



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអង្គការជំនុំជម្រះ

THE ARBITRATION COUNCIL

Case number and name: 110/08-Redtex

Date of Award: 15 September 2008

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

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

Arbitrator chosen by the worker party: **An Nan**

Chair Arbitrator (chosen by the two Arbitrators): **Pen Bunchhea**

DISPUTING PARTIES

Employer party:

Name: **Redtex Cambodia Printing Factory Ltd**

Address: #37, Street 1019, Sangkat Phnom Penh Thmey, Khan Russey Keo, Phnom Penh

Telephone: 012 950 983 or 099 488 368 Fax: N/A

Representative:

- | | |
|--------------------|---------------------------|
| 1. Mr. Qin Shi Hai | Supervisor |
| 2. Mr. Tang Vailam | Assistant and interpreter |
| 3. Mr. Sin Saray | Assistant |

Worker party:

Name: **No Union Federation or Local Union**

Address: N/A

Telephone: 012 776 895 Fax: N/A

Representative:

- | | |
|-------------------------|---|
| 1. Mr. Lon Mony Rangsey | Representative of workers (worker delegate) |
| 2. Mr. Chan Mony Reak | Chief electrician |
| 3. Mr. Teb Kimsan | Printing worker |
| 4. Mr. Sek Putheara | Printing worker |

5. Mr. Voeun Bora	Printing worker
6. Mr. San Kimlay	Printing worker
7. Mr. Chan Phally	Printing worker
8. Mr. Bun Ban	Printing worker
9. Mr. Long Saret	Printing worker
10. Mr. Chin Sody	Printing worker

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- The workers demand that the company increase their main wage by US\$ 5. The Company cannot increase workers' main wages by this amount but it is able to provide an additional US\$ 2 per month.

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. 926 KB/AK/VK, dated 25 August 2008 was submitted to the Secretariat of the Arbitration Council on 26 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: 1 September 2008 from 2:00 p.m. to 5:30 p.m.

Procedural issues:

On 13 August 2008 the Department of Labour Disputes received a complaint from workers demanding that the company increase their main wage by US\$ 5. The Department of Labour Disputes assigned an expert officer to resolve the collective labour dispute on 13 August 2008 and but was not able to resolve the one issue. The one non-conciliation issue was referred to the Arbitration Council on 26 August 2008 by non-conciliation report No. 926 KB/AK/VK, dated 25 August 2008.

Upon receipt of the case and because the workers were on strike, the Arbitration Council issued an interim order No. 011 KBA, dated 27 August 2008 to order the workers to

stop their strike at Redtex company immediately and return to work in accordance with their working hours on 28 August 2008. The workers came back to work in accordance with their working hours as ordered by the Arbitration Council.

The Secretariat of the Arbitration Council summoned the employer party and the worker party to the hearing and conciliation on the one non-conciliation issue on 1 September 2008 at 2:00 p.m.

Both parties were present at the arbitral hearing. The Arbitration Council attempted to seek further information relevant to this case and to further the conciliation on the one non-conciliation issue but was not able to resolve the issue. Thus, the Arbitration Council will consider and resolve this [issue] 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. Company's Internal Work Rules, No. 11 September 2000.
2. Announcement to open the enterprise, dated 14 August 2000.
3. Announcement that on the morning of 9 August 2008 at 7:00 a.m. workers went in to the factory compound but did not perform their work, dated 9 August 2008.

Provided by the worker party:

1. Minutes of collective labour dispute resolution at Redtex Company, dated 26 January 2007.

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

1. Report No. 926 KB/AK/VK, dated 25 August 2008 on the collective labour dispute settlement at Redtex Company.
2. Minutes of the collective labour dispute resolution at Redtex Company, dated 13 August 2008.

Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 546 KB/AK/VK/LKA dated 28 August 2008 to invite the worker party to attend the hearing.
2. Invitation No. 545 KB/AK/VK/LKA dated 28 August 2008 to invite the employer party to attend the hearing.

FACTS

- Having reviewed the report of collective dispute conciliation;

- Having listened to the statements by the worker party and the employer party;
- Having examined additional documents.

The Arbitration Council finds that:

- Redtex Company employs approximately 59 workers.
- There is no union in the Company.
- The worker delegates (worker representatives) are the claimants in this case.

Issue in dispute: The workers demand that the company increase their main wage by US\$5

- The workers demand that the company increase their main wage by an additional US\$3 as the company has already increased it by US\$2. The workers received the US\$2 wage increase on their payday on the 8th of every month.
- 8 of the workers who demand a US\$3 wage increase were present at the hearing.
They are:

No.	Name	Position	Date of employment	Amount of wage
1	Mr. Teb Kimsan	Printing	19-09-02	US\$72
2	Mr. Sek Puthera	Printing	26-04-04	US\$58.50
3	Mr. Voeun Bora	Printing	14-01-03	US\$61.50
4	Mr. San Kimlay	Printing	23-10-02	US\$66.50
5	Mr. Chan Phally	Printing	11-12-03	US\$58.50
6	Mr. Bun Ban	Printing	06-12-03	US\$58.50
7	Mr. Long Saret	Printing	24-04-04	US\$58.50
8	Mr. Chin Sody	Printing	26-09-02	US\$65.50

- In the hearing the workers stated that the company increases their main wage by US\$1 every year. However, in 2008 the workers requested that the company increase their wage by US\$5 but the company only increased it by US\$2.
- In the hearing the company acknowledged that printing work is hard and tiring. However, the company is unable to provide as requested by the workers.
- The company adds that recently the company does not have much work for the workers to do. However, when the company has more work again, the company will bring the issue of a wage increase for discussion again.
- The workers insist that the company increase their main wage by US\$3 because commodity prices and rental fees have increased by US\$3 per month and because printing work is heavy and tiring..
- Clause 5 of the company's Internal Work Rules, dated 11 September 2000, states, "... the company will consider increasing workers' wages at the end of the year based on

the workers' work results, adherence to discipline, quality of work of each individual and the company's capability."

REASONS FOR DECISION

Issue in dispute: The workers demand that the company increase their main wage by US\$5

In this case, based on the findings of fact, the Arbitration Council finds that the workers demand that the company increase their main wage by US\$5. The company is unable to pay US\$5 but is only able to increase [workers' wages] by US\$2.

Point 1 of Notification 745 KKBV, dated 23 October 2006 states *"The minimum wage for garment, textile workers and shoe making workers is set at US\$45.00 per month for probationary period of 01 month to 03 months. At the end of probationary period, a full-right worker receives the minimum wage of US\$ 50 per month."*

Based on the findings of fact, the Arbitration Council finds that none of the 8 workers wage is less than US\$50. Moreover, the Arbitration Council finds that the company considers and increases wages for workers every year. Thus, the workers' demand for an increase of wages is an interests dispute.

In relation to an interests dispute, the Arbitration Council can resolve it only when the union who brings the dispute is a union with most representative status in the enterprise or when there is a combination of unions whose combined membership is equal to more than half of number of workers in the enterprise. (*See Arbitral Awards 81/04-Evergreen, issue 4 and 98/04-Great Union, issue 3*).

The Arbitration Council considers that the most representative status of a union provides legal standing to negotiate a CBA with the company as well as the legal right to bring a dispute to the Arbitration Council for resolution. (*See Arbitral Awards 57/06-Evergreen and 98/04-Great Union*).

In order to receive most representative status, Article 277 of the Labour Law 1997 states that the union must register and meet other requirements as set forth under this Article.

Moreover, Clause 43 of Prakas 099/ dated 21 April 2004 stipulates that *"The arbitral award which settles an interest dispute will replace the collective agreement for a period of one year starting from the effective date of the award, unless the parties conclude another collective agreement to substitute it."*

So far, the Arbitration Council has found that if it rendered its arbitral award on [an interests] issue, the award will become a collective agreement applicable to all the workers in a company, and would take away the right of other workers to strike on grounds of such interests dispute in the future. This could lead to unfairness and injustice to other workers.

(See *Arbitral Awards 57/04-Evergreen, 60/04-United Art, issue 3; and 08/07-Siu Quinh, issue 3*)

In this case, the Arbitration Council agrees with the interpretation and Arbitral Awards of the Arbitration Council in previous cases. In this case the worker delegates (worker representatives) are the claimants and [the claim is made] only for the 8 workers who were present at the hearing.

Therefore, the Arbitration Council decides to decline to consider the demand for the company to increase their main wage by an additional US\$ 3.

DECISION

- Decline to consider the demand for the company to increase their main wage by an additional US\$3.

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: **Ly Tayseng**

Signature:

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: