



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាសវនករជាតិ

THE ARBITRATION COUNCIL

Case number and name: 116/08-Hytex

Date of Award: 19 September 2008

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: **An Nan**

Chair Arbitrator (chosen by the two Arbitrators): **Nhean So Munin**

DISPUTING PARTIES

Employer party:

Name: **Hytex Garment (Cambodia) Ltd.**

Address: No. 536, National Road 2, Sangkat Chak Angre Leu, Khan Mean Chey, Phnom Penh.

Telephone: 023 425 078 Fax: N/A

Representative:

- | | |
|--------------------|-----------------------------|
| 1. Mr. Simon Tay | Manager |
| 2. Mr. Khoun Virak | Administrator |
| 3. Mr. Ham Phea | Lawyer |
| 4. Ms. Sat Solina | Assistant to administration |

Worker party:

Name: **Coalition of Cambodian Apparel Worker Democratic Union C.CAWDU) and local union of C.CAWDU at Hytex factory**

Address: No. 536, National Road 2, Sangkat Chak Angre Leu, Khan Mean Chey, Phnom Penh.

Telephone: 012 988 623 / 017 512 537 Fax: N/A

Representative:

- | | |
|-----------------------|---|
| 1. Ms. Om Soavin | President of C.CAWDU at Hytex factory |
| 2. Ms. Kry Chamnan | Advisor of Union at Hytex Garment factory |
| 3. Miss. Chin Sreyfov | Union activists at Hytex factory |

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

1. The workers demand that the company pay them the termination payment in accordance with Articles 75, 89, 91, 116, and 166 of the Labour Law because the company does not have sufficient work for them to perform; moreover, the company has been transporting equipment out of the factory and deducting one or two days of their annual leave. The company states that it cannot pay as demanded as it is operating normally (not closing down). To the question why the company does not have sufficient work for the workers to perform, the company states that it does not have purchase orders so that it decided to suspend their employment contracts from 29 August 2008 to 29 September 2008 (according to the minute dated 26 August 2008).

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.991 KB/AK/VK, dated 5 September 2008 was submitted to the Secretariat of the Arbitration Council on 05 September 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 pre-hearing meeting: 15 September 2008 (from 8:30 a.m. to 10:00 a.m.)

Procedural issues:

Hytex Garment (Cambodia) Ltd., is located in #536, National Road 2, Sangkat Chak Angre Leu, Khan Mean Chey, Phnom Penh and employs 463 workers.

On 27 August 2008, the Department of Labour Disputes assigned an expert officer to conciliate a collective labour dispute on one issue but did not reach any conciliation result as both parties remained firm in their own positions. The employer party continued the lockout

and upheld its decision regarding the suspension of employment contracts of all workers and providing 50 percent of wages and bonuses plus US\$ 6 living allowance during the suspension period. The worker party, on the other hand, continued the strike in front of the factory and demanded that the company pay their termination payments. The non-conciliation issue was referred to the Secretariat of Arbitration Council on 5 September 2008.

On 8 September 2008, the Secretariat of Arbitration Council received a letter from the employer party stating that women workers in the sewing section were on strike and requested that the Arbitration Council should help to resolve the strike issue.

After the Arbitration Panel was formed, on 9 September 2008 the Arbitration Panel issued an interim order that required the workers to stop their strike by 10 September 2008 until the Arbitration Council procedure was over. However, on 10 September 2008, the Arbitration Council received information through the Secretariat of the Arbitration Council that the worker party did not stop their strike as ordered by the Arbitration Council.

After having learned that the workers were still on strike, the Arbitration Panel advised the Secretariat of Arbitration Council to invite the worker party and the employer party to a pre-hearing meeting on 15 September 2008. Both parties were presented as invited by the Arbitration Council.

In the pre-hearing meeting, the Arbitration Council informed the parties about the reasons and purposes of the meeting and asked the parties about the reason that led to the strike, and also requested that the workers party should stop the strike in order for the Arbitration Council to continue its procedure and schedule a hearing date otherwise the Arbitration Council would close this case. After the Arbitration Panel attempted conciliation between the two parties during the pre-hearing meeting, the representative of the worker raised a concern regarding the fact that the company was transporting equipment out of the company, thus they dared not decide whether to stop the strike immediately; the worker party requested that the Arbitration Council allow them a period of time to discuss matters with their members until 5:00 p.m. on 16 September 2008.

After the employer party was informed about the worker's request and consent was obtained from the employer party, the Arbitration Council decided to give opportunity to the worker party as requested and advised the two parties to try to find a solution through agreement. The Arbitration Panel informed the parties that if the worker party did not show that it had a real intention to bring this dispute for resolution at the Arbitration Council by halting the strike as ordered and requested by the Arbitration Council, the Arbitration Council would discontinue the arbitration process in this case.

However, on 18 September 2008 the Secretariat of the Arbitration Council received information that the worker party was still on strike.

Therefore, in this case the Arbitration Council will consider as follows:

EVIDENCE**Witnesses and experts:** N/A**Documents, Exhibits and other evidence considered by the Arbitration Council**Provided by the employer party:

1. Letter to request the Arbitration Council to resolve problem with women workers in sewing section, dated 8 September 2008.
2. Authorization letter by the company letter to authorize lawyer Ham Phea, 13 September 2008.
3. Letter No. HYC 0028, to inform the Arbitration Council that the workers were still on strike.

Provided by the worker party: N/AProvided by the Ministry of Labour and Vocational Training [MoLVT]:

1. Report No. 991 KB/AK/VK, dated 5 September 2008 on the collective labour dispute settlement at Hytex Garment (Cambodia) Company;
2. Minute of collective labour dispute settlement at Hytex Garment (Cambodia) Ltd., dated 1 September 2008.
3. Minute of meeting between the company and representative of workers, dated 26 August 2008.
4. Minute of information inquiry with worker representatives, dated 27 August 2008.
5. Minute of information inquiry with employer representatives, dated 28 August 2008.

Provided by the Secretariat of the Arbitration Council:

1. Interim order No. 012 KBA, dated 9 September 2008.
2. Letter of invitation No. 565 KB/AK/LKA to invite the employer party to give information, dated 11 September 2008.
3. Letter of invitation No. 566 KB/AK/LKA to invite the worker party to give information, dated 11 September 2008.

The Arbitration Council finds that:

There is no finding of facts related to the issue in dispute stated in the non-conciliation report by the Ministry of Labour and Vocational Training and referred to the Arbitration Council because the arbitration hearing could not proceed.

REASONS FOR DECISION

Clause 20 of Prakas 099, dated 21 April 2004 regarding the Arbitration Council states, *“During the arbitration process, the parties to the dispute must abstain from any strikes or lockouts (as defined in Article 318 of the Labor Law), or any other action likely to aggravate the situation. The parties must attend all meetings to which the arbitration panel calls them.”*

Moreover, in previous interim orders the Arbitration Council interpreted this provision to mean that the Arbitration Council will not continue the arbitration process if the worker party is conducting a strike or the employer is conducting a lockout.

In relation to workers being on strike during the [arbitration] process in this case, the Arbitration Council has found jurisprudence of the Arbitration Council in previous cases as follows:

In Arbitral Award 04/04-MSI, the Arbitration Council issued a Notification on 29 January 2004 in which paragraph 4 stated *“Considering that the party to a labour dispute has no right to strike during the Arbitration Council process, the Council cannot resolve or issue an award on this collective labor dispute that was referred to the Council. The Council can begin to resolve this collective labor dispute again when the union and workers stop striking.”*

In case 77/05- Franco Knitting Garment, the Arbitration Council issued the 2nd Interim Order on 24 December 2005 in which point 4 states, *“In case the workers continue to go on strike, the Arbitration Council will discontinue to resolve this collective labour dispute.”*

In cases 28/06-GDM and 34/06-Goldfame, the Arbitration Council also issued Arbitral Awards to close the cases for a reason that the workers were on strike during the arbitration process. (See also Arbitral Awards 97/07-Suit Way).

Based on the above interpretation, in this case the Arbitration Council considers that the worker party does not have an intention to resolve the dispute because they continued to go on strike against the order and request by the Arbitration Council.

Therefore, in order to be consistent with the law and previous Arbitral Awards, the Arbitration Council decides to discontinue the arbitration process in this case.

Based on the above reason, the Arbitration Panel decides as follows:

DECISION

- Discontinue the arbitration process in case 116/08 Hytex Garment.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Ing Sothy**

Signature:

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Nhean So Munin**

Signature: