



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

**ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល**  
**THE ARBITRATION COUNCIL**

**Case number and name: 126/07 – Heng Yu**

**Date of Award: 19 November 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: **An Nan**

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

#### **DISPUTING PARTIES**

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

Name: **Heng Yu Knitting Factory Co., Ltd.**

Address: National Road 6(A), Sangkat Prek Leap, Khan Russei Keo, Phnom Penh

Telephone: 012 522 255

Fax: N/A

Representatives:

1. Cheat Khemara

GMAC Official

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

Name: **Free Trade Union of Workers of Kingdom of Cambodia (FTUWKC) at Heng Yu  
Factory**

Address: N/A

Telephone: 012 482 284

Fax: N/A

Representatives: Absent

#### **ISSUE IN DISPUTE**

(In the Non-Conciliation Report)

Members of Free Trade Union of Workers of Kingdom of Cambodia at Heng Yu  
Factory demand that the company dismiss Ms. Seng Sopheap, Team Leader of the Sewing

Unit, because she swore at team members. The employer party said it would not dismiss Ms. Seng Sopheap since she had not committed serious misconduct (sworn at) her team members as alleged by members of FTUWKC and claimed that any dismissal is the right of the company.

#### **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 8 November 2007 was unsuccessful, and the non-conciliation report No. 1192 was submitted to the Secretariat of the Arbitration Council on 8 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:** 15 November 2007 (from 2:00pm to 3:00pm)

#### **Procedural issues:**

Heng Yu Company, which is located on National Road 6(A), Sangkat Prek Leap, Khan Russei Keo, Phnom Penh, employs 1,200 workers.

On 8 November 2007, the Secretariat of the Arbitration Council received case 126/07 – Heng Yu and were informed that the workers were also going on strike. When the Secretariat contacted the worker party to select an arbitrator, the worker party refused to make a selection. The Secretariat applied the procedures set forth in the Prakas on the Arbitration Council (Prakas 099 dated 2004 of the Ministry of Social Affairs, Labour, Vocational Training, and Youth Rehabilitation) to select an arbitrator by lot on 12 November 2007; as a result, Arbitrator An Nan was selected.

#### **EVIDENCE**

**Witnesses and experts:** N/A

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

Provided by the employer party:

1. Letter authorising Mr. Cheat Khemara to represent the company dated 23 August 2007.
2. Letter requesting the Arbitration Council to issue an order to stop the strike dated 8 November 2007.

Provided by the worker party: N/A

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

1. Report No. 1192 on the collective labour dispute settlement at Heng Yu Factory dated 8 November 2007.
2. Minutes of the collective labour dispute conciliation at Heng Yu Factory dated 7 November 2007.

Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 529 dated 8 November 2007 to the President of FTUWKC at Heng Yu Factory to select an arbitrator;
2. Minutes on the selection of arbitrator for the worker party by lot dated 12 November 2007;
3. Order No. 015 of the Arbitration Council dated 12 November 2007;
4. Minutes of the Secretariat of the Arbitration Council dated 15 November 2007 noting that the FTUWKC at Heng Yu Factory would not be able to attend the hearing session as summoned by the Arbitration Council.

**FACTS:** N/A

#### **REASONS FOR DECISION**

On 12 November 2008, the Arbitration Council ordered the worker party to stop the strike and return to work 13 November 2007. However, on 14 November 2008, the Arbitration Council received the news via the Secretariat of the Arbitration Council that the worker party was still striking.

On 14 November 2007, the Arbitration Council asked the Secretariat of the Arbitration Council to invite the worker party and the employer party to attend a pre-hearing meeting on 15 November 2007. The employer party was present as summoned by the Arbitration Council, but the worker party was not present and was still striking. They told the Secretariat of the Arbitration Council that they did not want the Arbitration Council to resolve their dispute. Therefore, the Arbitration Council considers this dispute as follows:

Clause 20 of Prakas 099 dated 21 April 2004 on the Arbitration Council states that, *“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 the previous cases the Arbitration Council interpreted this clause [to mean] that the Arbitration Council will not continue the arbitration process when the worker party is striking.

For example, in Arbitral Award 04/04 – MSI, the Arbitration Council issued a notification dated 29 January 2004, in which paragraph 4 of the notification states that, *“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 labour dispute what (stet) was referred to the Council. The Council can begin to resolve this collective labour dispute again when the workers and union stop striking or the employer requests to the Council to continue resolving this collective dispute.”*

In case 77/05 – Franco Knitting Garment, the Arbitration Council issued a second order on 24 December 2005, in which point 4 states that, *“in case the worker party still continues striking, the Arbitration Council will not continue the collective labour dispute settlement.”*

In case 28/06 – GDM and case 34/06 – Gold Fame, the Arbitration Council also issued awards to close the cases because the worker parties were still striking during the arbitration process (see Arbitral Award 97/07 – South Bay).

In this case, the worker party did not show anything to indicate that they wanted their dispute to be settled at the Arbitration Council. Therefore, in order to comply with the law and ensure consistency with previous rulings, the Arbitration Council decides not to continue the arbitration process while the worker party is still striking.

Based on the above reasons, the Arbitration Council makes its decision as follows:

**DECISION**

Discontinue the arbitration process for case 126/07 – Heng Yu.

**SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:**

Arbitrator chosen by the employer party:

Name: **Ouk Ry**

Signature: .....

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: .....