

**KINGDOM OF CAMBODIA
NATION KING RELIGION**

THE ARBITRATION COUNCIL

Case number and name: 108/06-Trinunggal Komara

Date of Award: 13 December 2006

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **Ly Tayseng**

Arbitrator chosen by the worker party: **Liv Sovanna**

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

DISPUTING PARTIES

Employer party:

Name: **Trinunggal Komara Garment Industry Co., Ltd.**

Address: Russian Federation Blvd., Sangkat Toeuk Thla, Khann Russey Keo, Phnom Penh

Telephone: 023 881 428/ 012 361 899 Fax: 023 881 438/ 884 628

Representative:

- | | |
|-----------------------|--|
| 1. Mr. Lim Chhor Khay | Representative of the Company Director |
| 2. Mr. Tep Chharavan | Administrator |
| 3. Mr. Long Heang | GMAC officer |

Worker party:

Name: **Representatives of workers in Trinunggal Komara Factory**

Address: Russian Federation Blvd., Sangkat Toeuk Thla, Khann Russey Keo, Phnom Penh

Telephone: 012 647 355 (Mariya) Fax: N/A

Representative:

- | | |
|-----------------------|-----------------------|
| 1. Mr. Pring Kuy Heng | Worker Representative |
| 2. Mr. Chhuon Chhorn | Worker Representative |
| 3. Mr. Chuon Thida | Worker Representative |
| 4. Mr. Soun San | Worker Representative |
| 5. Mr. Im Sovann | Worker Representative |
| 6. Ms. Pho Kimchan | Worker |
| 7. Ms. Dok Sopha | Worker |

8. Ms. Leh Mayam	Worker
9. Ms. Boeun Sopheap	Worker
10. Ms. Chhuon Kimsan	Worker
11. Ms. Khiev Savy	Head of Khmer Union
12. Mr. Pon Poeun	Worker Representative
13. Mr. Iem Sophal	Worker Representative

ISSUES IN DISPUTE

(In the non-conciliation Report)

Workers still do not agree to go to work in Building A and B, although they have been assigned to do so by the management of the company. The employer assigns workers in Building D to go to work in Building A and B because the company will suspend work in Building D for sometime because it does not have material for workers to work there. In addition, the company has no intention to dismiss workers in Building D.

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 Arbitrators 099/06 dated 11 May 2006 (Fourth 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. 1690 KBV/AK/VK dated 21 November 2006 was submitted to the Secretariat of the Arbitration Council on 22 November 2006.

HEARING AND SUMMARY OF PROCEDURE

Place of hearing: Arbitration Council, Phnom Penh Center, Building A, Sothearos Blvd.,
Sangkat Tonle Basak, Khan Cham Kar Mon, Phnom Penh

Date of hearing: 1 December 2006 (from 2:30 p.m. to 5:30 p.m.)

Procedural issues:

On 13 November 2006, the Department of Labour Dispute received a complaint from workers at Trinunggal Komara demanding that the company not assign workers in Building D to work in Building A and B. Upon receipt of the complaint, the Department of Labour Dispute assigned its officer(s) to settle this dispute but the officer was unable to conciliate the issue. The one non-conciliated issue was submitted to the Arbitration Council on 22 November 2006.

After receiving the case, the Arbitration Council summoned the employer party and the workers in the factory to a hearing on 1 December 2006 at 2:30 p.m. Both parties appeared as invited by the Arbitration Council.

On the hearing day, the Arbitration Council attempted a further conciliation in respect of the one non-conciliated issue but the issue was not successfully conciliated. Therefore, in this award, the Arbitration Council will consider the issue in dispute 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:

- Letter dated 31 March 2003 to authorize Mr. Lim Chhor Khay as representative of the company
- Summary statement dated 25 November 2006
- Assignment letter dated 10 November 2006
- Announcement dated 11 November 2006
- Announcement dated 16 November 2006
- Minute of the collective labour dispute resolution dated 13 November 2006
- Request to return to work by nine women workers.
- Minute of the Department of Labour Dispute dated 29 August 2006
- Letter by the Department of Labour Inspector No. 698 KKBV/AK/A.TH.K, dated 29 August 2006
- Request to suspend workers for 2 months dated 22 August 2006
- Statute and Internal Work Rules
- Certificate of company registration

Provided by the worker party:

- Minute regarding the suspension of the employment contracts dated 25 August 2006
- Complaint dated 16 November 2006

Provided by the Ministry of Labour and Vocational Training:

- Report on the resolution of the collective dispute at Trinunggal Komara Company No. 1690 K.K.B.V./A.K/V.K by the head of the Department of Labour Dispute dated 21 November 2006
- Minute on the resolution of the collective dispute dated 13 November 2006.

Provided by the Secretariat of the Arbitration Council:

- Letter of invitation to the worker party to attend the hearing no: 226 LKA dated 22 November 2006.
- Letter of invitation to the employer party to attend the hearing no: 225 LKA dated 22 November 2006.

FINDINGS OF FACT

- Having examined the documents which the parties submitted
- Having examined the report of the collective dispute resolution
- Having listened to the testimonies of the worker and the employer parties.

The Arbitration Council finds that:

- The company transferred workers from Building D to Building A and B on 13 November 2006 for the reason that there is no work for workers in this building. The workers agree that there is no work.
- The workers agree that there is no work but do not wish to go for the following reasons:
 1. The workers requested to move to Building A and B once but the company did not let them go and suspended their work.
 2. They request that the company terminate their employment contracts and pay [termination benefits] in accordance with the law because the company has no work for them, according to the minute dated 25 August 2006.
 3. The company has terminated some workers in Building D, so why won't it terminate them as well?
- The company applied to suspend workers in Building D for two months from 30 August to 30 October 2006 with permission from the Ministry of Labour. The workers agree with this.
- When the workers came back to work on 1 November 2006 to 9 November 2006, the workers in Building D did not have work and the company did not notify them about the change in the location of their work.
- On 10 November 2006, the company announced that they would assign workers in Building D to go to work in Building B. The workers did not know about this announcement.
- On 11 November 2006, the company made another announcement to assign workers to work in Building B. The workers were informed of this assignment through their worker representative(s).

- The change of building does not affect the workers' wage or work.

REASONS FOR DECISION

In this case, the Arbitration Council will consider whether the workers have the right to not to go to work as assigned by the company.

Article 2 of the Labour Law states, "Every enterprise may consist of several establishments, each employing a group of people working together in a defined place such as in factory, workshop, work site, etc., under the supervision and direction of the employer."

In case No. 06/06-M&V, the Arbitration Council interpreted Article 2 of the Labour Law as follows: "*the employer has the right and power to supervise and direct human resources and to operate the company; however, this supervision and direction must be made in accordance with the law and be reasonable* (see Arbitral Award 28/04-Raffles Grand d'Angkor, 49/04-Ho Hing, 03/05-Flying Dragon, 15/06-Xing Tai and 20/06-New Star).

In the Arbitral Award of 17 & 18/03-Ho Hing, the Arbitration Council stated, "*In making this decision the Arbitration Council is mindful not to interfere with the right of supervision and management of activities for business and general authorities of the company as employer in managing and changing the works of employees of the company provided it does not result into reduction of wage, changing of working place to the far place from original one, changing of day shift to night shift or night shift to day one and does not affect the specific professional skills. If these things are affected, it is considered as a violation of employment contract that requires to be respected. If the change of shift is made without reduction of wage, if it does not affect the time and place of work and if the change of work involves use of similar (and not complex) skills by the employee, the employer can lawfully do so.*"

In this case, the change from Building D to Building A and B does not affect the workers' wages, working positions or time of work. Therefore, the Arbitration Council considers that the change does not affect the workers' personal rights or the rights workers receive from their employment contract. Therefore, the Arbitration Council rejects this demand.

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 not assign workers in Building D to work in Building A and B

Type of Award: Binding

This Award is immediately binding upon the parties after the notification of this award.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Ly Tayseng**

Signature:

Arbitrator chosen by the worker party:

Name: **Liv Sovanna**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: