

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); the Arbitration Council Procedural Rules which form an Annex to the same Prakas; and the Prakas on the Appointment of Arbitrators (Third Term) (513/05).

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 the non-conciliation report No. 113 KKBV/VK, dated 24 January 2006, was submitted to the Secretariat of the Arbitration Council on 26 January 2006.

Closing of Case

North Gaiety Apparel employs 1,103 workers. On 12 January 2006, the Department of Labour Disputes received a petition dated 10 January 2006 from the National Industrial Federation Trade Union of Cambodia (NIFTUC) and from the worker delegate dated on 10 January 2006 regarding the notice of an intention to conduct a strike and demanding the company to provide wages and 50 per cent of bonuses during the suspension from 1 December 2005 to 31 January 2006. On receipt of the petition, the Department of Labour Disputes designated Mr. Huon Soeur, Vice-Chief of the Office of Labour Disputes, and his colleagues to conciliate the dispute. The last conciliation was conducted on 16 January 2006, but no agreement was reached. The non-conciliation issue was referred to the Arbitration Council on 26 January 2006. Following the receipt of the case, the Arbitration Council invited the disputing parties to a hearing on 10 February 2006 at 8:00 a.m.

Clause 18 of the Prakas on the Arbitration Council 99/04 provides that *“The Arbitration Council shall invite the disputing parties to present oral arguments before the Arbitration Council and submit other necessary documents.”* Therefore, following the receipt of the case on 10 February 2006, both disputing parties were invited to the Arbitration Council for hearing.

Both parties were present at the hearing. During the hearing both parties acknowledged that the demand raised by the worker party for the company to pay 50 per cent of wages and bonuses during the suspension from 1 December 2005 to 31 January 2006 was the same demand as that raised in [Arbitral Award] 72/05 – North Gaiety. After considering the relevant documents and evidence submitted by the parties, the Arbitration Council finds that the demand in the present case, 10/06 – North Gaiety, is the same as that of 72/05 – North

Gaiety, which was referred to the Arbitration Council on 2 December 2005 and in respect of which an award was issued by the Arbitration Council on 27 December 2005.

According to Clause 40 of Prakas 99[04] on the Arbitration Council, a party to a dispute may lodge an objection to a non-binding arbitral award to the competent authority and take action as permitted by law. In this sense, the Arbitration Council does not have jurisdiction to settle an objection or complaint related to its award.

In principle, the settlement of a dispute, through either judicial or non-judicial means, must comply with the principle of *res judicata*. *Res judicata* is the principle that the same issue between the same parties may not, generally, be reconsidered once it has been decided on the merits. The public policy basis for this principle is to prevent inconsistent results, and to promote finality by bringing an end to a dispute. It is not merely a legal principle, but also a public policy.

Based on Clause 40 of Prakas 99[04] and the principle of *res judicata*, the Arbitration Council does not have jurisdiction to hear this case. (See 18/04 Raffles Le Royal and Raffles Grand D'Angkor.)

Decision

- Dismiss 10/06.

Signatures of Members of the Arbitration Panel:

Arbitrator chosen by the employer party:

Name: Mr. Ly Tayseng

Signature:

Arbitrator chosen by the worker party:

Name: Mr. Tuon Siphann

Signature:

Chair of arbitration panel:

Name: Mr. Pen Bunchhea

Signature: