



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាសវនកម្មជាតិ

THE ARBITRATION COUNCIL

Case number and name: 104/07 – Global Apparels

Date of Award: 24 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: **An Nan**

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

DISPUTING PARTIES

Employer party:

Name: **Global Apparels Limited (Global Apparel)**

Address: Tropaing Tuol Village, Kambol Commune, Ang Snuol District, Kandal Province

Telephone: 012 571 528

Fax: N/A

Representatives:

1. Mr. Choon Yik Thong Company's Deputy Director;
2. Vong Rithy Human Resource Manager

Worker party:

Name: **Trade Union of Independence and Democracy (TUID), Coalition of Cambodian Apparel W. D. U (C.CAWDU) and Khmer Trade Union (KTU) at Global Apparel**

Address: Tropaing Tuol Village, Kambol Commune, Ang Snuol District, Kandal Province

Telephone: 012 907 902, 012 988 623, 012 853 254 Fax: N/A

Representatives:

Trade Union of Independence and Democracy (TUID)

1. Mr. Kong Sophal President of TUID at Global Apparel;
2. Mr. Kong Kosal Vice-President of TUID at Global Apparel;
3. Ms. Kiet Phallikar Worker;

4. Ms. Siem Chantha Worker.

Coalition of Cambodian Apparel W. D. U (C.CAWDU)

1. Mr. Yang Sun Heng Union President at Global Apparel;
2. Mr. Sok Saroeun Union Activist;
3. Ms. Morm Sarin Union Activist;
4. Ms. Kong Thavry Worker;
5. Ms. Mang Somean Worker;
6. Ms. Ros Sopheap Worker;
7. Ms. Pech Lay Worker;
8. Ms. Py Ith Worker;
9. Ms. Kol Navy Worker.

Khmer Trade Union (KTU)

1. Mr. Suon Vanna President of KTU at Global Apparel;
2. Mr. Sin Sihak Vice-President of KTU at Global Apparel;
3. Ms. Chheun Srey Lis Team Leader;
4. Ms. Chum Lina Worker;
5. Ms. Nov Savin Worker;
6. Ms. Sray Sophorn Worker;
7. Ms. Nu Chanthol Worker;
8. Ms. Yat Sopheap Worker;
9. Ms. Say Sarin Worker;
10. Ms. Bor Nget Worker.

ISSUE IN DISPUTE

(In the Non-Conciliation Report)

1. The workers demanded that the company provide an additional wage payment to the workers whose employment contracts were not suspended. The employer did not agree to the demand because the company claimed to have applied the labour law.

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 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 27 September 2007 was unsuccessful, and the non-conciliation report No. 198/07 was submitted to the Secretariat of the Arbitration Council on 1 October 2007.

HEARING AND SUMMARY OF PROCEDURE

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

Date of hearing: 6 October 2007 (from 8:00am to 10:00am)

Procedural issues:

Having received the complaint from the workers on 27 September 2007, the Kandal Department of Labour and Vocational Training [attempted to] conciliate the worker's demand that the company provide them with an additional wage payment for those [workers] who did not take leave, but the issue remained non-conciliated. The non-conciliated issue was submitted to the Secretariat of the Arbitration Council on 1 October 2007 through the non-conciliation report No. 198/07 dated 27 September 2007.

Having received the case, the Secretariat of the Arbitration Council informed the Arbitration Council of the workers' strike at the factory. For the sake of both parties as well as public order, the Arbitration Council decided to issue an order on 2 October 2007 requesting that the worker party stop the strike at once and order that all workers return to work on 3 October 2007. In the afternoon of 3 October 2007, Arbitration Council Secretariat informed the Arbitration Council that the workers had stopped the strike and returned to work as ordered by the Arbitration Council. Then, the Arbitration Council informed the Secretariat of the Arbitration Council to invite the disputing parties to attend a hearing to settle the non-conciliated issue on 6 October 2007 at 8:00 a.m. Both parties were present at the hearing scheduled by the Arbitration Council.

The Arbitration Council made a further attempt to conciliate the issues as stated in the non-conciliation report of the Kandal Department of Labour and Vocational Training but the issue remained unresolved. Therefore, the Arbitration Council considers the non-conciliated issue based on 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. Internal Work Rules of Jusca Garment (Cambodia) Ltd dated 7 December 2004;
2. Minutes of the collective labour dispute conciliation at Global Apparel dated 27 September 2007;
3. Global Apparel's Letter No. 011/07 requesting the Arbitration Council to issue an order to stop the strike dated 1 October 2007;

Provided by the worker party: N/A

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

1. Report No. 198/07, dated 27 September 2007, on the collective labour dispute conciliation at the company;
2. The company's collective labour dispute settlement dated 27 September 2007.

Provided by the Secretariat of the Arbitration Council:

1. The Arbitration Council's Order No. 010 dated 2 October 2007.

FACTS

- 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:

- Global Apparel factory employs approximately 2, 600 workers;
- In this case, the complainants are the Trade Union of Independence and Democracy (TUID), the Trade Union of Solidarity, Coalition of Cambodian Apparel W. D. U (C.CAWDU) and the Khmer Trade Union. The Trade Union of Solidarity, one of the complainants, did not show up at the hearing and did not provide any reason for the absence. Based on the [evidence of the] unions and the employer, 1,600 workers were involved in the dispute.
- The worker party demanded that the company provide those [workers] who did not take leave with an additional wage payment for the months of February to April 2007 because the company provided full wages to workers who were asked to take leave from February to April 2007.
- The worker party agreed that the employer had paid workers their wages for the period February to April 2007.

- The employer stated that approximately 790 workers did not work from February to April 2007. Approximately 1,600 workers worked from February to April 2007 and demanded that the company pay [them] an additional wage payment.
- From February to April 2007 the company suspended the employment of some workers and agreed to pay them 50 percent of their wage. The remaining workers attended work as normal. The local unions of Khmer Youth Federation Trade Union, Coalition of Cambodian Apparel W.D.U. and Cambodian Union at Global Apparel Limited factory filed a complaint to demand payment of full wages during the [period of] employment suspension. On 17 August 2007 the Arbitration Council conducted a hearing to settle this labour dispute. On 30 August 2007 the Arbitration Council ordered the employer to provide full wages to the workers during the period February to April 2007 when the company did not have work for the workers to do; because the Arbitration Council found that the employer did not suspend the worker's employment contracts in accordance with the proper procedures set out in the Labour Law (see Arbitral Award 74/07-Global Apparel, dated 30 August 2007, Issue 1).
- After the issuance of the Arbitral Award, the employer implemented the Award by paying full wages to workers whose employment was suspended from February to April 2007; this indicates that the employer followed the Labour Law of the Kingdom of Cambodia.
- The workers whose employment contracts were not suspended and came to work normally considered that, if compared with the workers whose employment was suspended and who did not need to come to work and received full wages, it is unfair for them because they came to work, paid the transportation fare, did not receive a day off and only received their regular wages..
- The worker party states that their demand is not provided in the Labour Law or in the Internal Work Rules, CBA or any agreement. However, they are not happy that members of the local union of KYTU received full wages without having to work. The employer party confirms that there is nothing in the Internal Work Rules, CBA or any agreement about this issue.

REASONS FOR DECISION

In this case, the workers demand that the company pay an additional wage payment to those workers who did not take leave from February to April 2007; for the reason that the company paid full wages to workers who were asked to take leave for the period from February to April 2007 in accordance with Arbitral Award 74/07 – Global Apparel dated 30 August 2007, Issue 1.

In this case, both the employer party and the worker party agreed that the employer did provide full wages to workers who came to work for the period February to April 2007. Regarding the demand of an additional wage payment during this period, the Arbitration Council considers that the demand is not stated in the Labour Law. Furthermore, the worker party claimed that [an entitlement to] such benefit is not provided for in the [company's] Internal Work Rules, any collective agreement or other agreement. That means the worker party has no right to receive an additional wage payment.

Therefore, the Arbitration Council rejects the demand of workers that the company provide them with an additional wage payment for the period of February to April 2007.

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

DECISION AND ORDER

Reject the demand of workers that the company provide an additional wage payment to those workers who did not take leave for the period from February to April 2007.

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 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: **An Nan**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: