



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអន្តរាគ្នា

THE ARBITRATION COUNCIL

Case number and name: 132/08-GHG

Date of Award: 22 October 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): **Kong Phallack**

DISPUTING PARTIES

Employer party:

Name: **GHG (Cambodia) Ltd.,**

Address: Morl Village, Sangkat Dangkor, Khan Dangkor, Phnom Penh

Telephone: 012 953 866

Fax: N/A

Representative:

- Mr. Chea Simeng

Administration officer

Worker party:

Name: **Worker Union Federation and Local Union of Worker Union at GHG Company**

Address: Morl Village, Sangkat Dangkor, Khan Dangkor, Phnom Penh

Telephone: 012 995 523

Fax: N/A

Representative: (Absent)

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- The workers demand that the company terminate a Chinese head of group (Group C) because he/she insulted and look down on workers. The company cannot terminate

the individual but it will give a warning or instruction to him/her according to the company's Internal Work Rules.

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. 1119 KB/AK/VK, dated 9 October 2008 was submitted to the Secretariat of the Arbitration Council on 10 October 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: 17 October 2008 at 8:30 a.m. (The union and worker party were absent)

Procedural issues:

On 7 October 2008, the Department of Labour Disputes received a verbal complaint from the Worker Union Federation regarding workers who were on strike to demand that the company terminate a Chinese supervisor. Immediately after receiving the complaint, the Department of Labour Disputes assigned an officer to settle the single issue collective labour dispute but did not achieve a successful conciliation. The one non-conciliation issue was referred to the Secretariat of the Arbitration Council on 10 October 2008.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer party and the worker party to the hearing and conciliation on the one non-conciliation issue on 17 October 2008 at 8:00 a.m. but the worker party did not come to the hearing and did not provide any reason nor did it request postponement of the hearing for good cause. The employer party, on the other hand, came to the hearing as invited by the Arbitration Council. Therefore, the Arbitration Council will consider this case as follows:

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

A. Provided by the employer party:

1. Authorization letter by the director of GHG Company to Mr. Chea Simeng to attend and resolve the collective labour dispute of GHG company at the Arbitration Council, dated 17 October 2008.

B. Provided by the worker party: N/A

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

1. Report No. 1119 KB/AK/VK, dated 9 October 2008 on the collective labour dispute settlement at GHG Company;
2. Minutes of the collective labour dispute resolution at GHG Company, dated 7 October 2008.

D. Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 650 KB/AK/VK/LKA dated 14 October 2008 to invite the worker party to attend the hearing;
2. Invitation No. 649 KB/AK/VK/LKA dated 14 October 2008 to invite the employer party to attend the hearing;

FACTS

- N/A

REASONS FOR DECISION

In this case, the union and worker party did not attend the hearing at the Arbitration Council, and failed to provide a reason for the absence although they were duly invited and reminded by phone calls by the Secretariat of the Arbitration Council about the hearing on the hearing day. Thus, the Arbitration Council will consider this case as follows:

Rule 4.7 of the Arbitration Proceedings in the Annex to Prakas No. 099 SKBY, dated 21 April 2004, states, *"If a party fails to appear in person or to be represented at the arbitration proceedings, the Arbitration Panel may proceed in the absence of that party or may terminate the arbitration proceedings by means of an award."*

Clause 21 of the Prakas on the Arbitration Council No. 099 SKBY, dated 21 April 2004, states, *"In the case that one of the parties, although duly invited, fails to appear before the arbitration panel without showing good cause, the arbitration panel may proceed in the absence of that party or may terminate the arbitral proceedings by means of an award."*

In cases 16/07-Lotus and 27/07-M & V 3, the Arbitration Council interprets Clause 21 above that there are three requirements which should be fulfilled before the Arbitration Council can close a case: *"first condition: the party is properly notified; second condition: the*

party does not appear at the hearing and third condition: the party does not provide reasons for this lack of appearance.”

In this case, the Arbitration Council agrees with the interpretation of the Arbitration Panels in previous cases. Thus, in this case the Arbitration Council will consider whether the three conditions are met.

Condition 1: The party was duly invited

Based on part (D) [above], documents provided by the Secretariat of the Arbitration Council, the Arbitration Council finds that the party was duly invited by the Secretariat of the Arbitration Council to attend the hearing of the Arbitration Council. **Thus, condition 1 is met.**

Condition 2: The party was not present at the hearing

The Arbitration Council considers that the term “present at the hearing” [as implied] in Clause 21 of Prakas No. 099 dated 21 April 2004 means that the party (1) is present at the hearing and (2) attends the arbitration hearing until the end.

The arbitration process includes 4 stages as follows:

- a. Self introduction and clarification of conflict of interest
- b. Explanation of procedure and clarification of issues in dispute
- c. Conciliation, if the parties agree that the Arbitration Council should try to further the conciliation
- d. And hearing on the merits of the case.

In this case, the union and worker party did not participate in all the four stages above. Thus, the Arbitration Council considers that the union and the worker party was not present at the hearing per condition 2 of Clause 21 above. **Therefore condition 2 is met.**

Condition 3: The party fails to appear without showing good cause

In this case, the Arbitration Council finds that the worker party did not provide any reason for its failure to attend the hearing because up to the hearing date on 17 October 2008 at 8:30 a.m., the Secretariat of the Arbitration Council communicated via telephone to remind the employer party and the union and worker party about the hearing. The union and worker party responded that the president of the local union was busy going to attend a ceremonial function in the provinces. The Officer of the Secretariat of the Arbitration Council inquired whether someone else from the union leadership would be able to attend the hearing. However, the union and worker party stated that they could not come to attend the hearing and would leave this to the Arbitration Council to make a decision based on its procedure. The employer party attended the hearing as scheduled. Thus, the Arbitration

Council considers that **the union and worker party did not provide good cause for its failure to appear at the hearing.** Thus, condition 3 is also met.

In conclusion, the three conditions mentioned in Clause 21 above are fulfilled.

Based on the Rule, Prakas and interpretation above, the Arbitration Council considers that although the worker party did not participate in the arbitration process, the Arbitration Council still has authority to issue an award.

Furthermore, in this case the Arbitration Council allowed sufficient opportunity for the local union of Worker Union at GHG Company who is the claimant in this case to present the demand of the workers who authorized the union [to represent them] according to the Labour Law. However, the union chose not to attend the hearing and relinquished the opportunity to present evidence to support its demand. Generally, a claimant has an obligation to provide reasons and evidence before the Arbitration Council to support its claim. however, in this case the union and worker party who is the claimant did not provide any reasons or evidence to support the demand. In such a case when the claimant does not participate in the hearing of the Arbitration Council, the party loses its right to provide reasons and evidence to defend and support their demand. The Arbitration Council considers that the union renounces the claim. Such decision does not show good faith by the union and worker party to bring their dispute for resolution before the Arbitration Council.

Thus, the Arbitration decides to close case 132/08-GHG.

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

DECISION

- Close Case 132/08 – GHG.

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: **Kong Phallack**

Signature: