



KINGDOM OF CAMBODIA
NATION RELIGION KING

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THE ARBITRATION COUNCIL

Case number and name: 14/07- Shoe Premier

Date of Award: 28 February 2007

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **Chhiv Phyrum**

Arbitrator chosen by the worker party: **An Nan**

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

DISPUTING PARTIES

Employer party:

Name: **Shoe Premier (Cambodia) Co. Ltd.**

Address: New Road, Sangkat Toul Sangke, Khan Russey Keo, Phnom Penh

Telephone: 092 595 595

Representative:

- Mr. Kien Hong Head of Administration of Shoe Premier Factory

Worker party:

Name: **Free Trade Union Federation and local Free Trade Union at Shoe Premier Factory**

Address: N/A

Telephone: 092 580 335

Representative:

- | | |
|----------------------|--|
| 1. Mr. Fa Saly | Dispute Resolution Officer of FTUF |
| 2. Mr. Hoeun Tharith | President of FTU at Shoe Premier Factory |
| 3. Mr. Suong Sarat | First Vice-President of FTU at Shoe Premier Factory |
| 3. Mr. Chhun Ngann | Second Vice-President of FTU at Shoe Premier Factory |

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ISSUES IN DISPUTE

(In the Non-Conciliation Report)

The electrical repair workers insist that the company maintain their former positions. The company party does not agree to the electricians' request and it does not discriminate against the local Free Trade Union at Shoe Premier Factory.

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. 099 dated 11 May 2006 (Fourth 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 was unsuccessful, and the non-conciliation report No. 090 K.K.B.V/A.K/V.A dated 29 January 2007 was submitted to the Secretariat of the Arbitration Council on 06 February 2007.

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: 22 February 2007 (at 2:00 p.m.)

Procedural issues:

Upon receiving the complaint from workers regarding demand for the company to improve work conditions in accordance with the Labour Law, on 2 January 2007, the Department of Labour Dispute assigned an officer to handle the case. The last conciliation [conducted by the officer] was held on 5 January 2007, resulting in the issue remaining unresolved. The one non-conciliation issue was referred to the Arbitration Council on 6 February 2007. After receiving the case, all parties to the dispute were summoned by the Arbitration Council [for a hearing] on 22 February 2007 at 2 p.m.

Both parties were present at the hearing. The Arbitration Council attempted further conciliation with respect to the one non-conciliated issue but there was no conciliated result.

Therefore, the Arbitration Council will consider and resolve this one issue based on evidence and findings of fact as follows:

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party:

- Letter from Mr. Zheng Xianjiang, the owner of Shoe Premier Enterprise to authorize Mr. Kien Hong to resolve the labour dispute at the Arbitration Council.
- Internal Work Rules of Shoe Premier Company No. 089 KSBN/AK, registered on 13 August 1999.
- Labour contract of the company with Mr. Chhuon Ngann, dated 30 September 2006
- Labour contract of the company with Mr. Roeung Tharith, dated 19 October 2006
- Labour contract of the company with Mr. Suong Sarat, dated 1 October 2006

Provided by the worker party:

- Union registration certificate No. 1093 KKBV/AK, dated 22 January 2007

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

- Report of the collective labour dispute resolution at Shoe Premier company, No. 090 K.K.B.V/AK/V.K, dated 26 January 2007
- Minute of the collective labour dispute conciliation, dated 5 January 2007
- Letter from the Minister of the Ministry of Labour and Vocational Training to the Arbitration Council regarding a request for collective labour dispute resolution at Shoe Premier Enterprise, No. 229 KKBV, dated 13 February 2007

Provided by the Secretariat of the Arbitration Council:

- Invitation letter No. 051 K.K.B.V/AK/VK/LKA dated 9 February 2007 to invite the worker party to attend the hearing.
- Invitation letter No. 052 K.K.B.V/AK/VK/LKA dated 9 February 2007 to invite the worker party to attend the hearing.

FINDINGS OF FACT

- Having examined the documents the parties submitted to the Arbitration Council
- Having reviewed the report of the collective labour dispute conciliation
- Having listened to statements by representatives of the worker party and the employer party

Findings of Fact:

- Shoe Premier Company is located along New Road, Sangkat Toul Sangke, Khan Russey Keo, Phnom Penh. [The company] employs 1,182 workers.

- [the electricians] were transferred by the company from working as electricians to working in sole of shoe gluing.

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- On 30 December 2006, the head of electricians called all 13 electricians to a meeting to inform them that the company would have to transfer five electricians to work as sole-gluing workers. The five workers rejected going to work in a new place that same evening. However on the following day, those workers went to work in the sole-gluing section according to the company's transfer arrangement but continued to make complaints according to the legal procedures.

- After a period of time after the transfer, two workers resigned from work and only three workers remained [] - Mr. Hoeun Tharith, union President; Mr. Suon Sarat, union first Secretary; Mr. Chhun Ngann, union second Secretary - who demand to go back to work in their former positions.

- Mr. Hoeun Tharith's contract dated 19 October 2006 provides that the company party agreed to employ him as an electrician from 19 October 2006 until the contract's expiry on 19 October 2007.

- Mr. Chhuon Ngann's contract with the company is dated 30 September 2006. The contract provides that the company party agreed to employ him as a worker from 30 September 2006 until the contract expiry on 30 September 2007.

- Mr. Suong Sarat's contract with the company is dated 1 October 2006. The contract provides that the company party agreed to employ him as a worker from 1 October 2006 until the contract expiry on 1 October 2007.

- In the contracts of the three workers, there is a provision which states, "*when the company changes [a worker's] position, [the worker] must follow the company's assignment.*"

- In the afternoon of 30 December 2006, these workers did not go to work in their newly assigned section which had been set by the company. The company [therefore] cut half a day's wage and the US\$5 attendance bonus for December. The worker party demanded that the company retain the wages and the bonus which the company cut. This demand however, was not cited in the non-conciliation report of case 14/07-Shoe Premier sent by the Ministry to the Arbitration Council. The worker party requests that the Arbitration Council consider this issue too.

- The company acknowledges that the union was not informed of the transfer nor did the company discuss it with the union.

- The transfer does not end the union mandate of Mr. Hoeun Tharith, Mr. Suon Sarat, and Mr. Chhun Ngann's.

- Work performed by the three workers since they commenced work include: connecting electrical wiring, welding metal, roofing etc. When transferred to the new positions, these workers work as sole-gluing workers and sometimes help to take goods out of containers on trucks. They did not ever do this work in the past.

- The worker party accepts that after transferring the five electricians, the company has not recruited new workers to replace them.

- The workers also acknowledge that their wages and other benefits were not reduced when they were transferred to the new section. The working conditions in the new section are not any more difficult than in their former section.

- The workers claim that they want to keep working in their former section because it is stated in their contract that they are electricians and they want to develop their skill as electricians. In addition, work as a sole-gluer is not a skilled position and even someone who is unskilled can do this work.

- The company promises that if there is work in the electrical section again, the company will take these workers back to work as electricians.

- The three workers also demand for a half days wage and the US\$5 attendance bonus for December 2006 which the company deducted.

- The local Free Trade Union at Shoe Premier Company held an election to establish this union on 19 November 2006 and registered on 22 January 2007. This union has 110 members in total.

- The union claims that the transfer of work was for reason of union discrimination because those who were transferred are union leaders and union activists.

- The company party claims that the transfer is not union discrimination, that it was based solely on skills and that the company simply needs to reduce the number of electricians [employed].

REASONS FOR DECISION

The workers demand that they be allowed to go back to work as electricians based on the reason that this [transfer] constitutes union discrimination and that they are [employed] in positions as electricians, not sole-gluer. The company rejects the union's request claiming that the work transfer was not union discrimination but was conducted because the company needed

to reduce the number of electricians as there is no work to do in that section and the new work which the employees do is similar to the previous work.

In order to decide on this case, the Arbitration Council must consider:

1. Is the transfer of the three union leaders, union discrimination?

During the hearing the union claimed that the work transfer was union discrimination because those who were transferred are union leaders and union activists. Generally, when a worker party accuses [the employer of] union discrimination, the worker party is responsible for providing evidence or witnesses to convince the Arbitration Council that the workers' claim is valid and reasonable (see Arbitral Awards 79/05-Ever Green, 99/06-South Bay, Reason for Decision Issue 1 and 07/07-Supreme).

In this case, the company transferred the three workers from the electrical section to work as sole-glueers and the workers themselves acknowledged that the company maintained other benefits for them and that the nature of work in the new section is not more difficult than in the former section. The Arbitration Council considers that with the transfer to the new section, the workers are still able to continue their union activities, they do not lose benefits and neither are the work conditions more difficult than their former work.

Moreover, the company promised that when they need additional electricians' work, the company will take the three workers back to work as electricians. The Arbitration Council does not consider that there is enough evidence to show that the work transfer constitutes union discrimination as they can continue to work and do their union activities as normal. The workers did not provide other evidence to show that the employer is discriminating against the union in regard to the transfer of Mr. Hoeun Tharith, union President; Mr. Suon Sarat, union first Secretary and Mr. Chhun Ngann, union second Secretary

Therefore, the Arbitration Council does not find that this transfer of work constitutes union discrimination.

2. Does the transfer of Mr. Hoeun Tharith, Mr. Suon Sarat and Mr. Chhun Ngann who are union leaders follow legal procedures?

Article 293 of the Labour Law states, *"The dismissal of a shop steward or a candidate for shop steward can take place only after authorization from the Labour Inspector... Any reassignment or transfer that would end the worker delegate's term is subject to the same procedure."* Article 293 of the Labour Law means that any transfer of the worker delegate which leads to the loss of [union] position or [union] mandate should [only be conducted after] permission from the Labour Inspector. Article 282 of the Labour Law states that worker delegates are entitled to the benefits provided for in Article 293 regarding the dismissal, re-assignment or transfer of worker representatives. Articles 282 and 293 of the Labour Law mean

that any transfer of a worker delegate which leads them to lose their [union] position or mandate should be permitted by the Labour Inspector.

In this case [the employees hold the following positions], Mr. Hoeun Tharith, union President; Mr. Suon Sarat, union first Secretary and Mr. Chhun Ngann, union second Secretary, which means that they are delegates of the Free Trade Union who were elected by workers. Thus, based on Articles 282 and 293 mentioned above, the employer must have permission from the Labour Inspector regarding a transfer of their work if that transfer leads to the loss of their [union] position or mandate. However, in this case, the Arbitration Council found that the transfer does not lead Mr. Hoeung Tharith, Mr. Suon Sarat, and Mr. Chhun Ngann to lose their union position. Therefore, the employer is not obliged to follow the procedures stated in the above mentioned Article 293 regarding receipt of permission from the Labour Inspector.

In conclusion, the Arbitration Council considers that the transfer is not contradictory to the legal procedure.

3. Does the transfer of Mr. Hoeung Tharith, Mr. Suon Sarat and Mr. Chhun Ngan follow the law and the contract in effect?

The work of gluing the soles of shoes is different from the work which the three workers did at the back of the building such as connecting electricity, welding metal, welding tables and chairs and sometimes mending the roof when this was related to metal and electrical matters. In the hearing the parties agreed that the gluing of soles does not require much skill and workers only need a little training in order for them to be able to do this work. The three workers also agreed that the gluing of soles work is easy and that anyone can do the job. When the company asked the workers to work as sole-gluer, this new condition was not in conformity to that which had been agreed or written in the contract.

During the hearing, the employer party asserted that it is the employer's right to assign a worker where to work and that the company did not violate the law but rather follows the company's Internal Work Rules. However, the company did not clearly mention at which point this is stated in the Internal Work Rules. After examining the company's Internal Work Rules, the Arbitration Council does not see that there is any provision which supports the employer's claim. Nonetheless, the Internal Work Rules must be consistent with the employment contract.

Looking at the employment contract of the three workers, there is only one [relevant] provision which states, "*when the company changes [a worker's] position, [the worker] has to follow the company's assignment.*" The Arbitration Council will consider whether this provision is effective in this case.

Article 2 of the Labour Law states, *“Every enterprise may consist of several establishments, each employing a group of people working together in a defined place such as in factory, workshop, work site, etc., under the supervision and direction of the employer.”*

In [Arbitral Awards] 16/06-M&V and 108-Trinunggal Komara, the Arbitration Council interpreted Article 2 of the Labour Law [to mean] that *“... the employer has the right and power to supervise and direct human resources and operation in the company as long as this supervision and direction is made in accordance with the law and is reasonable.”*

The transfer of workers from one section to another may be within the employer's rights in some cases. In [Arbitral Award] 17/03 & 18/03-Ho Hing, the Arbitration Council mentioned, *“In making this decision the Arbitration Council is mindful not to interfere with the right of supervision and management of activities for business and general authorities of the company as employer in managing and changing the works of employees of the company provided it does not result into reduction of wage, changing of working place to the far place from original one, changing of day shift to night shift or night shift to day one and does not affect the specific professional skills. If these things are affected, it is considered as a violation of employment contract that requires to be respected. If the change of shift is made without reduction of wage, if it does not affect the time and place of work and if the change of work involves use of similar (and not complex) skills by the employee, the employer can lawfully do so.”*

In this case, the employer transferred workers from the back of the building [where they did work] such as connecting electricity, welding metal, welding tables and chairs and sometimes mending the roof, to sole-gluing work which is located at the front [of the building]. This transfer does not affect their wages, working hours or the workers' working shifts. However, this transfer does require that [they] give up their former skills relating to connecting electricity, welding metal, tables and chairs and mending the roof and receive training for a new skill in gluing shoes which is completely different from their former skills. This means that the transfer does seriously affect the three workers' employment skills. Thus, the employer's authority to transfer the workers to do the shoe gluing work and the provision in the employment contract which states, *“when the company changes [a worker's] position, [the worker] must follow the company's assignment”* is not reasonable in this case.

Moreover, in Mr. Hoeung Tharith's contract, it is mentioned clearly that his position is as an electrician. For the contracts of Mr. Chhuon Ngann and Mr. Suong Sarat, it is stated that they are employed as workers. They work at the back of the building and do work such as connecting electricity, welding metal, tables and chairs and sometimes mending the roof; their job related to metal and electrical matters only. They undertook this work habitually since the commencement of their work and until the time they were transferred by the company to do the shoe gluing work,

even though their written contracts do not mention in detail the specific tasks related to their job. The Arbitration Council considers that the work they have habitually undertaken since they started working, created a “condition” of a silent contract which forms a part of the contract of the three workers with the company. The transfer of the workers by the company from the electrical, welding metal, tables and chairs and roofing section to the shoe-gluing section violates the contract which the employer has an obligation to practice with the workers.

4. What compensation should the workers receive if the employer violates this employment contract?

Article 67 of the Labour Law states,

“1. A labour contract signed with consent for a specific duration must contain a precise finishing date.

2. The labour contract signed with consent for a specific duration cannot be for a period longer than two years...

7. A contract of a fixed duration must be in writing...”

Based on the findings of fact, Mr. Hoeun Tharith’s position is electrician; this commenced on 19 October 2006 and the contract will expire on 19 October 2007. Mr. Chhuon Ngann signed a contract with the company as a worker commencing work on 30 September 2006 and [] expiring on 30 September 2007. Mr. Suong Sarat signed a contract with the company as a worker starting work on 1 October 2006 and [] expiring on 1 October 2007.

The contracts of the three workers have a specific date of expiration. Their contracts have durations of one year which therefore are durations that do not exceed two years. Their contracts are in written form. These conditions are in accordance with Article 67 of the Labour Law in point 1, and 2 and 7 mentioned above. In conclusion the contracts of the three workers are fixed duration contracts.

The employer party asserted that the transfer of the three workers to the sole-gluing section was done because there is no more work for these workers to do in the electrical section at the moment. However, in general parties to the contract are obliged to follow what is agreed at the time of signing the employment contract except where there is an agreement to change the “conditions” in that contract. Therefore, the Arbitration Council considers that the employer must allow the three workers to perform their former work as electricians because the employer agreed to employ them to do this job for one year as stated in the contract.

Additional issue to the dispute:

On the afternoon of 30 December 2006, Mr. Hoeun Tharith, Mr. Suon Sarat and Mr. Chhun Ngann did not go to work in the new place where the company had transferred them to.

The company deducted half a day's wages and the bonus. This demand was not included in the non-conciliation report of case 14/06 which was sent to the Arbitration Council by the Ministry of Labour. But [this was raised] in the hearing and [the workers] requested the Arbitration Council to consider this demand.

Article 312 of the Labour Law states, "*The Council of Arbitration has no duty to examine issues other than those specified in the non-conciliation report or matters, which arise from events subsequent to the report, are the direct consequence of the current dispute.*"

The workers' demand regarding the wages and bonus as mentioned above was not an issue mentioned in the non-conciliation report. In addition, this is not an issue which has arisen after the report which is a direct consequence of this dispute. Therefore, based on the above mentioned Article 312, the Arbitration Council does not have a duty to consider this demand. In conclusion, the Arbitration Council declines to consider this demand.

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

DECISION

- The company must allow Mr. Hoeung Tharith, Mr. Suong Sareth and Mr. Chhun Ngan to work in their former positions as electricians.
- Decline to consider the workers' demand which seeks that the company retains half a day's wages and the attendance bonus which the company deducted in December 2006.

Type of Award: Binding award

This Award is immediately binding upon the parties after the notification of the award.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Chhiv Phyrum**

Signature:

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Ang Eng Thong**

Signature: