consistent with the law and previous Arbitral Awards, the Arbitration Council decides to discontinue the arbitration process in case 04/08-Cambodia Apparel.

Based on the above mentioned reasons, the Arbitration Council decides as follows:

DECISION

- Discontinue the arbitration process in case 04/08-Cambodia Apparel.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Ing Sothy**

Signature:

Arbitrator chosen by the worker party:

Name: **Sin Kim Sean**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: