

KINGDOM OF CAMBODIA

NATION RELIGION KING



ក្រុមប្រឹក្សាពង្វាតណ្ណាល

THE ARBITRATION COUNCIL

Case number and name: 102/06 – Sangwoo

Date of Award: 17 November 2006

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATOR PANEL

Arbitrator chosen by the employer party:

LY TAYSENG

Arbitrator chosen by the worker party:

HUON CHUNDY

Chair Arbitrator (chosen by the two Arbitrators):

TAN TRY

DISPUTING PARTIES

1- Employer Party

Name : **Sangwoo (Cambodia) Co. Ltd.**

Address : National Road No. 4, Trapeang Veng and Thlork Village, Trapeang Kong
Commune, Somruong Tong District, Kampong Speu Province

Telephone : 012 849 266, 092 250 531 Fax: 025 396 619

Employer Representatives:

- | | |
|---------------------|---|
| 1. Mr. Ji Soo Jang | Chairman of Company's Board of Directors; |
| 2. Mr. Sang Ik Jang | General Manager; |
| 3. Mr. Lou Sang | Interpreter. |

2- Worker party

Name : **Khmer Youth Free Trade Union (KYFTU)**

Address : No. 34, Street 265, Village 13, Sangkat Toeuk Laak III, Khan Tuol Kork,
Phnom Penh

Telephone : 092 902 569 Fax: N/A

Worker Representatives: Absent

ISSUES IN DISPUTE

(In the non-conciliation report)

1. With respect to wages for overtime work in which the company had not paid; the workers demanded that the company pay them in July 2006;
2. The workers demanded that the company open one more gate to avoid congestion;
3. The workers demanded that the company set out clear working hours and that the company do not force them to work earlier than the working hours;
4. The workers demanded that the company reinstate 64 workers who were dismissed on 24 July 2006 and another 60 workers who were dismissed on 26 September 2006 and pay their wages since the date of their dismissals;
5. The workers demanded that the company build a playground and a nursing room; and if the company cannot do so, it can provide workers with a US\$20 allowance in substitution for the two establishments and three one-kilogram cans of milk powder;
6. The workers demanded that the company keep enough medicine on site and hire full-time physicians;
7. The workers demanded that the company maintain the workers' wages and bonuses when they are on sick leave certified by a medical certificate;
8. The workers demanded that the company pay all medical expenses and maintain the workers' wages and bonuses when the workers have a work accident;
9. The workers demanded that the company reimburse the medical check-up fee of 10,100 riel;
10. The workers demanded that the company maintain wages and bonuses for 17 July 2006, a strike day (where the company recruited new workers);
11. The workers demanded that the company dismiss the Administrative Manager for the following reasons:
 - Dismissing 60 Cutting Section workers to silence them because they knew that he stole clothes from the company;
 - Warning workers that the Minister of Labour (H.E Vong Sauth) and the Director of Kampong Speu Department of Labour are his friends and he just gives them US\$3,000 so nobody will dare to help them;
 - Threatening workers that they should resign from KYFTU because the union is affiliated with the Cambodian People Party;
 - Threatening workers that he can arrest anyone and put him or her in jail by only giving US\$500 to Kampong Speu Police;
 - Hiring gangsters to beat workers and to eliminate their freedom of association or freedom of peaceful demonstration.

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B (Article 309 to 317) of the Labour Law (1997); the Prakas on the Arbitration Council 099/04; the Arbitration Council Procedural Rules which form an Annex to the same Prakas; and the Prakas on the Appointment of the Arbitration Council 099/06 (Fourth Term).

An attempt was made to conciliate the collective labour dispute that is the subject of this Award, as required by Chapter XII, Section 2(A) of the Labour Law. However, the conciliation hearing was unsuccessful, and the non-conciliation report No. 475 dated 19 October 2006 was submitted to the Secretariat of the Arbitration Council on 20 October 2006.

HEARING AND SUMMARY OF PROCEDURE BEFORE ARBITRATION COUNCIL:

Place of Hearing : **The Arbitration Council**, Phnom Penh Centre, Building A,
Sothearos Blvd, Sangkat Tonle Bassac, Khan Chamkarmon,
Phnom Penh.

Date of the Hearing : 10 November 2006 (from 8:00 a.m. to 10:00 a.m.)

Procedural Issues:

On 18 September 2006 at 1:30 p.m., the company invited an official from the Labour Office to help examine the wage payments of two female workers whose probationary contracts were terminated at 5:00 p.m.; the payment was not made, because the workers had already left. On 25 September 2006, the company invited the working group to examine the above case. When the working group arrived, 62 workers in the Cutting Unit demanded that the company dismiss them. However, the company rejected the workers' demand and asked them to return to work, but the workers still demanded to be dismissed. On 26 September 2006, the 62 workers continued to go on strike and urged other workers to join the strike and the strike continued until 27 September 2006.

On 28 September 2006, Kampong Speu Department of Labour and Vocational Training received a complaint from KYFTU in Kampong Speu seeking that the company improve 11 issues related to working conditions in accordance with the Labour Law. Having received the complaint, the Kampong Speu Department of Labour and Vocational Training designated its expert official to settle the labour dispute and invited the parties to conciliate the issues; the last conciliation session was held on 17 October 2006, but none of the issues were resolved.

On 20 October 2006, the Secretariat of the Arbitration Council received the case and the non-conciliation report No. 475 dated 19 October 2006 from the Kampong Speu

Department of Labour and Vocational Training. Having received the case, the Secretariat of the Arbitration Council summoned both the employer party and the worker party to a hearing to resolve the 11 non-conciliated issues on 10 November 2006 at 8:00 a.m. The employer party was present in accordance with the Arbitration Council's invitation but the worker party did not attend the hearing as summoned by the Arbitration Council. KYFTU sent an official to ask for a delay of the hearing just before the hearing was scheduled to start. On the hearing day, the Arbitration Council could not continue to conciliate the issues because the worker party was absent.

EVIDENCE

Witness and experts besides the parties: N/A

Documents, exhibits and other evidence considered by the Arbitration Council

- a. Provided by the employer party:
 - Value Added Tax registration license No. 280 dated 8 December 2005;
 - Business registration license No. 2685 dated 30 November 2005;
 - Letter No. 1067/06 dated 17 March 2006 from the Cambodian Investment Committee to the Director of Sangwoo Company on the establishment of an Inspection Committee to inspect the factory construction plan;
 - Letter from Sangwoo Company to the Minister of Labour and Vocational Training on the transformation of strike on 18, 19, 25 and 26 September 2006 into demonstration on 27 September 2006;
 - Photographs of the strike on 26 September 2006;
 - Letter dated 26 September 2006 from Sangwoo Company to the Director of Kampong Speu Department of Labour and Vocational Training regarding a report of irregular activities of workers in the Cutting Unit between 18 and 25 September 2006;
 - Statute of Sangwoo Company;
 - Notification of Sangwoo Company dated 19 September 2006 on the termination of labour contracts of Phin Channa and Khin Kim;
 - Labour contracts of Phin Channa and Khin Kim (from 26 July 2006 to 25 September 2006).
- b. Provided by the worker party: None
- c. Provided by the Ministry of Labour and Vocational Training:
 - Report No. 475 dated 19 October 2006 on the collective labour dispute conciliation at Sangwoo Company of the Director of Kampong Speu Department of Labour and Vocational Training;

- Minute of the collective labour dispute conciliation dated 17 October 2006.

d. Provided by the Secretariat of the Arbitration Council:

- 1- Invitation No. 476 dated 10 November 2006 to the worker party to attend the hearing;
- 2- Invitation No. 475 dated 10 November 2006 to the employer party to attend the hearing.

FINDINGS OF FACT

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

The Arbitration Council finds that:

- Sangwoo Company employs approximately 900 workers and none of the unions in the factory is registered with the Ministry of Labour and Vocational Training;
- 30 minutes before the hearing on 16 November 2006 was due to start, a Labour Officer of KYFTU called the Secretariat of the Arbitration Council to request a delay to the hearing;
- On the same hearing day, Uor Phoeun, who was sent by KYFTU to the Secretariat of the Arbitration Council (without an official letter), claimed that he was sent only to ask for a delay to the Arbitral hearing, but that he had no right to decide on behalf of workers in Sangwoo Factory. Uor Phoeun also claimed that two workers' representatives could not attend the hearing because of flu and the other one could not be contacted by phone. He did not provide other reasons to explain the absence of the complainant party;
- The official (Uor Phoeun) added that KYFTU in Sangwoo Factory might be created but had not yet been registered with the Ministry of Labour and Vocational Training. At the hearing, the employer also claimed that there is no union established in Sangwoo Factory;
- Based on the conciliation report dated 17 October 2006 and letter No. 475 dated 19 October 2006 from the Kampong Speu Department of Labour and Vocational Training to the Minister of Labour and Vocational Training on the collective labour dispute conciliation in Sangwoo Company, while the employer and the worker party both attended the conciliation session, the conciliation session could not proceed as the worker party did not recognize the employer's representative because he had no written authorization from the company;

- Based on the letter from the workers' representative dated 27 September 2006, the complainant workers had no adequate evidence to prove their legal relationship with the KYFTU and the plaintiff workers.

REASONS FOR DECISION

At the start of the hearing, the Arbitration Council faced a primary issue – the absence of the worker party during the hearing. 30 minutes before the start of the hearing, a KYFTU official telephoned the Secretariat of the Arbitration Council to ask for a delay of the hearing. The employer party did not agree to the delay of the hearing arguing that the shareholder of Sangwoo Company had come to settle the dispute and that he would return [to his home country] next week.

Regarding the above primary issue, the Arbitration Council needs to examine the provisions stated in the Prakas on the Arbitration Council (No. 099 dated 21 April 2004) and the rules of the Arbitration Council Procedure stated in the annex of the same Prakas (Article 31 of Prakas 099 provides, “The arbitration process shall take place in compliance with the Procedural Rules of the Arbitration Council, which form the annex of this Prakas.”)

Article 21 of Prakas 099/04 provides, “In the case that one of the parties, although duly invited, fails to appear before the arbitration panel without showing good cause, the arbitration panel may proceed in the absence of that party or may terminate the arbitral proceedings by means of an award.” Rule 4 (7) of the Annex to Prakas 099/04 provides, “If a party fails to appear in person or to be represented at arbitration proceedings, the arbitration panel may proceed in the absence of that party or may terminate the arbitration proceedings by means of an Award. In either case, it must be satisfied that the parties have been properly notified of the date, time and venue of the arbitration proceedings before making such decision.”

The Arbitration Council finds that the Secretariat had sent the invitations to the parties (Invitation No. 475 and No. 476 dated 20 November 2006). The parties had also chosen Arbitrators and agreed on the hearing date. The Arbitration Council considers that there is no problem regarding the notification of the date, time and venue of the Arbitral Proceeding.

At the hearing, KYFTU sent an official, Uor Phoeun (without an authorization letter) who claimed that he had been sent only to ask for a delay of the hearing but could not attend the hearing because he had no right to make decisions on behalf of the workers in Sangwoo Company throughout the arbitral proceeding. Based on the above point, the Arbitration Council notes that the worker party failed to attend before the Arbitration Council as stated in the above Article 21.

At the hearing, the KYFTU Official explained that the worker party failed to attend the hearing because two of the worker representatives could not attend the hearing because of flu and the other one could not be reached by phone. He did not provide other reasons about the absence of the complainant. The Arbitration Council considers that the request from KYFTU to the Arbitration Council does not constitute a valid reason and the late notice of the delay is unacceptable as a valid reason; at least a formal request should have been sent to the Arbitration Council in appropriate time.

Rule 4(9) of the Annex to Prakas 099/04 provides, "Postponement of arbitration hearings are costly and undesirable. Postponement will only be granted by the arbitration panel where all parties to the arbitration agree to the postponement."

The Arbitration Council notes that the two employer representatives who attended the hearing were the Chairman of the Board of Directors and another Director of Sangwoo Company and based on the statute of Sangwoo Company, both of them are also shareholders in the company. The Arbitration Council has no doubt of their representative status; therefore, the Arbitration Council can ask for their agreement on the delay of the hearing.

Both of them stressed that Sangwoo Company had only been in operation for six months and such issues delayed the production line for several days. They further added that Sangwoo Company has factories in other countries such as the Philippines and it always wants to respect the law of each country. Therefore, they themselves came to settle the dispute. Because they have to leave Cambodia the following week, they think that the hearing should continue on the set day. Based on the claim of the employer party, the Arbitration Council considers that there was no agreement from the employer party to delay the hearing and that the employer party properly used its right to reject the delay in accordance with Rule 4(9) of the Annex [to the Prakas].

Therefore, the Arbitration Council exercises its rights provided in Article 21 of Prakas 099/04 and Rule 4(7) of the Annex to the Prakas 099/04 to reject the worker party's request demand for a delay of the hearing and end the Arbitration proceeding.

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

DECISION AND ORDER

Close case 102/06 and reject the 11 issues demanded by the workers.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **LY TAYSENG**

Signature:

Arbitrator chosen by the worker party:

Name: **HUON CHUNDY**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **TAN TRY**

Signature: