



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

**ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល**

**THE ARBITRATION COUNCIL**

**Case number and name: 101/07 – Planet Textile**

**Date of Award: 22 October 2007**

### **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: **Vong Vanna**

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

#### **DISPUTING PARTIES**

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

Name: **Planet Textile (Cambodia) Company Ltd.**

Address: Building No.3, Street 329 and 596, Khan Toul Kork, Phnom Penh

Telephone: 012 375 5630/600 849 Fax: 023 882 625

Representatives:

1. Mr. Cheng Daravuth Company Representative;
2. Mr. Sok Bunthoeun Unit Chief;
3. Ms. Thach Kunthea Group Leader;
4. Ms. Lim Sophat Group Leader.

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

Name: **Federation Union of Khmer Democratic Workers (FUKDW) and Union of Khmer Democratic Workers (UKDW) at Planet Textile Factory**

Address: Sangkat Boeung Kak II, Khan Toul Kork, Phnom Penh

Telephone: 016 211 433 Fax: N/A

Representatives:

1. Mr. Rim Bora President of FUKDW;
2. Mr. Chhim Bora Vice President of FUKDW;

3. Mr. Loy Sopharak Secretary General of FUKDW;
4. Mr. Sorn Prak Treasurer of FUKDW;
5. Mr. Ouk Phurik Attorney;
6. Ms. Vann Paov President of UKDW at Planet Textile Factory;
7. Ms. Mao Hun Secretary of UKDW at Planet Textile Factory;
8. Ms. In Pheakdey Advisor of UKDW.

### **ISSUE IN DISPUTE**

(In the Non-Conciliation Report)

1. The workers demand that the company reinstate Ms. Vann Paov. However, the company claims that it will not agree to the workers' demand. The company [remained firm that it would not] reinstate Ms. Vann Paov because she was under probation.

### **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 which took place on 19 September 2007 was unsuccessful, and the non-conciliation report No. 1020 was submitted to the Secretariat of the Arbitration Council on 20 September 2007.*

### **HEARING AND SUMMARY OF PROCEDURE**

**Place of hearing:** The Arbitration Council, Phnom Penh Center, Building A, Sothearos Blvd., Sangkat Tonle Basak, Khan Chamkarmorn, Phnom Penh.

**Date of hearing:** 3 October 2007 (from 2:00pm to 4:00pm)

**Procedural issues:**

Having received a complaint from the leaders of Union of Khmer Democratic Workers on 28 August 2007, demanding that the company improve working conditions, the Department of Labour Disputes designated its expert official to settle and conciliate the dispute and six out of a total of seven issues were successfully conciliated. The non-conciliated issue was submitted to the Arbitration Council Secretariat on 20 September 2007.

Having received the case on 10 July 2006, the Arbitration Council Secretariat summoned the disputing parties to attend a hearing to settle the non-conciliated issue on 3

October 2007 at 2:00pm. Both parties were present at the hearing summoned by the Arbitration Council.

In the hearing, the Arbitration Council made a further attempt to conciliate the non-conciliated issue outlined in the report of the Department of Labour Disputes, but the issue remained unresolved. Therefore, the Arbitration Council considers the non-conciliated issue only on the basis of the evidence and the findings of fact as follows:

## **EVIDENCE**

**Witnesses and experts:** N/A

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

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

1. The Company's letter certifying the date on which Ms. Vann Paov started and finished work;
2. The Company's Notification Letter dated 28 August 2007 asking workers who were on holiday to return to work;
3. Internal Work Rules of the Company (has yet applied for the visa);
4. Business Registration License No. Inv. 663/99P dated 15 November 1995;
5. The Company's statute;
6. Minutes of the investigation of the Labour Disputes Department dated 28 August 2007;
7. Letter of Resignation of Ms. Vann Paov dated 24 August 2007;
8. Minutes of the collective labour dispute conciliation dated 28 August 2007;
9. Power of Attorney of the Company Director dated 2 October 2007 to Mr. Cheng Daravuth.

#### **Provided by the worker party:**

1. Minutes of the election of the Board of Director of the Union of Khmer Democratic Workers at the Planet Textile Company dated 29 August 2007;
2. Attorney Ouk Phurik's Request for the protection of the rights and benefits of the leaders of Union of Khmer Democratic Workers at the Planet Textile Factory dated 27 September 2007;
3. Statute of Union of Khmer Democratic Workers at Planet Textile Factory;
4. Complaint of workers and leaders of the Union of Khmer Democratic Workers dated 28 August 2007;
5. Name list of the Board of Directors and Executive Committee of the Union of Khmer Democratic Workers at the Planet Textile Factory;

6. Statement of Defence in case 101/07 – Planet Textile;
7. Receipt of case acceptance of the Department of Labour Dispute (for the registration of Union of Khmer Democratic Workers at Planet Textile company) dated 28 August 2007;
8. Notification Letter on the establishment of Union of Khmer Democratic Workers at Planet Textile Factory to Planet Textile Company dated 27 August 2007.

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

1. Report No. 1020 dated 19 September 2007 on the collective labour dispute conciliation at Planet Textile Company;
2. Minutes of the collective labour dispute conciliation dated 28 August 2007.

Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 436 dated 26 September 2007 to the worker party to attend the hearing;
2. Invitation No. 435 dated 26 September 2007 to the employer party to attend the hearing.

**FACTS**

- Having examined the report on the collective labour dispute conciliation;
- Having listened to the testimonies of both the employer party and the worker party;
- Having reviewed other supplementary documents;

**The Arbitration Council finds that:**

- Planet Textile Factory employs around 97 workers;
- The workers demanded that the company reinstate Ms. Vann Paov. The company's [objection to] reinstating Ms. Vann Paov was seen as discrimination against the union because Ms. Vann Paov was a probationary worker;
- The company was not willing to reinstate Ms. Vann Paov because she was a probationary worker. The company claimed that Ms. Vann Paov was employed to work for the company on 17 July 2007 and she resigned on 24 August 2007 because she and other five workers had destroyed about 100 [pairs of] jeans. The company representatives showed the destroyed jeans in the hearing;
- Ms. Vann Paov confirmed that she was employed on 17 June 2007, not 17 July 2007;
- Ms. Vann Paov mentioned that she did not have a written contract with the company, but she had an oral contract because when she succeeded in the interview she was

- immediately employed with the promise of US\$50 as the monthly wage. She added that when she first worked for the company, the company did not inform her that she was a probationary worker and did not tell her about the termination of work;
- Ms. Vann Paov confirmed that she was not a probationary worker because during the interview, she was not informed that she would be a probationary worker. She added that she had worked for 13 days in the first month, 26 days in the second month and 26 days in the third month, but she did not have any document to support the claim since she did not have [a] written contract;
  - Ms. Vann Paov furthered that she had received US\$30 for the first month, US\$70 for the second month and US\$69 for the third month, but she did not have any documents as proof to support the claim because she had already thrown away the pay slips;
  - In the hearing, the company representatives claimed that there are three types of workers within the factory. Type 1, new workers with no skills, receive US\$50 per month and the company offers them a two month probationary contract. Type 2, workers with basic sewing skills, receive US\$50 per month and an attendance bonus of US\$5 per month and they are provided with a two month probationary contract. Type 3, skilled workers like Ms. Vann Paov as an example, receive US\$50 and a US\$5 attendance bonus, but the employment period is undetermined. The workers did not refute the said statement;
  - Mr. Sok Bunthoeun, who interviewed Ms. Vann Paov, mentioned that he had not told Ms. Vann Paov that she was a probationary worker when she passed the interview. He added that he did not remember the date in which Ms. Vann Paov was interviewed for the job;
  - The company claimed that six workers in Ms. Vann Paov's team including Ms. Vann Paov damaged 100 [pairs of] jeans. The other workers were Pheakdey, Keo Sophy, Mao Hun, Kong Sarun and Phos Math Hieng;
  - Ms. Vann Paov mentioned that she did not damage all the 100 [pairs of] jeans. She encountered a pair of damaged jean on her desk and she took the jeans to show her team leader, Sophat. She claimed that her responsibility was to sew the waist area and the damaged area on the jean was not on the waist, it was somewhere else;
  - The company confirmed that the company did not find Ms. Vann Paov damaging the jeans, but the damaged jeans were found on Ms. Vann Paov's desk in the machine on 24 August 2007. On the date, having seen the damaged jeans, the company asked the six workers to take four to five days off;
  - At 9:00am on 24 August 2007, the company asked each worker to sign a letter of resignation and all six workers signed the letters;

- Ms. Vann Paov claimed that she did sign the letter of resignation at 9:00am on 24 August 2007, but she did not realise that it was a letter of resignation which the company had prepared for her to sign. She claimed in the hearing that she can read and write, but she did not read the letter of resignation and signed the letter as instructed by the company;
- At 4:00pm on 24 August 2007, there was a gathering of some 49 workers in front of the factory to establish the Union of Khmer Democratic Workers (UKDW) at Planet Textile Factory and also to select the President of the union. According to the workers' testimony, Ms. Vann Paov was selected as President of the union;
- On 28 August 2007, the company issued a notification asking five workers to return to work but not Ms. Vann Paov. The employer party mentioned that the reason it reinstated the five workers was because the company found it hard to hire workers since there were not many houses for rent in the neighborhood;
- The company remained firm that it had not reinstated Ms. Vann Paov because she did not get along with other team members and Ms. Vann Paov herself resigned. Ms. Vann Paov rejected this accusation;
- Attorney Ouk Phurik confirmed that he had requested that the company consider reinstating Ms. Vann Paov. He claimed that six workers made mistakes and five of them were reinstated but not Ms. Vann Paov. This showed that the company discriminated against her and he pointed out Prime Minister Hun Sen's recommendation, which considers the factories as workers' rice pots and requested the company and workers to cooperate;
- Based on the name list of the Board of Directors and Executive Committee of the Union of Khmer Democratic Workers at Planet Textile Factory submitted to the Arbitration Council, it shows that three out of the five workers hold positions in the union. The three workers were Hun Mao, holding the position of Secretary of the union, In Pheakdey, advisor of the union and Keo Sothy, union activist.
- The Arbitration Council ordered the employer party to provide any relevant documents to Ms. Vann Paov include a list of workers and a record of wage payments by the deadline of 5 October 2007, but the employer party failed to do so. The employer only provided a letter stating that Ms. Vann Paov was employed on 17 July 2007 and she resigned on 24 August 2007;
- The Arbitration Council ordered the worker party to provide any relevant documents to Ms. Vann Paov such as the election of union leaders and documents certifying that she had worked for the factory for three months by the deadline of 5 October 2007, but the worker party provided only the document on the election of union leaders;

- The Arbitration Council provided the submitted documents to the employer party and worker party for objection.

### **REASONS FOR DECISION**

In this case, the Arbitration Council will consider as follows:

1. Did Ms. Vann Paov resign from work or not?
2. Did failure to reinstate Ms. Vann Paov amount to discrimination on the grounds of union membership?

#### **1. Did Ms. Vann Paov resign from work or not?**

Clause 7 of Article 67 of the Labour Law provides, *“A contract of a fixed duration must be in writing. If not, it becomes a labour contract of undetermined duration.”*

Based on Clause 7 of Article 67 above, the Arbitration Council considers that a contract of fixed duration that is not made in writing becomes a contract of undetermined duration.

In this case, Ms. Vann Paov did not have a written labour contract. Thus, based on Clause 7 of Article 67 of the Labour Law, the Arbitration Council finds that Ms. Vann Paov’s labour contract was a labour contract of undetermined duration.

Clause 1 of Article 74 of the Labour Law provides, *“The labour contract of unspecified duration can be terminated at will by one of the contracting parties. This termination shall be subject to the prior notice made in writing by the party who intends to terminate the contract to the other party.”*

Based on the content of Clause 1 of Article 47, the Arbitration Council considers that either one of the parties to the labour contract of undetermined duration can terminate the contract at his or her will, but the termination must be according to the law.

Ms. Vann Paov mentioned that she did not resign from work because she had not known that it was a letter of resignation.

However, based on the above finding of fact, Ms. Vann Paov did not sign under pressure from the employer and she had the ability to read and write. No evidence showed that she was not willing to sign.

Based on the above facts, the Arbitration Council finds that Ms. Vann Paov had resigned from work.

#### **2. Did the failure to reinstate Ms. Vann Paov amount to discrimination on the grounds of union membership?**

Article 12 of the Labour Law provides, *“Except for the provisions fully expressing under this law, or in any other legislative text or regulation protecting women and children, as well*

*as provisions relating to the entry and stay of foreigners, no employer shall consider on account of:*

- *race,*
- *color,*
- *sex,*
- *creed,*
- *religion,*
- *political opinion,*
- *birth,*
- *social origin,*
- *membership of workers' union or the exercise of union activities;*

*to be the invocation in order to make a decision on:*

- *hiring,*
- *defining and assigning of work,*
- *vocational training,*
- *advancement,*
- *promotion,*
- *remuneration,*
- *granting of social benefits,*
- *discipline or termination of employment contract.*

*Distinctions, rejections, or acceptances based on qualifications required for a specific job shall not be considered as discrimination.”*

Article 279 of the Labour Law provides, “*Employers are forbidden to take into consideration union affiliation or participation in union activities when making decisions concerning recruitment, management and assignment of work, promotion, remuneration and granting of benefits, disciplinary measures and dismissal.*”

Based on the above two articles, the Arbitration Council considers that no employer shall consider on account of *race, color, sex, creed, religion, political opinion, birth, social origin, membership of workers' union or the exercise of union activities; to be the invocation in order to make a decision on: hiring, defining and assigning of work, vocational training, advancement, promotion, remuneration, granting of social benefits, discipline or termination of employment contract.*

In this case, the workers mentioned that the company discriminated [on the basis of union membership] because the company did not reinstate Ms. Vann Paov. The employer rejected [this allegation].

Based on the above facts, the termination of Ms. Vann Paov took place on 24 August 2007 along with the termination of five other workers. In the afternoon on the same date, Ms. Vann Paov was elected President of the union. On 28 August 2007, the company reinstated the five workers, but not Ms. Vann Paov. The worker party confirmed that this was proof of discrimination on the basis of union membership because the company did not reinstate Ms. Vann Paov.

However, among the three reinstated workers, one was elected as the Union's Secretary, another was elected as the Union's Advisor and other one was elected as Union's Activist.

In this Award, the worker party did not have testimony or evidence to show the company's discriminated on the basis of union membership. Thus, the Arbitration Council finds that there is insufficient evidence to show that the employer discriminated on the basis of union membership.

In conclusion, the Arbitration Council decides to reject the workers' demand that the company reinstate Ms. Vann Paov.

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

#### **DECISION**

Reject the workers' demand that the company reinstate Ms. Vann Paov.

#### **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 to the Minister of Labour through the Secretariat of the Arbitration Council within this time period.

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

Arbitrator chosen by the employer party:

Name: **Ing Sothy**

Signature: .....

Arbitrator chosen by the worker party:

Name: **Vong Vanna**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: .....