



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

**ក្រុមប្រឹក្សាអាជ្ញាធរ**

**THE ARBITRATION COUNCIL**

**Case number and name: 138/08-Marlyn Garment**

**Date of Award: 20 November 2008**

### **ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

#### **ARBITRATION PANEL**

Arbitrator chosen by the employer party: **Ly Tayseng**

Arbitrator chosen by the worker party: **Liv Sovanna**

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

#### **DISPUTING PARTIES**

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

Name: **Marlyn Industrial Corporation**

Address: Damnak Thom Village, Sangkat Steung Mean Chey, Khan Mean Chey, Phnom Penh

Telephone: 012 598 748 Fax: N/A

Representative: **Absent**

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

Name: **Khmer Youth Federation Trade Union (KYFTU) and Local Union of Khmer Youth Trade Union at Marlyn Garment Company (KYTU)**

Address: Damnak Thom Village, Sangkat Steung Mean Chey, Khan Mean Chey, Phnom Penh

Telephone: 012 310 320 Fax: N/A

Representative: **Absent**

#### **ISSUES IN DISPUTE**

(In the Non-Conciliation Report)

- 1- The workers demand that the company make it easier for them to request for leave with permission.
- 2- The workers demand that the company pay them full wages when it has no work for them to do and provide back payments for their past wages.
- 3- The workers demand that the company provide the 5% severance pay and other benefits to those workers whose fixed duration contract have expired.
- 4- When the workers perform overtime work on Sundays and Public Holidays, the company should provide them with a meal allowance in an amount of 2,000 riels.
- 5- For women workers who will take the 90-day maternity leave, the company should pay 50 percent of their wages and perquisites before the leave request letter is submitted [to the company].
- 6- The workers demand that overtime work is based on voluntary principles.
- 7- When workers take sick leave and are admitted to hospital, the company should maintain their wages and bonus.
- 8- The workers demand that the company deduct 1,000 riels monthly from the wages of each member of Khmer Youth Trade Union for the union contribution fee.
- 9- The workers demand that the company pay the meal allowance once per week.
- 10- The workers demand that the company terminate the security guard named Pisey.

#### **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. 1197 KB/AK/VK, dated 28 October 2008 was submitted to the Secretariat of the Arbitration Council on 28 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:** 7 November 2008 at 2:00 p.m. (The union and worker party and the employer party were absent)

**Procedural issues:**

On 5 September 2008, the Department of Labour Disputes received a complaint from workers regarding the demand for the company to improve certain working conditions. Immediately after receiving the complaint, the Department of Labour Disputes assigned an officer to settle the collective labour dispute on 10 issues and the last conciliation was held on 14 October 2004 but did not achieve a successful conciliation result. The 10 non-conciliation issues were referred to the Secretariat of the Arbitration Council on 28 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 10 non-conciliation issues on 7 November 2008 at 2:00 p.m. but the worker party did not come to the hearing and did not provide any reason nor request for postponement of the hearing for good cause. The employer party also did not come to the hearing as invited by the Arbitration Council although the Secretariat of the Arbitration Council attempted to contact them but no one could be reached through the [phone] number. Therefore, the Arbitration Council will consider and decide the issues in 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:** N/A

**B. Provided by the worker party:** N/A

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

1. Report No. 1197 KB/AK/VK, dated 28 October 2008 on the collective labour dispute settlement at Marlyn Company;
2. Minutes of the collective labour dispute resolution at Marlyn Company, dated 14 October 2008.

**D. Provided by the Secretariat of the Arbitration Council:**

1. Invitation No. 685 KB/AK/LKA dated 30 October 2008 to invite the worker party to attend the hearing;
2. Invitation No. 684 KB/AK/LKA dated 30 October 2008 to invite the employer party to attend the hearing;

**FACTS**

- N/A

**REASONS FOR DECISION**

In this case, the claimant union and worker party did not attend the hearing at the Arbitration Council, and did not 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. The employer party also did not participate in the hearing as invited by the Arbitration Council and could not be reached by phone although the Secretariat of the Arbitration Council attempted many times. 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, 27/07-M & V 3, 73/07-Sun Shine and 132/08-GHG, the Arbitration Council interpreted Clause 21 of Prakas 099 SKBY, dated 21 April 2004 above to mean that there are three requirements which should be fulfilled before the Arbitration Council can close a case: *"first condition: the party is properly informed; second condition: the party does not appear at the hearing; and third condition: the party does not provide good cause for this lack of appearance."*

In this case, the Arbitration Council agrees with the interpretation on Clause 21 of Prakas 099 SKBY, dated 21 April 2004 by 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 properly informed**

Based on part (D) [above], documents provided by the Secretariat of the Arbitration Council, the Arbitration Council finds that parties indeed received the letter invitation 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**

In the above cases, the Arbitration Council interpreted that the term “**represented at the hearing**” [as implied] in Clause 21 of Prakas No. 099 dated 21 April 2004 on the Arbitration council means that the party (1) is present at the hearing and (2) attends the arbitration hearing until the end. Arbitration process includes 4 stages as follows:

- a. Self introduction and clarification of conflict of interests
- 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. Finally, a hearing on the merits of the case.

In this case, the union and worker party and the employer party did not participate in all four stages above. Thus, the Arbitration Council considers that the union and the worker party and the employer party were not present at the hearing according to the condition 2 of Clause 21 of Prakas 099 SKBY, dated 21 April 2004 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 7 November 2008 at 2:00 p.m., the Secretariat of the Arbitration Council communicated through telephone to remind the employer party and the union party and worker party about the hearing. The union and worker party [representative] responded that he could not attend the hearing without giving any reason. An 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 [representative] stated that they could not come to attend the hearing and would leave this to the Arbitration Council to make a decision according to its procedure. The employer party also did not come to the hearing as scheduled although the Secretariat of the Arbitration Council tried to contract them but they were not reachable. Thus, the Arbitration Council considers that both parties did not provide good reasons for their failure to appear. Thus, condition 3 is also met.

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

Based on the Rules, Prakas and interpretation above, the Arbitration Council considers that although the parties in dispute 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 at Marlyn Company, who is the claimant in this case, to present the demand of workers who authorized the union [to represent them] in accordance with the Labour Law.

However, the union chose not to attend the hearing and gave up the chance to present evidence to support its demand. Generally, the claimant has an obligation to provide reasons and evidence before the Arbitration Council to support its claim. Nonetheless, in this case the union and worker party who is the claimant does not provide any reason or evidence to support its 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 reason and evidence to defend and support their demand. The Arbitration Council considers that the union renounces the claim. Such decision does not show an intention of the union and worker party to bring their dispute in good faith for resolution before the Arbitration Council.

Thus, the Arbitration decides to close case 138/08-Marlyn Garment.

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

**DECISION**

- Close Case 138/08 – Marlyn Garment.

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

Arbitrator chosen by the employer party:

Name: **Ly Tayseng**

Signature: .....

Arbitrator chosen by the worker party:

Name: **Liv Sovanna**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: .....