

**KINGDOM OF CAMBODIA
NATION KING RELIGION**

THE ARBITRATION COUNCIL

Case number and name: 114/06-Chhang Chheng

Date of Award: 2 January 2007

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **Ouk Ry**

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

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

DISPUTING PARTIES

Employer party:

Name: **Chhang Chheng Company**

Address: Trea Village, Sangkat Steun Mean Chey, Khann Mean Chey, Phnom Penh

Telephone: 012 222 721

Representative:

- | | |
|-------------------------|---------------------------------------|
| 1. Mr. Hi Sien Hor | Company Director |
| 2. Mr. Chang Kheng Hong | Head of the Administration Department |
| 3. Mr. Peo Vuthy | Head of the Accounting Department |

Worker party:

Name: **Local KYFTU at Chhang Chheng Company**

Address: # 34, Street 265, Sangkat Toeuk Laak 3, Khann Tuol Kork, Phnom Penh

Telephone: 012 940 548 or 012 714 11

Representative:

- | | |
|-----------------------|------------------|
| 1. Mr. Poeun Sam Oeun | Officer of KYFTU |
| 2. Mr. Ly Kim Ann | Officer of KYFTU |
| 3. Mr. Sorn Piseth | Officer of KYFTU |
| 4. Mr. Siet Sat | Worker |
| 5. Mr. Im Mony | Worker |

ISSUES IN DISPUTE

(In the non-conciliation Report)

1. The workers demand that the company pay 100 percent wages while there is no work to do. The company states that it can provide only 50 percent wages.
2. The workers demand that the company pay wages properly; that is that the real and full amount received is paid (that the amount after the decimal point is not cut). The company does cut that amount, but only rounds down when the cent value is \$0.40 and below. If the cent value is from \$0.5 to \$0.9, the company rounds up to \$1.00.
3. The workers demand that the company reinstate Mr. Im Mony and Mr. Siet Sat because they are union leaders of the Khmer Youth Trade Union. The company cannot reinstate the two men because they are just normal workers whom the company already dismissed.
4. The workers demand that the company give a food allowance of 1,000 riel for overtime work from 4:00 p.m. to 6:00 p.m. The company provides 1,000 riel per overtime shift because the company applies Notification 017 SKBY dated 18 July 2000.

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B (Articles 309 to 317) 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. 099 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 hearing was unsuccessful, and the non-conciliation report No. 1790 KKBV/AK/VK dated 6 December 2006 was submitted to the Secretariat of the Arbitration Council on 6 December 2006.

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: 19 December 2006 (from 8:00 a.m. to 11:00 a.m.)

Procedural issues:

Upon receipt of the complaint regarding the demand that the company improve its work conditions so that they are in accordance with the Labour Law; on 23 November 2006 the Department of Labour Dispute assigned officer(s) to attempt to resolve the labour dispute through conciliation. The last conciliation was held on 29 November 2006 with the result that 10 out of 14 issues were conciliated. The non-conciliated issues were referred to the Arbitration Council on 7 December 2006. After receiving the case, all parties to the dispute were summoned by the Arbitration Council to a hearing on 19 December 2006 at 8:00 a.m.

Both parties were present at the arbitral hearing. The Arbitration Council further attempted to conciliate the four non-conciliated issues and three of these issues, issues 1, 2 and 4, were successfully conciliated. Therefore, only one issue remains (issue 3), which the Arbitration Council will consider and resolve in consideration of 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 from the company regarding a request for representatives of the enterprise/establishment to attend the hearing, dated 19 December 2006.

Provided by the worker party:

- Letter No. 816 S.S.Y.K from the Khmer Youth Federation Trade Union to the Director of the company informing the company of the election of the Committee of the local KYFTU at the company, dated 11 November 2006.

Provided by the Ministry of Labour and Vocational Training:

- Report of the collective labour dispute resolution at Chhang Chheng Company No. 1790 KKBV/AK/VK, dated 6 December 2006.
- Minute of the collective labour dispute conciliation, dated 29 November 2006

Provided by the Secretariat of the Arbitration Council:

- Letter No. 551 LKA to inform the Director of the company regarding the selection of Arbitrators, dated 8 December 2006.

FINDINGS OF FACT

- Having examined the report of the collective labour dispute conciliation
- Having listened to the arguments raised by the employer and the worker parties
- Having examined additional documents

The Arbitration Council finds that:

- Chhang Chheng Company is located in Trea Village, Sangkat Steung Mean Chey, Khann Mean Chey, Phnom Penh. The company employs approximately 90 workers. Chhang Chheng Company is a sub-contracting factory, which accepts goods from other factories to work on.

Issue 3:

- The workers demand that the company reinstate Mr. Im Mony and Mr. Siet Sat because both of them are union leaders. The company claims that the two men are normal workers who are paid by piece; the price is set per dozen (i.e. pieceworkers).
- Mr. Im Mony started work on 8 July 2006 and Mr. Siet Sat started on 14 July 2006. [Both men were employed pursuant to] a verbal contract with the employer. There was approximately four months between the date of work commencement and the date of termination.
- The worker party claims that on 10 November 2006, in Russey Village, Sangkat Steung Mean Chey, Khann Tuol Kork, the KYFTU arranged an election for the Khmer Youth Trade Union committee at Chhang Chheng company. As a result of the election, Mr. Im Mony was elected the President of the union; Mrs. Moeun Sokmeng, Vice President; and Mr. Siet Sat, Secretary. At the hearing, the company claims that Mrs. Moeun Sokmeng is not a worker in the company as she was dismissed a long time ago. Mrs. Moeun Sokmeng worked for the company for only about 10 days. The worker party did not object to this claim. The worker party did not provide to the Arbitration Council any clear evidence about the union election, such as a notification letter about the election, the list of names of union members and union registration receipt from the Ministry of Labour and Vocational Training.
- According to the claim of the worker party, on 11 November 2006, the union Federation sent a letter about the Khmer Youth Trade Union committee election to the Director of Chhang Chheng Company via Mr. Sarin who signed the letter on 11 November 2006. However in the hearing, the company [Director] claimed that he did not receive information regarding this election because Mr. Sarin is not one of the company's workers or a company security guard. In the hearing, the worker party did not object to the company's claim that Mr. Sarin is not a worker or a security guard at the company. The workers only claim that they met Mr. Sarin (not in a security uniform) and that when they met Mr. Sarin, Mr. Sarin said that he was a security guard so the notification letter about the election could be sent through him.
- On 16 November 2006, the company decided to terminate the two workers and calculated the severance pay for them without any prior notice. During the hearing,

the two workers claimed that they were terminated because of union discrimination. This claim was objected to by the employer party.

- The worker party mentioned during the hearing that it had sent the notification letter regarding the election of the Khmer Youth Trade Union committee and requested union registration from the Ministry of Labour and Vocational Training. When the Arbitration Council asked for the receipt of registration and requested relevant documents such as a list of names of workers who voted, the union promised to provide them to the Arbitration Council but it did not do so. The Arbitration Council set a deadline for submission of the additional evidence for Friday, 22 December 2006 at 12 p.m. However, the Arbitration Council did not receive any additional evidence from the worker party before this deadline.

REASONS FOR DECISION

During the hearing, the worker party demanded that the company reinstate Mr. Im Mony and Mr. Siet Sat because both of them are leaders of the Khmer Youth Trade Union.

The Arbitration Council will consider if Mr. Im Mony and Mr. Siet Sat are indeed union leaders who should therefore receive special protection.

Regarding the termination of a leader of a labour union, Article 293 of the Labour Law states, "*The dismissal of a shop steward or a candidate for shop steward can take place only after authorisation from the labour inspector. The same protective measures apply to former shop stewards...is subject to the same procedure.*"

Article 4 of Prakas 305 provides, "*...all workers and employees who are founders or all workers and employees who are voluntary members of syndicate...also receive protection like personnel delegate. This protection lasts for 30 days after the date of registration of syndicate... the protection will be granted to 3 syndicate leaders in terms set out in articles 282 and 293 of labour law... To receive the protection, the syndicate shall inform the employer about the names of people having to receive it by official means. A copy of this information shall be sent to the Ministry of Labour and Vocational Training.*"

In previous cases, (Arbitral Awards 50/05-Fortune, issue 1; 64/05-Chian Hwey, issue 1; 09/06-Grand Diamond, issue 1; and 43/06-Wincam) the Arbitration Council has determined that, in order to receive special protection against termination, [the following] three conditions must be satisfied: 1) the worker must be a type of worker who is entitled to special protection, 2) the date of the termination must be within the duration of special protection and 3) the worker must have informed the employer [of their position] by any reliable means. If these three conditions are satisfied, the employer party must receive permission from the Labour Inspector before terminating the worker.

In this case, the three conditions are not satisfied. The workers claimed at the hearing, that on 10 November 2006 an election of the Khmer Youth Trade Union at Chhang Chheng Company's committee was held. The Arbitration Council has authority to require the parties in dispute to provide evidence (see article 18 and 24 of Prakas 099/2004). Article 25 of Prakas 099 dated 21 April 2004 states, "*The arbitration panel shall be free to determine the admissibility, relevance, materiality and weight of evidence as well as the allocation of the burden of proof.*"

The Arbitration Council set a date by which the parties had to provide evidence to the Arbitration Council, of not later than 12 p.m. on 22 December 2006. However, the worker party did not provide any evidence to the Arbitration Council to prove that workers at Chhang Chheng Company had an election to elect union leaders, that the union has been registered or that the employer had been informed about the leaders of the union through any reliable means (see the Findings of Fact).

In previous cases, the Arbitration Council determined that if a party does not provide evidence to support its claim, the Arbitration Council cannot take the claim into consideration (see Arbitral Awards 79/05-Evergreen and 99/06-South Bay, Issue 1 of the Reasons for Decision). The Arbitration Council has also determined that when the worker party claims that the employer terminated workers because they are union leaders or because of union discrimination, it needs to show official documents and evidence to support its claim. If the claimants do not show official documents and evidence to show that the employer terminated the workers because they were union leaders or because of union discrimination, the claim will not be considered by the Arbitration Council. In this case, the workers do not have any evidence ([such as] the minute of the election, notification about the election, receipt of union registration, and list of names of union members) to provide to the Arbitration Council to confirm that Mr. Im Mony and Mr. Siet Sat are leaders of Khmer Youth Trade Union at Chhang Chheng Company who should receive special protection in accordance with the Labour Law.

However, the Arbitration Council notes that in this case, if workers had provided evidence to the Arbitration Council on time to show the leadership of Khmer Youth Trade Union at Chhang Chheng Factory (such as the minute of the union election, minute of participants in the election, result of the election, or request for registration at an authorized institution), the Arbitration Council would have considered whether the termination was made in accordance with the legal procedures.

Therefore, the Arbitration Council considers that the two workers are not under special protection.

In addition, the Arbitration Council considers that the Labour Inspector and the Minister of Labour have a duty to decide which disputes are individual disputes and which are collective before referring any disputes to the Arbitration Council. Normally, the Arbitration Council will

accept the decision of the Labour Inspector and the Minister of Labour if there is no explicit reason for objection (see Arbitral Awards 10/03-Jaqsintex Issue 4 in the Reasons for Decision, 07/05-Coca Cola Issue relating to Jurisdiction, 41/04-Micasa in the Reasons for Decision). In this case, the Arbitration Council finds that the two workers do not have special protections [against termination] so this is a reason therefore for the Arbitration Council to consider whether this is a collective labour dispute.

The Arbitration Council has jurisdiction to hear only collective labour disputes (see chapter 12, section 2B (Articles 309 to 317) of the Labour Law (1997); the Prakas on the Arbitration Council No. 099 dated 21 April 2004; and the Arbitration Council Procedural Rules which form an Annex to the same Prakas. Thus, in this case, the Arbitration Council will consider if this dispute is a collective labour dispute.

The Arbitration Council notes that the union which is a party to the dispute does not show enough evidence to prove to the Arbitration Council that this union is legally registered. Therefore, the Arbitration Council will consider as follows:

Article 302 of the Labour Law provides, “*A collective labour dispute is any dispute that arises (a). between one or more employers and a certain number of their staff over (b) working conditions, the exercise of the recognised rights of professional organisations, the recognition of professional organisations within the enterprise, and issues regarding relations between employers and workers, and (c) this dispute could jeopardise the effective operation of the enterprise or social peace.*”

In this case, the Arbitration Council considers that the termination of Mr. Im Mony and Mr. Siet Sat is not a collective labour dispute because this dispute does not satisfy condition (c) of the definition of collective labour disputes as stated in Article 302 of the Labour Law.

Condition (a) is satisfied because this dispute arises between one employer and two workers. Condition (b) is satisfied as this dispute relates to the termination of workers which is an issue which relates to the relationship between the employer and workers. However, condition (c) is not satisfied. This dispute is not likely to cause an interruption in the operation of the factory because, based on the above findings of fact by the Arbitration Council, the two workers have no support from any union legally registered according to the Labour Law. [In addition], the labour dispute of the two workers does not have the support of other workers in the enterprise. Therefore, the Arbitration Council concludes that this dispute cannot cause an interruption to the production activities in the enterprise. This means that, this dispute is not a collective labour dispute and the Arbitration Council does not have jurisdiction to consider this labour dispute.

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

DECISION

- Decline to consider the workers' demand.

Type of Award: non binding

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 Ministry of Labour and Vocational Training 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: **Ouk Ry**

Signature:

Arbitrator chosen by the worker party:

Name: **Liv Sovanna**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: