



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

**ក្រុមប្រឹក្សាអន្តរាគមន៍**

**THE ARBITRATION COUNCIL**

**Case number and name: 127/08-Zheng Yong (Branch)**

**Date of Award: 24 October 2008**

### **ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

#### **ARBITRATION PANEL**

Arbitrator chosen by the employer party: **Seng Vuochhun**

Arbitrator chosen by the worker party: **Tuon Siphann**

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

#### **DISPUTING PARTIES**

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

Name: **Zheng Yong Garment Factory Co., Ltd. (Branch)**

Address: Tuol Sangker Village, Sangkat Toul Sangker, Khan Russey Keo, Phnom Penh

Telephone: 011 756 868

Fax: N/A

Representative:

1. Mr. Kuch Kimlong                      Lawyer representative of the company

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

Name: **Cambodian Federation for Workers' Rights (CFWR) and local union of  
Cambodian Union for Workers' Right (CUWR) at Zheng Yong Factory (Branch)**

Address: Tuol Sangker Village, Sangkat Toul Sangker, Khan Russey Keo, Phnom Penh

Telephone: 012 533 823

Fax: N/A

Representative:

1. Mr. Sieng Sambath                      General secretary of CFWR

2. Mr. Van Srey                              President of CUWR

3. Mr. Chan Hon                              Vice-President of CUWR

4. Mr. Lort Sreang                              Secretary of CUWR

5. Mr. Tim Bonra                              Worker representaive

## ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- The workers demand that the company pay US\$ 10 for infant formula in lieu of their breast feeding hour. The company does not agree to the demand but will follow the existing practice.
- 2- The workers demand that when they work overtime from 4:00 p.m. to 8:30 p.m. the company pay 3,000 riels for meal allowance. The company does not agree to the demand but will follow the existing practice.
- 3- The workers demand that the company increase wages for (all) group leaders, (all) vice-group leaders, translators, electricians, investigators, warehouse workers, and fabric organizers. The company does not agree to the demand but will follow the existing practice.
- 4- The workers demand that the company provide 3,000 riels as a bonus for workers who redo trousers. The company does not agree to the demand but will follow the existing practice.
- 5- The workers demand that the company provide a bonus for those who come to work on Sundays and public holidays. The company does not agree to the demand but will follow the existing practice.
- 6- The workers demand that the company provide wages on Saturdays at the same rate as is the practice at [the main] Zheng Yong [factory]. The company does not agree to the demand but will follow the existing practice.
- 7- The workers demand that the company provide payment for transportation to workers who redo trousers. The company does not agree to the demand but will follow the existing practice.
- 8- The workers demand that the company decrease the target number of trousers by 20 percent to make it easier for the workers to reach. The company does not agree to the demand but will follow the existing practice.
- 9- The workers demand that the company decrease the target number of trousers by 70 percent so that those who cannot sew can reach the target set by the company. The company does not agree to the demand but will follow the existing practice.
- 10- The workers demand that the company reimburse their wages and attendance bonus for the period they went on strike, from 15 to 18 September 2008, because the company was notified about the strike but did not try to resolve the problem. The company does not agree to the demand but will 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 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. 1069 KB/AK/VK, dated 22 September 2008, was submitted to the Secretariat of the Arbitration Council on 23 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 hearing:** 13 October 2008 (from 8:00 a.m. to 11:00 a.m.)

### **Procedural issues:**

On 18 September 2008, the Department of Labour Disputes received a complaint dated 18 September 2008 from workers in the company demanding the improvement of working conditions. Having received the complaint, the Department of Labour Disputes designated its officials to resolve the dispute on 18 September 2008 with a result of four conciliation issues on 14 issues. The 10 non-conciliation issues were submitted to the Arbitration Council on 23 September 2008.

Having received the case, the Secretariat of the Arbitration Council summoned both the employer party and the employee party to the hearing and conciliation on the 10 non-conciliation issues on 22 September 2008 at 2:00pm.

Both parties were present at the arbitration hearing. The Arbitration Council tried to ask for more information relevant to this dispute and attempted to further the conciliation of the 10 non-conciliation issues on 13 October 2008 at 8:00 a.m. Both parties were present as invited by the Arbitration Council.

On the hearing day, the Arbitration Council attempted to further the conciliation on the 10 non-conciliation issues, and both parties agreed to take issues 1 - 9 for further negotiation at the factory level in order to establish a collective bargaining agreement. Thus, the Arbitration Council will consider only issue 10, based on evidence and reasoning as follows:

## **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 conciliation at Zheng Yong Factory (branch), dated 18 September 2008.
2. Letter No. 075/08 SKDC regarding request to meet for resolution on some issues on 3 September 2008, and a letter of demand, dated 30 August 2008.
3. Certificate of commercial registration of Zheng Yong Garment Factory Co., Ltd No. 1122 PN.PKB.KN, dated 10 April 1997.
4. Letter No. 373 PN.NTK regarding request to expand the new factory location of Zheng Yong Company, dated 11 March 2004.
5. Letter to acknowledge receipt for filing by the Department of Legislation, dated 9 March 2004.
6. Internal Work Rules of Zheng Yong Garment Factory Co., Ltd (branch) No. 062 KBV/AK, dated 16 August 2004.
7. Authorization letter to Mr. Kuch Kimlong lawyer, for representation and assistance to find a resolution, dated 11 September 2008.

### Provided by the worker party: N/A

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

1. Report of collective labour dispute resolution at Zheng Yong (branch) Company No. 1069 KB/AK/VK, dated 22 September 2008.
2. Minutes of collective labour dispute resolution at Zheng Yong (branch) Company, dated 18 September 2008.

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

1. Letter of invitation to invite the company party to attend the hearing, No. 630 KB/AK/VK/LKA, dated 2 October 2008.
2. Letter of invitation to invite the worker party to attend the hearing, No. 631 KB/AK/VK/LKA, dated 2 October 2008.

## **FACTS**

- Having reviewed the collective labour dispute conciliation report
- Having listened to the statements by the worker party and the employer party
- Having examined additional documents

## **The Arbitration Council finds that:**

- Zheng Yong factory established another branch in 2004 through a letter dated 11 March 2004 No. 373 PN.NTK from the Ministry of Commerce regarding a request from Zheng Yong Company, the party in this case, to expand to a new factory location.
- Zheng Yong factory (branch) is located in Tuol Sangker Village, Sangkat Tuol Sangker, Khan Russey Keo, Phnom Penh. It employs approximately 390 workers.
- CUWR is the claimant in this case. There is only one union in the factory. According to the worker party, the union has approximately 200 members but does not have most representative status. The union claims that the union was registered on 25 April 2007 but it did not provide the certificate of union registration to the Arbitration Council; however the employer does not make any objection to the workers' claim on this matter. Thus, the Arbitration Council considers that the claimant union is a registered union.

**Issue 10:**

- The workers demand that the company reimburse their wages and attendance bonus for the period they went on strike, from 15 to 18 September 2008.
- The workers claim that they went on strike from 2:15 p.m. on 15 September 2008 to 18 September 2008. On 15 September 2008 the workers worked normally [until lunch]. After that there was an election for the next worker delegate term of office. The employer party does not object to the workers' facts, and agrees that the strike started after lunch on 15 September 2008; however he could not remember the exact time.
- The worker party states that the reason that they went on strike was because they were worried that there would be a change of ownership but no representative of the company came out to clarify this issue. The union submitted a letter dated 11 September 2008 to request a negotiation on 12 September 2008, but did not get any response from the company. For this reason, the workers decided to go on strike from 15 September 2008 to 18 September 2008. The worker party states that the strike did not follow legal procedure, i.e., there was no secret ballot or notification about the strike.
- The company wrote a letter announcing that unless the workers came back to work on 15 September 2008 at 3:00 p.m., the company would not provide their wages or attendance bonus.
- The workers state that the company already deducted their wages and attendance bonus for the period they went on strike. Thus, they demand that the company reimburse them because the strike was not their fault, but resulted from the employer's refusal to negotiate with the workers. The employer claims that it would

like to follow the Labour Law and agreed to reimburse the workers for half a day's worth of wages for 15 September 2008, but the worker party does not agree to accept it. The worker party did not state that the company had recruited other workers to replace them during the striking period.

- The Arbitration Council ordered the two parties to negotiate further on this issue because both parties wished to end the problem without an arbitral award. In case of non-conciliation, the two parties were required to provide the Arbitration Council with other evidence related to the strike by 17 October 2008. On 17 October 2008 the Secretariat of the Arbitration Council received information that there was not any agreement on this issue but the two parties did not provide any evidence to the Arbitration Council.

### **REASONS FOR DECISION**

The workers demand that the company reimburse wages and attendance bonus for the period they went on strike from 15 September at 2:15 p.m. to 18 September 2008. The Arbitration Council considers this case as follows:

#### **A. Wages during strike**

Based on the above findings of fact, the workers started going on strike at 2:15 p.m. on 15 September 2008 to 18 September 2008, but the employer agrees to pay wages only for the morning on 15 September because in that morning there was an election of newly elected worker delegate. The employer deducted wages [and attendance bonus] from the afternoon of 15 September to 18 September 2008. Thus, the Arbitration Council considers that the employer should pay wages for the period the workers were not on strike, until 2:15 p.m. on 15 September 2008 since the workers worked normally and there was an election for worker delegate, as the employer has accepted.

In relation to strike, Article 332 of the Labour Law states, "*A strike suspends the labour contract. During strike, the allowance for work is not provided and the salary is not paid.*"

The Arbitration Council observes that according to Article 332 of the Labour Law, those workers who are on strike are not entitled to their wages during the strike. Even though a strike is in accordance with the procedure outlined in the Labour Law, the workers cannot receive wages during a strike (see Arbitral Award 22/04-Raffles le Royal, issue 2).

However, according to Article 334, if during the strike the employer recruits other workers to replace the striking workers, the employer needs to provide wages to all workers for the striking period.

In this case, the workers did not mention that the employer recruited new workers to replace the strikers. Thus, the Arbitration Council considers that, according to the Labour

Law, the workers are not entitled to wages for the period they went on strike. (See Arbitral Awards 04/03-Lida, issue 1; 03/05-Flying Dragon, issue 3; 07/05-Coca Cola, issue 4; 110/07-Now Corp, issue 3).

In this case, the Arbitration Council agrees with the interpretation of the Arbitration Council in previous cases. Thus, the workers are not entitled to wages for the period they went on strike, from 2:15 p.m. on 15 September 2008 to 18 September 2008.

#### **B. Attendance bonus during strike**

Article 333 of the Labour Law prohibits the employer from imposing any sanction on the strikers. The prohibition is fully effective only if the workers follow the procedure for conducting a strike. If the workers do not follow the legal procedure, they are not entitled to benefit from the full protection of the law.

Point 3 of Notification 745 KBV, dated 23 October 2006, states, *“Benefits workers used to receive from Notification No. 017 SKBY dated 18 July 2000 on points 3, 4, 5 and 6 shall be retained.”*

Point 3 of the Notification 017 dated 18 July 2000 states that *“Any workers who regularly work according to number of working days per month shall have a reward at least US\$ 5 dollars per month.”*

In previous cases, the Arbitration Council decided that workers who go on strike that is not in accordance with legal procedure do not come to work regularly, thus are not entitled to attendance bonus. (See Arbitral Awards 04/03-Lida, issue 1; 15/04-Lucky Zone, issue 4; 03/05-Flying Dragon, issue 3; 63/07-Phnom Penh and 54/08-Zhong Yov, issue 3).

In this case, the workers did not follow the legal procedure when they went on strike for the following reasons:

Article 323 of the Labour Law states, *“A strike shall be declared according to the procedures set out in the union’s statutes, which must state that the decision to strike is adopted by secret ballot.”* In this case the union did not conduct a secret ballot in order to make the decision to strike.

Article 324 of the Labour Law states that before going on strike workers need to give prior notification of at least 7 working days in advance to the employer. In this case, the workers went on strike from 2:15 p.m. on 15 September to 18 September 2008 without notifying the employer about the strike or holding a secret ballot according to the procedure [required by] the Labour Law.

Clause 4 of Article 320 of the Labour Law states that *“The right to strike can be exercised only when all peaceful methods for settling the dispute with the employer have already been tried out.”* However, in reality the workers did not try their best to resolve the dispute in accordance with Article 320(4); the workers went on strike before trying other dispute resolution procedures—such as negotiation, or conciliation by the labour inspector

and the Arbitration Council, which is an institution that resolves collective labour disputes peacefully. The workers went on strike without following the Labour Law, but [following] the will of the workers. Therefore, the Arbitration Council considers that the workers did not come to work regularly during the strike. Therefore, the Arbitration Council decides that the workers are not entitled to an attendance bonus during the strike from 2:15 p.m. on 15 September to 18 September 2008.

In conclusion, the Arbitration Council decides to reject the workers' demand for the company to maintain their wages and attendance bonus during the striking period from 2:15 p.m. on 15 September to 18 September 2008 and orders the employer to reimburse the amount of wages deducted from the workers for the period [of normal work] on 15 September 2008 (the period before 2:15 p.m.).

**DECISION AND ORDER**

**Issue 10:**

- Reject the workers' demand for the company to reimburse their wages and attendance bonus for the period they went on strike from the afternoon of 15 September, at 2:15 p.m., to 18 September 2008.

- Order the employer to reimburse the amount of wages deducted from the workers for the period [of normal work] on 15 September 2008 (the period before 2:15 p.m.)

**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 time period.

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

Arbitrator chosen by the employer party:

Name: **Seng Vuochhun**

Signature: .....

Arbitrator chosen by the worker party:

Name: **Tuon Siphann**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: .....