



**KINGDOM OF CAMBODIA**  
**NATION RELIGION KING**

**ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល**

**THE ARBITRATION COUNCIL**

**Case number and name: 114/07– Union Paper**

**Date of Award: 27 November 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: **Liv Sovanna**

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

#### **DISPUTING PARTIES**

##### **Employer party:**

Name: **Union Paper Corporation**

Address: Prek Takong Village, Sangkat Chak Angre Leu, Khan Meanchey, Phnom Penh

Telephone: 023 724 451, 012 311 368

Representatives:

1. Mr. Koon Sai Chau                      General Manager;
2. Mr. Yang Makara                        Administrator.

##### **Worker party:**

Name: **Khmer Youth Trade Union (KYTU) at Union Paper Corporation**

Address: Prek Takong Village, Sangkat Chak Angre Leu, Khan Meanchey, Phnom Penh

Telephone: 012 846 681, 012 990 227

Representatives:

1. Mr. Long Sophat                        KYTU conciliator;
2. Mr. Touch Seng Leap                KYTU conciliator;
3. Mr. Him Vanna                        President of KYTU at Union Paper;
4. Mr. Khuon Saroeun                Member of KYTU at Union Paper.

## **ISSUES IN DISPUTE**

(In the Non-Conciliation Report)

1. The KYTU demanded that the company maintain one-year fixed duration labour contracts in accordance with its earlier practice. The company claimed that it had signed labour contracts of six months for workers.
2. The KYTU demanded that the company convert casual workers who had worked for more than two months to regular workers. The company claimed that it agreed to this demand only for new workers who have been working for more than two months and the new practice will be applicable from 24 October 2007.
3. The KYTU demanded that the company maintain the bonus they had been receiving. The company claimed that it would not agree to such provision because the company has already provided workers with the minimum wage of US\$ 50.

## **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 30 October 2007 was unsuccessful, and the non-conciliation report No. 1152 was submitted to the Secretariat of the Arbitration Council on 1 November 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:** 13 November 2007 (from 2:00pm to 5:30pm)

### **Procedural issues:**

On 20 October 2007, the Department of Labour Dispute received a complaint from the KYTU at the factory demanding that Union Paper Company improve working conditions in six areas. The Department of Labour Dispute designated its officials to conciliate the issues on 25 October 2007 and as a result three out of six issues were conciliated. The three remaining non-conciliated issues were submitted to the Arbitration Council for resolution in accordance with the law.

Having received the case, the Secretariat of the Arbitration Council invited both the employer party and the employee party to a hearing to conciliate the dispute on 13 November 2007.

At 2:00pm on 13 November 2007, the Arbitration Council conducted a hearing to resolve the non-conciliation issue. The Arbitration Council encouraged the disputing parties to try to settle the issues both in the hearing and at the enterprise in order to reach a resolution through conciliation and as a result of the attempt, one of the issues was conciliated while two others remained unresolved. Thus, the Arbitration Council will consider only two issues in this award.

## **EVIDENCE**

**Witnesses and experts:** N/A

### **Documents, Exhibits and other evidence considered by the Arbitration Council**

#### **Provided by the employer party:**

1. Minutes of collective labour dispute conciliations dated 5 September 2007 and 24 October 2007;
2. Invitation No. 419 of Department of Labour Disputes dated 11 July 2007;
3. Trade Registration Certificate No. 616 dated 20 May 2003;
4. Patent No. 013160/2007 dated 14 March 2007;
5. The Internal Work Rules of Union Paper Company No. 030 dated 2 April 2004.

#### **Provided by the worker party:**

1. Union's Registration Certificate No. 1241 dated 17 September 2007;
2. Statute of Khmer Youth Trade Union at Union Paper Factory;
3. Minutes of collective labour dispute conciliation dated 24 October 2007.

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

1. Letter No. 1592 dated 7 November 2007 of the Minister of Labour and Vocational Training on the request for the collective labour dispute conciliation at Union Paper Company;
2. Report on the non-conciliated dispute No. 1152 dated 30 October 2007 of the Department of Labour Disputes;
3. Minutes of the collective labour dispute conciliation dated 24 October 2007.

#### **Provided by the Secretariat of the Arbitration Council:**

1. Invitation No. 513 to the employer party to attend the hearing dated 5 November 2007;
2. Invitation No. 514 to the worker party to attend the hearing dated 5 November 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:**

Within Union Paper Corporation, there are a total of 120 workers and none of the unions has most representative status.

### **Issue 1: The worker party demanded that the company maintain one-year fixed duration labour contracts in accordance with the company's earlier practice**

- Within Union Paper Company, 40 workers signed fixed-duration labour contracts of one year. The practice had been in place since 2003. [However] from September 2007, when a worker's contract expired, the worker was asked to sign a new fixed-duration labour contract of six months. To date, 30 workers are still using fixed-duration labour contracts of one-year and these labour contracts will expire very soon.
- So far, five workers have signed the fixed-duration labour contracts of six months. The demand was made for 35 workers.
- The KYTU claimed that the change in the duration of labour contract from one year to six months has affected the benefits of workers which include the period of notice [of non renewal], impact on wage as well as the non-renewal of labour contracts of union leaders. For instance, the Union President Him Vanna's labour contract was not renewed.
- The employer claimed that the change in the duration of contracts was made based on Article 73 of the Labour Law, adding that when a contract expired, the company compensated the [worker] for the contract expiration as set forth in the law before signing a new one. The worker party accepted that the compensation was paid.
- The worker party claimed that so far the company had not complied with the law, adding that some workers had no work for two to three days before they were called to sign new contracts and some workers were not notified by the company for eight days. The employer party accepted this.

### **Issue 3: The worker party demanded that the company maintain a bonus in accordance with its earlier practice**

- Union Paper Company has provided workers with a US\$ 10 bonus per month. This bonus is provided for in the labour contract of each worker.
- The union party claimed that regular workers receive US\$ 10 bonus per month while casual workers get only US\$ 5 per month; and the union demanded [that the

employer] sign new labour contracts which retained the above mentioned bonus. The company party declined to provide casual workers with the bonus.

- The union party claimed that the request for maintenance of the bonus was in accordance with Article 390 of the Labour Law and [there is] no collective agreement which states anything about the bonus.
- The employer party claimed that the company will continue to provide such a bonus to those workers whose labour contracts are still valid and which specify that they are entitled to a bonus; but once their labour contracts expire, the company will no longer provide such a benefit in the new labour contracts.

### **REASONS FOR DECISION**

#### **Issue 1: The worker party demanded that the company maintain one-year fixed duration labour contracts in accordance with the company's earlier practice**

The worker party demanded that the company maintain one-year fixed duration labour contracts in accordance with its earlier practice but this was rejected by the company. The company referred to Article 73 of the Labour Law.

Article 65 of the Labour Law states that, "*A labour contract establishes working relations between the worker and the employer. It is subject to common law and can be made in a form that is agreed upon by the contracting parties.*"

Pursuant to Article 65 of the Labour Law, the labour contract is subject to common law. Decree No. 38 dated 28 October 1988 sets out the common law provisions relevant to labour contracts.

Article 22 of Decree No. 38 states that:

*"A contract is a legally binding agreement between the parties."*

Article 22 of Decree No. 38 on Contracts and Liabilities Outside Contracts states that:

*"Amendments to the contract can only be made with the consent of both contracting parties."*

*A contract shall be executed with honesty and according to the will of the parties."*

Based on Article 1 and Article 22 of Decree No. 38, a labour contract can be only be established with the agreement of both the employer party and the worker party. Both parties should enter into a contract agreement freely, without coercion and according to the law.

In case 56/06 – Boric, the Arbitration Council ruled that, "*A labour contract establishes working relations between the worker and the employer. It is subject to common law and can be made in a form that is agreed upon by the contracting parties. The contract shall be subject to common law. None of the contracting parties may force the other party to sign contract or accept the conditions that the other party finds unacceptable. Any contract made by force will be considered null by the law or the other party.*" (See Arbitral Award 56/06 – Boric, Issue 1)

In this case, the Arbitration Council agrees with the interpretations of the arbitrators in the previous awards. Thus, the demand that the employer sign one-year fixed [duration] labour contracts is possible only if there is an agreement between the employer and the workers. If no agreement is reached, then a contract can not be made and no party can force the other party to sign the contract. However, the Arbitration Council considers that the signing of one-year or six-month fixed duration contracts is not contrary to the law because it depends on the negotiation and agreement of the contracting parties. In conclusion, the Arbitration Council decides to reject workers' demand.

**Issue 3: The worker party demanded that the company maintain the bonus in accordance with its earlier practice**

The workers demanded that the company maintain the bonus of US\$10 in accordance with its earlier practice. The Arbitration Council closely examined the Internal Work Rules of Union Paper Corporation and found that there is no provision or article which refers to this bonus. The Arbitration Council found that the demand for maintenance of the bonus was not provided for in any agreement, collective agreement or Internal Work Rules of the company. Regarding the reference to Article 390 of the Law Labour by the worker party, the Arbitration Council considers that the article exists in the Transitional Provisions which set out the transition of the 1992 Labour Law into the 1997 Labour Law. Article 390 was designed to preserve benefits for workers whose labour contracts were under the 1992 Labour Law and they were valid until 1997. Therefore, Article 390 is not applicable in this case. The Arbitration Council considers that in this dispute the workers demand that the employer is under an obligation to provide a [US\$10] bonus in their new labour contracts. Generally, the Arbitration Council considers this type of dispute as an interests dispute.

Regarding interests dispute, the Arbitration Council always considers whether or not the union has most representative status because most representative status provides a union with legal capacity to negotiate a collective bargaining agreement. Therefore, a union with most representative status or a union, with members of at least 50% of all workers in the factory where no other union does, has legal standing to bring an interests dispute before the Arbitration Council.

In order to achieve most representative status, Article 277 of the Labour Law and Clause 6 of Prakas 305 dated 22 November 2001 require a union to have members of at least 50% of all workers in the factory and must be registered at the Ministry of Labour and Vocational Training and it must meet other requirements set forth in this Article (see Arbitral Awards 84/07 – Yung Hwa II, Issue 1 and 108/07 – Star Sportswear, Issue 3).

In this case, the Khmer Youth Trade Union at Union Paper Factory does not have most representative status. Therefore, the union does not have the legal right to negotiate a

collective bargaining agreement on behalf of all workers in the factory (see Clause 9(1) of Prakas 305).

Generally, the Arbitration Council declines to consider an interests dispute brought by a union that does not have most representative status (see Arbitral Awards 81/04 – Evergreen, Issue 4; 09/05 – Kin Tay, Issue 2; 84/07 – Yung Hwa II, Issue 1; and 108/07 – 8 Star Sportswear, Issue 3).

In conclusion, the Arbitration Council declines to consider the demand of workers that the company maintain the bonus of US\$ 10.

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

**DECISION AND ORDER**

**Issue 1:** Decline to consider the demand of workers that the company maintain one-year fixed duration labour contracts.

**Issue 3:** Decline to consider the demand of workers that the company maintain the [US\$10] bonus in the new labour contracts.

**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: **Liv Sovanna**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Ang Eng Tong**

Signature: .....