

**KINGDOM OF CAMBODIA
NATION KING RELIGION**

THE ARBITRATION COUNCIL

Case number and name: 115/06-Archid

Date of Award: 5 January 2007

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **Chhiv Phyum**

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

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

DISPUTING PARTIES

Employer party:

Name: **Archid Garment Factory Cambodia Ltd.**

Address: Sangkat Steung Mean Chey, Phnom Penh

Telephone: Fax: N/A

Representative:

- | | |
|-------------------|----------------------|
| 1. Hang Siev Tong | Manager |
| 2. Oeun Sam Ol | Communications Staff |
| 3. Ho Hong | Interpreter |
| 4. Hang In Sy | |

Worker party:

Name: **Worker Union at Archid Garment Factory Cambodia Limited Company**

Address: N/A

Telephone: 012 628 490 Fax: N/A

Representative:

- | | |
|-------------------|---|
| 1. Hing Bunthoeun | Coordinating Officer |
| 2. Ol Sam Art | Vice President of Khmer Youth Trade Union |
| 3. Huon Sokha | President of Khmer Youth Trade Union |
| 4. Yib Bunroeun | Committee |
| 5. Poeun Sam Oeun | Coordinating Officer |

ISSUES IN DISPUTE

(In the non-conciliation Report)

1. The workers demand that the company enter into fixed duration labour contracts in the following way; six-month contracts at the first time of signing and one year contracts at the second time of signing. The company stated that the fixed duration labour contracts are entered into in the following way:
 - three-month contracts at the first time of signing
 - six-month contracts at the second time of signing
2. The workers demand that the company pay back their wage for the period during which the company did not have work for them to do. The company did not provide 100 percent wages to workers [at that time]. The company is not able to pay the wages back to workers.
3. The workers demand that the company maintain the regular attendance bonus of US\$5 when workers take leave with permission for three days. The company does not agree but seeks to follow Notification 017 SKBY dated 18 July 2000 issued by the Ministry [in charge of Labour].
4. The workers demand that the company maintain the regular attendance bonus of US\$5 when workers clock-in late because of bad traffic for up to five times per month. The company states that if workers come to work late because of bad traffic more than three times per month, the company will not provide the US\$5 regular attendance bonus.
5. The workers demand that the company arrange for a re-election of worker delegates. The company states that it will arrange the new worker delegate election when the current mandate is over in accordance with the Law.

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 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 (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. 1832 K.K.B.V/AK/VK dated 13 December 2006 was submitted to the Secretariat of the Arbitration Council on 13 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 2:15 p.m. to 2:30 p.m.)

Procedural issues:

On 1 November 2006, the Department of Labour Disputes received a complaint from workers demanding that the company improve working conditions. Upon receipt of the complaint, the Department assigned officers to settle this dispute, with the last conciliation conducted on 30 November 2006 with a result that four out of nine issues were resolved. The five unresolved issues were referred to the Arbitration Council on 13 December 2006.

After receiving the case, the Secretariat of the Arbitration Council summoned the employer party and the workers of the factory to a conciliation with respect to the five non-conciliated issues on 13 December 2006 at 2:15 p.m. Both parties presented as summoned by the Arbitration Council.

On the hearing day, the Arbitration Panel introduced themselves to the parties and explained issues related to conflicts of interest. At this point, the Khmer Youth Trade Union Federation objected to the whole of the Arbitration Panel alleging that the Arbitration Panel always declined to consider complaints raised by Khmer Youth Trade Union but that conflict of interest was not an issue. After that, the Khmer Youth Trade Union stated, "In this case, the Arbitrators can decide in whatever way they want; the union will not participate in the hearing because I am very busy." The Arbitration Council asked for confirmation with respect to how the union party wished the Arbitrators to proceed with this case. The union repeated that "the Arbitrators can do whatever they like; the Arbitrators are appointed just to take money and not to protect workers." After saying that, the union party walked out of the hearing room.

Therefore, the Arbitration Council considers this case as follows:

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party: N/A

Provided by the worker party: N/A

Provided by the Ministry of Labour and Vocational Training:

- Report No. 1832 KKBV/AK/VK from the Director of the Department of Labour Disputes dated 13 December 2006.
- Minute of the collective labour dispute, dated 30 November 2006
- Minute of the collective labour dispute, dated 15 November 2006

Provided by the Secretariat of the Arbitration Council:

- Invitation letter No. 568 LKA dated 15 December 2006 to invite the worker party to attend the hearing.
- Invitation letter No. 569 LKA dated 15 December 2006 to invite the worker party to attend the hearing.

FINDINGS OF FACT

N/A

REASONS FOR DECISION

Rule 4.7 of the Arbitration Council procedural rules, attached as an Appendix to Prakas 099[/04] states that *“if a party fails to appear in person or to be represented at arbitration proceedings, the arbitration panel may proceed in the absence of that party or may terminate the arbitration proceedings by means of an award.”*

In this case, the Arbitration Council provided an opportunity to the Khmer Youth Trade Union to present the demands of the workers who had asked that union for assistance in accordance with legal procedures. However, the union chose to walk out of the hearing and gave up the opportunity to present evidence in support of their claims. The union did not give any other reason besides its dissatisfaction with the decisions of the Arbitration Council in prior cases brought by the Khmer Youth Trade Union which are not relevant to this case.

The Arbitration Council considers that the departure of the union from the hearing room before the commencement of the Arbitration Council hearing process can be considered as a failure to appear in person or to be represented at an Arbitration proceeding.

Based on the above rule, the Arbitration Council considers that it can therefore *“... terminate the arbitration proceeding by means of an award.”*

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

DECISION

- Close case 115/06 by declining to consider the five issues demanded by the worker party.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Chhiv Phyrum**

Signature:

Arbitrator chosen by the worker party:

Name: **Liv Sovanna**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: