



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអន្តរាគមន៍

THE ARBITRATION COUNCIL

Case number and name: 105/08-Hytex

Date of Award: 4 September 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: **An Nan**

Chair Arbitrator (chosen by the two Arbitrators): **Ang Eng Thong**

DISPUTING PARTIES

Employer party:

Name: **Hytex Garment (Cambodia) Ltd.**

Address: National Road 2, Chak Angre Leu, Khan Mean Chey, Phnom Penh

Telephone: 023 425 078

Fax: 023 425 098

Representative:

- | | |
|------------------------|-----------------------------|
| 1. Ms. Chhit Srey Mach | Assistant to administration |
| 2. Ms. Suo Sokheng | Assistant to administration |

Worker party:

Name: **Coalition of Cambodian Apparel Worker Democratic Union (C.CAWDU) and local union of C.CAWDU at Hytex Factory**

Address: #6 C, Street 476, Tuol Tompoung 1, Khan Chamkamorn, Phnom Penh

Telephone: 012 282 653

Fax: N/A

Representative:

- | | |
|---------------------|--|
| 1. Mr. Oum Visal | Vice-General Secretary of C.CAWDU |
| 2. Mr. Huot Tongyou | Officer of C.CAWDU |
| 3. Ms. Om Savin | President of the local union at Hytex factory |
| 4. Ms. Sok Nov | Vice-president of the local union at Hytex factory |

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- The workers in the cutting and printing sections demand that the Company pay them full wages for the period their employment contracts were suspended because the suspension was not in accordance with the Labour Law as there was no official approval from the Labour Inspector. The company cannot pay workers' their full wages but only half of their wages because it [alleges] that it already made a request for suspension to the Labour Inspector.

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 was unsuccessful, and the non-conciliation report No. 873 KB/AK/VK, dated 13 August 2008 was submitted to the Secretariat of the Arbitration Council on 13 August 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: 20 August 2008 (from 2:00 p.m. to 4:00 p.m.)

Procedural issues:

On 1 August 2008, the Department of Labour Disputes received a complaint by telephone from workers in the cutting and printing sections at Hytex Company regarding the demand for the company to pay them full wages for the period their employment was suspended. On 1 August 2008, immediately after receiving the complaint, the Department assigned an officer to conciliate the dispute, but was not able to resolve the issue. The case was referred to the Arbitration Council on 13 August 2008. After receiving the case, the Arbitration Council invited the employer party and the worker party to the hearing on the one non-conciliated issue on 20 August 2008 at 2:00 p.m. Both parties were present as invited by the Arbitration Council. In the hearing, the Arbitration Council attempted to further the conciliation of the non-conciliation issue but was not able to resolve the issue. Therefore, in

this case the Arbitration Council will consider the non-conciliation point based on the evidence and 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. Power of attorney to Ms. Chhit Srey Mach and Ms. Suo Sokheng, dated 20 August 2008.
2. Certificate of commercial registration of Hytex Garment Company, No 1361 PN.PKB.KN, dated on 6 June 1996.
3. Internal Work Rules of Hytex Garment Company, No 036 SKBY.SK, dated 05 April 2001.

Provided by the worker party:

1. Certificate of union registration of the local union C.CAWDU at Hytex factory, No. 1370 KB/VK, dated 11 February 2008.
2. Summary statement of case 105/08 of Hytex Company, dated 19 August 2008.
3. Minutes of collective labour dispute at Hytex Company, dated 25 April 2008.
4. Notification No. JYC: 1408 [to inform that the company] has not determined whether to move the location, dated 6 August 2007.
5. Arbitral Award, 22/08-Hytex, dated 5 March 2008.
6. Letter regarding request for help to solve some requests of the union, dated 30 July 2008.
7. 4 membership cards of C.CAWDU.

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

1. Report of collective labour dispute resolution at Hytex Company, No. 873 K.B/A.K/V.K dated 13 August 2008.
2. Minutes of collective labour dispute conciliation at Hytex company, dated 4 August 2008.

Provided by the Secretariat of the Arbitration Council:

1. Invitation letter No. 526 KB/AK/VK/LKA, dated 15 August 2008 to invite the Company party to attend the hearing.
2. Invitation letter No. 527 KB/AK/VK/LKA, dated 15 August 2008 to invite the worker party to attend the hearing.

FACTS

- Having examined documents submitted to the Arbitration Council;
- Having reviewed the report of collective labour dispute conciliation;
- Having listened to the statement by the employer party and the worker party.

The Arbitration Council finds that:

- Currently Hytex Garment (Cambodia) Ltd employs approximately 592 workers.
- There are two unions in Hytex Company: the local union of C.CAWDU at Hytex factory and the Cambodia Labour Union Federation.
- In the hearing, C.CAWDU claimed that it had 100 members; this was based on union contribution fees it collected manually.
- In the hearing, the worker party states that among the 36 claimants, only 35 of them are members of C.CAWDU (this was based on union contribution fees collected manually). The Arbitration Council advised the party to provide evidence to prove the number of members of C.CAWDU who are making the demand to the Arbitration Council by 28 August 2008. The worker party submitted evidence by the deadline; photocopied membership cards of 28 workers with an attached letter which contained the thumbprints of 34 workers and a request that the union help solve [their] problems; and a complaint letter dated 30 July 2008; among them, 6 workers did not have sufficient documentation to prove that they were members of C.CAWDU.
- In the hearing the employer party did not raise any objection to C.CAWDU representing the 36 workers. The company does not submit any objection letter or response to the evidence submitted by the worker party either.
- The workers mention in the hearing that in the past Hytex Company suspended workers' employment but it always paid workers full wages. The company does not object to this statement.
- Both parties mention in the hearing that there is no agreement, employment contract or Internal Work Rules regarding the suspension of [workers'] employment contracts.
- 36 workers in the cutting and printing sections demand that the company provide their full wages for the period that it suspended their employment because the suspension was not in accordance with the [proper] legal procedures. On the other hand, the employer party does not agree to the demand for the reason that it has already made a request to the Labour Inspector to suspend the [workers] employment.
- The company states that the reason for the suspension was because the company did not have sufficient orders from buyers and, after the two month suspension, the company is unable to provide any assurance about when it will have work for the workers in these two sections again. The worker party responds that the reason was, in fact, not because of the lack of buyers but because the company has opened a

new branch (in Angsnuol District) and requires the workers in the cutting and printing sections to go to work there; but they did not agree thus the company stopped providing work for them to do.

- The representatives of the employer party agreed that the company established another [branch] in Ang Keo Village, Kantok Commune, Angsnuol District, Kandal Province but the representatives claimed that the company does not have an intention to move workers who are working at Chak Angre to go to work in the new location as it was only workers in another factory in Prey Tea, Pochentong that were transferred to Angsnuol.
- In the hearing the employer claims that on 29 July 2008 the employer submitted a request for the suspension of employment of the cutting and printing sections from 1 August 2008 to 1 October 2008, to the Labour Inspector of the Ministry of Labour and Vocational Training.
- On 30 July 2008, the Company announced the suspension of employment to the workers.
- On 31 July 2008, the union and worker representatives had a meeting with the company, which was also attended by the Labour Inspector of the Ministry of Labour and Vocational Training, to try and find a solution regarding the suspension of employment; but they were not able to resolve the issue because the workers did not agree for the company to suspend their employment. The representatives of the employer claim in the hearing that the Labour Inspector did not issue a letter to permit the suspension because the unions had not agreed with the employer.
- The representatives of the employer state that during the 2 month suspension of employment the employer would provide [workers with] half of their main wage, attendance bonus, seniority bonus, substantial living allowance and skill bonus. However, the worker party does not agree and insists that the employer pay full wages for the two months employment suspension.

REASONS FOR DECISION

Article 71(11) of the Labour Law states, *“When the enterprise faces a serious economic or material difficulty or any particular unusual difficulty, which leads to a suspension of the enterprise operation. This suspension shall not exceed two months and be under the control of the Labour Inspector.*

According to this Article, the Labour Law allows an employer whose enterprise faces a serious economic or material difficulty or any special difficulty to suspend workers' employment contracts but the suspension should be under the control of the Labour Inspector. According to the above Article, the Arbitration Council considers under the Labour

Law a company can suspend its operations if the enterprise faces a serious economic or material difficulty or any special difficult of the company.

Based on the findings of fact above, the suspension of employment at Hytex Company was related to a serious economic or material difficulty of the company as there was a lack of orders [from buyers]. The Arbitration Council considers that a serious material or economic difficulty is a legitimate reason for the employer to suspend workers' employment provided the employer fulfills two conditions:

- (a) the suspension is under the control of the Labour Inspector; and
- (b) the duration of the suspension does not exceed two months.

Based on the findings of fact above, the Arbitration Council finds that the employer fulfilled condition (b) because the employment suspension did not exceed two months. For condition (a), in this case the employer already notified the Labour Inspector about the suspension but the Labour Inspector did not issue a response letter permitting the employment suspension. According to the findings of fact, the Arbitration Council considers that the employer fulfilled its obligation as it already submitted a notification letter to request the suspension of employment of the 36 workers. Thus, the Arbitration Council will consider:

What does the phrase “*the suspension shall be under the control of the Labour Inspector*” mean? Is it sufficient for the employer to notify the Labour Inspector about the employment suspension?

According to the Arbitral Award 105/04-United Eternity, issue 1, “*the control of the Labour Inspector while the company suspends its operation is to avoid the serious impact on labour contracts and workers' living.*” (See *Arbitral Awards 05/08-Tonga, Issue 1 and 28/08-Fingis, Issue 1 and 2*).

Arbitral Award 05/08-Tonga, issue 1, states that “*So the process to give prior notice to labour inspectors and the reply to approve or not approve should be done in a clear manner.*”

The Arbitration Panel in this case agrees with the above interpretation. In addition, the Arbitration Council considers that the Labour Law protects workers' right to work; thus if Article 71(11) is held to mean an the employer must only give notice in order for an employment suspension to be legally valid, it may cause serious injustice to workers because the suspension of employment will seriously affect the main obligations [of the contract] as stated in paragraph 1 of Article 72 which provides that ***the employer is freed from the obligation to provide workers' wages during the period of employment suspension.*** Thus, the Arbitration Council considers that for an employer who is unwilling to pay wages to workers and suspends the workers' employment contract in bad faith, it is not sufficient to just provide notice about the employment suspension to the Labour Inspector, [if this was the case] the term ‘under the control of the Labour Inspector’ would mean nothing.

On the other hand, in order to protect the business of the employer when it faces economic difficulties, the employer can suspend the workers' employment contracts in good faith with proper reasons; and in order to avoid unreasonable suspensions, all labour contract suspensions should be under the control [of the Labour Inspector] and [the employer should receive] an approval letter from the Labour Inspector for it to be considered a lawful [suspension].

In this case, the Arbitration Council finds that the employer did not have a permission letter from the Labour Inspector regarding this suspension which means the suspension was not in accordance with the meaning and purpose of Article 71(11) of the Labour Law.

In previous cases, the Arbitration Council decided that when a labour contract suspension is not in accordance with Article 71 (11) of the Labour Law, the employer has a legal obligation to provide full wages to workers. (See Arbitral Awards 21/03-Loyal, Issue 8; 60/04-United Arts, Issue 1).

In this case, the Arbitration Council agrees with the interpretation of the Arbitration Council above. Thus, the Arbitration Council decides that Hytex Company has a legal obligation to provide full wages to the 36 workers in the cutting and printing sections for the period in which it did not have permission from the Labour Inspector to suspend the worker's labour contracts, which is from 1 August 2008 until such date that permission is granted by the Labour Inspector.

Based on the above facts, legal principles, and evidence the Arbitration Council decides as follows:

DECISION

- The employer is required to pay full wages to the 36 workers in the cutting and printing sections for the period it did not have permission from the Labour Inspector to suspend the workers' contracts, which is from 1 August 2008 until the date the permission is granted by the Labour Inspector.

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: **An Nan**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Ang Eng Thong**

Signature:

Annex to Arbitral Award 105/08-Hytex Garment

I am **Ing Sothy**, the Arbitrator from the employer list selected by **Hytex Garment Company** to settle the dispute in case 105/08.

In this case, I would like to issue a dissenting opinion to the decision of the Arbitration Panel, which held that 36 workers in the cutting and printing sections who are members of C.CAWDU were entitled to receive full wages for the period their employment contracts were unlawfully suspended.

According to the response provided by C.CAWDU in the hearing: among the 36 workers, only 35 of them are members of C.CAWDU while a worker named Mom was not a member. The Arbitration also required the parties to provide and submit documents and evidence to support their claim.

On 25 August 2008, C.CAWDU provided the photocopied membership cards of 28 of its members to the Arbitration Council with a note that the **other 8 members did not bring their cards**.

However, according to the complaint letter dated 30 July 2008, only 34 workers in the cutting and printing sections endorsed their thumbprints on the letter; according to my observation and review of the list of claimants and evidence submitted by the worker party to the Arbitration Council and based on the photocopied documents which were considered reliable, among the 34 people, only 28 of them were legitimate members of C.CAWDU.

Thus, I recognize that: the 28 workers in cutting and printing sections are legitimate members of the local union of C.CAWDU at **Hytex Garment** company and should be entitled to the benefits from case 105/08 claimed by C.CAWDU.

I would like to point out my reasons for such recognition as follows:

I. Power of the Arbitration Council

In reference to:

- Articles **309 - 316** of the Labour Law, specifically Article **312(4)**;
- Prakas **099** SKBY, dated 21 April 2004, clauses **25 and 27(2)**.

II. Roles and tasks of union:

Regarding the role and duties of the union, we review the following legal documents:

1. Article 11 of the Labour Law;
2. Clauses **4** and **3** of Prakas **313** SKBY, dated 27 November 2000.

Clause 4 states: A union representative may also provide information and requests to the employer regarding the issues stipulated in Article **3** above if the issues **concern its members**.

Clause 3 states: A worker delegate has a mission as stipulated in Article 284 of the Labour Law.

3. Prakas **305** SKBY, dated 22 November 2001, Clause **3**, paragraph **1 and 2** and Clause **5**, paragraph **1, 2, 3, 4, 5, 6, and 7**.

Therefore, in order to clarify the legitimacy of my dissenting opinion above, we should consider the following questions and answers:

III. Questions related to dissenting opinion:

1. Who does the term **union representative** refer to in case 105/08?
2. What is the **relationship between the [union] members** in case 105/08?
3. What is the role and duties of worker delegates?
4. Is a worker delegate involved in case 105/08?
5. In case 105/08, if C.CAWDU represents the local union of C.CAWDU at Hytex Garment Company, which is one of its local unions, does it need an authorization letter?
6. Can workers who are not **members of the local union of C.CAWDU** at **Hytex Garment** Company ask **C.CAWDU** [to represent them]? If so, do they need [to provide] any documents?

IV. Answers to the above questions:

1. The union representative in case 105/08 is **C.CAWDU**.
2. The **relationship between the [union] members** in case 105/08 is the demand for wages during the period of labour contract suspension in the company from 1 August 2008 to 1 October 2008.
3. The role and duties of worker delegates are provided in the Labour Law, Article 284.
4. In case 105/08, a worker delegate was not present in the hearing.
5. They do not need an authorization letter but they need a letter of request [to ask the federation to represent the local union].
6. They need a request letter and another letter authorizing the federation to represent them according to the **Civil Procedure Code**, article **52**, point **1** and **3** and Article **53**, point **1/a** and point **2**. Then we need to match this answer number 6 to Prakas **305** SKBY, dated 22 November 2001, Clause **3**, paragraph **1** and **3** and Clause **5** paragraph **1, 2, 3, 4, 5, 6 and 7** in order to understand the power of the representative appointed by a party and those who have right to represent [the local union] as provided in the law.

As mentioned above, I would like to issue a dissenting opinion in case 105/08-**Hytex Garment**.

Signature of the Arbitrator:

Arbitrator chosen by the employer party:

Name: **Ing Sothy**

Signature: