



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 122/07 - Genuine

Date of Award: 21 December 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: **Sin Kim Sean**

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

DISPUTING PARTIES

Employer party:

Name: **Genuine Garment (Cambodia) Co., Ltd.**

Address: Veal Village, Kambol Commune, Angk Snoul District, Kandal Province

Telephone: 012 827 755 Fax: N/A

Representatives:

1. Mr. Sry Kim You Lawyer representing the company;
2. Ms. Sok Sony Administrator.

Worker party:

Name: **Khmer Youth Federation Trade Union (KYFTU) and Khmer Youth Trade Union (KYTU) at the Factory**

Address: Veal Village, Kambol Commune, Angk Snoul District, Kandal Province

Telephone: 012 906 811 Fax: N/A

Representatives:

1. Mr. Uor Phoeun Official of KYFTU;
2. Mr. Touch Vannak Representative of KYTU at the factory.

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

1. The worker party demanded that the company reinstate Koy Sothy, who took leave to take care her sick child (with medical certificate). The company did not agree because Koy Sothy was absent longer than her leave violating the Internal Work Rules.
2. The worker party demanded that the company provide additional US\$ 10 per month when the company requires workers to work overtime for one month. The company did not agree and would follow the previous practice.
3. The worker party demanded that the company duly control the attitude of staff members at the head office. The company did not agree and asked to resolve this issue with the officials from the KYFTU.
4. The worker party demanded that the company increase their seniority bonus to US\$ 10 to workers who have worked for nine years. The company did not agree and would follow the Labour Law.

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 5 November 2007 was unsuccessful, and the non-conciliation report No. 213 was submitted to the Secretariat of the Arbitration Council on 7 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: 7 December 2007 (from 2:00 p.m. to 4:30 p.m.)

Procedural issues:

On 20 September 2007, Kandal Provincial Department of Labour and Vocational Training received a complaint from Khmer Youth Trade Union at Genuine Garment Factory on the demand for the improvement of six working conditions. Having received the complaint, Kandal Provincial Department of Labour and Vocational Training designated its officials to conciliate the dispute and the last conciliation session was held on 16 October 2007 with two

out of six issues were conciliated. The four remaining non-conciliated issues were submitted to the Arbitration Council on 7 November 2007.

Having received the case, the Secretariat of the Arbitration Council summoned both the employer party and the worker party to a hearing to conciliate the four non-conciliated issues on 7 December 2007 at 2:00 p.m. Both parties were present at the hearing summoned by the Arbitration Council.

On the hearing day, the Arbitration Council made another attempt to conciliate the four remaining non-conciliated issues stated in the non-conciliation report of Kandal Provincial Department of Labour and Vocational Training; as a result, both parties agreed to the withdrawal of Issue 3 and Issue 1. Therefore, in this case the Arbitration Council considers only two issues – Issue 2 and Issue 4.

In this case, the Arbitration Council considers the dispute based on the evidence and statements of both parties in the hearing as follows:

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party:

1. Authorization Letter from the Director of Genuine Garment Factory dated 7 December 2007;
2. Internal Work Rules of Genuine Garment Factory dated 14 March 2002;
3. Letter dated 25 February 2002 certifying that the worker delegate of Genuine Factory has read and checked the Internal Work Rules;
4. Name list of workers who have worked for four years dated 11 December 2007;
5. Letter No. 009 dated 11 December 2007 on the response to the demand of Khmer Youth Trade Union.

Provided by the worker party:

1. Registration Certificate of Khmer Youth Trade Union at Genuine Factory dated 13 July 2007;
2. Letter No. 096 dated 13 July 2007 on the recognition of Khmer Youth Trade Union at Genuine Factory;
3. Certificate No. 1171 dated 13 July 2007 on the statute of Khmer Youth Trade Union;
4. Letter No. 7805 dated 2 August 2007 on the permission to discharge from hospital.

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

1. Report No. 213 on the collective labour dispute conciliation at Genuine Company dated 5 November 2007;

2. Minute of the collective labour dispute conciliation at Genuine Company dated 16 October 2007.

Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 551 dated 14 November 2007 to the worker party to attend the first hearing.
2. Invitation No. 550 dated 14 November 2007 to the employer party to attend the first hearing.
3. Invitation No. 580 dated 22 November 2007 to the worker party to attend the second hearing.
4. Invitation No. 579 dated 22 November 2007 to the employer party to attend the second hearing.
5. Invitation No. 594 dated 4 December 2007 to the worker party to attend the third hearing.
6. Invitation No. 593 dated 4 December 2007 to the employer party to attend the third hearing.

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:

- Genuine Garment (Cambodia) Co., Ltd. employs approximately 1,000 workers.
- Claimant, Khmer Youth Trade Union, has 573 members and was registered with the Ministry of Labour and Vocational Training on 13 July 2007.
- The worker party and employer party claimed that there is only one union in the factory and it does not have most representative status.

Issue 2: The worker party demanded that the company provide additional US\$ 10 per month when the company requires the workers to work overtime for one month

- The worker party demanded that the company provide additional US\$ 10 on top of the overtime wage and meal allowance when the company requires them to work overtime for one month because the price of goods has risen sharply and the workers have always been cooperative when the company asked them to work overtime.
- The employer party did not agree to provide the additional US\$ 10 because the company has already provided an incentive bonus between 900 and 1,000 riels per day on top of the meal allowance of 1,000 riels.
- The worker party claimed that the company has done what was mentioned and claimed that the incentive bonus of 900 to 1,000 riels per day was only for those who could complete the amount of work required.

Issue 4: The worker party demanded that the company increase the seniority bonus to US\$ 10 to workers who have worked for nine years

- The worker party demanded that the company increase the seniority bonus to US\$ 10 for those who have worked for nine years because the price of goods has risen sharply and workers have worked in the company for so many years and put their effort in the required tasks.
- The employer party did not agree to increase the seniority bonus to US\$ 10 for those who have worked for nine years because the company has already implemented Notification 017. The employer party said that it has already provided the seniority bonus stated in the current Notification and if there is a new Notification that requires the company to increase the bonus, it will follow it. The worker party did not refute this claim.
- The worker party said that the company has already implemented Notification 017 by providing US\$ 2 per month for those who have worked for one year, US\$ 3 for those who have worked for two years, US\$ 4 for those who have worked for three years and US\$ 5 for those who have worked for four years up.
- This issue was demanded by 500 workers. However, the worker party did not provide the name list of those 500 workers.
- The worker party claimed that there are 20 workers have worked the longest in the company – from 2001 to the present (seven years). The worker party said that they demanded this issue for the future since no one has yet worked for nine years. However, the employer party did not agree claiming that the company would check the list submitted to the Secretariat of the Arbitration Council on 11 December 2007. The Arbitration Council received the list and found that only 138 workers have worked for more than four years.

REASONS FOR DECISION

Issue 2: The worker party demanded that the company provide additional US\$ 10 per month when the company requires the workers to work overtime for one month

Notification 017 (4) dated 18 July 2000 of the Ministry of Labour states that, “Workers who voluntarily work overtime upon request from the employer shall receive a meal allowance of 1,000 riels per day or receive one free meal.” The content of this Notification clearly determines that meal allowance for overtime work is 1,000 riels on a per day basis.

In the current practice, the employer party has provided appropriate overtime wage and the 1,000-riel meal allowance for the overtime work as required by Notification 017.

Based on the above fact, the Arbitration Council considers that the demand is an

interests demand which is beyond what the law provides.

Generally, the Arbitration Council will decline to consider the interests dispute, if the union, who brings the labour dispute, does not have the most representative status. The most representative status of a union provides legal capacity to negotiate the collective bargaining agreement in a company (see Article 96 (2B) of the Labour Law and Article 9 (1) of Prakas 305) and legal right to bring an interests dispute before the Arbitration Council. In order to receive the most representative status, Article 277 of the Labour Law states that a union must be registered and fulfill other requirements stated in this Article. (See Award 60/04 – United Art, Issue 3; 89/04 – Issue 3; and 109/04 – Great Fortune, Issue 1 and 2).

In this case, Khmer Youth Trade Union at Genuine Company does not have the most representative status. Therefore, in order to be consistent with the previous rulings, the Arbitration Council declines to consider the demand on this issue.

Issue 4: The worker party demanded that the company increase the seniority bonus to US\$ 10 to workers who have worked for nine years

Clause 3 of Notification 745 dated 23 October 2006 of the Ministry of Labour and Vocational Training states that, *“other benefits that workers used to receive in accordance with Notification 017 dated 18 July 2000 in point 3, 5 and 6 shall remain the same.”*

Clause 5 of Notification 017 dated 18 July 2000 of the Ministry of Social Affairs, Vocational Training and Youth Rehabilitation states that, *“Workers who have been working for a long time in a factory or an enterprise shall receive a seniority bonus as follows:*

- *those who have been working more than one year shall receive a seniority bonus of US\$ 2 per month;*
- *those who have been working more than two years shall receive a seniority bonus of US\$ 3 per month, that is US\$ 2 for the first year plus US\$ 1 for the second year;*
- *those who have been working more than three years shall receive a seniority bonus of US\$ 4 per month, that is US\$ 2 for the first year plus US\$ 1 for the second year and US\$ 1 for the third year;*
- *those who have been working more than 4 years shall receive a seniority bonus of US\$ 5 per month, that is US\$ 2 for the first year plus US\$ 1 for the second year, US\$ 1 for the third year and US\$ 1 for the fourth year.”*

Based on this Article, the Arbitration Council considers that this Notification determines the seniority bonus is only US\$ 5 per month for those who have worked four years and more.

In this case, the worker party demanded that the company increase the seniority bonus to US\$ 10 per month when workers have worked for nine years. According to the facts, none

of the workers has worked for nine years. Therefore, this demand is for the future and the dispute has yet happened.

In the previous cases, the Arbitration Council interpreted that, *“the Arbitration Council was established to resolve the labour disputes not to resolve the dispute that has yet happened.”* (See Arbitral Awards 10/03 – Jacqsintex, Issue 2; 14/06 []; and 42/07, Issue 3).

Therefore, the Arbitration Council declines to consider the demand of the union in this case.

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

DECISIONS AND ORDERS

Issue 2: Decline to consider the demand that the company provide additional US\$ 10 per month when the company requires workers to work overtime.

Issue 4: Decline to consider the demand that the company increase the seniority bonus to US\$ 10 per month for those who have worked for nine years.

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: **Sin Kim Sean**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Ang Eng Thong**

Signature: