



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល
THE ARBITRATION COUNCIL

Case number and name: 140/07 – Vision

Date of Award: 9 January 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: **Vision Garment (Cambodia) (Vision Company)**

Address: Toul Pongror Village, Sangkat Chom Chao, Khan Dangkor, Phnom Penh

Telephone: 011 889 558 Fax: N/A

Representatives:

- | | |
|-------------------|----------------|
| 1. Mr. Alem Lim | Director; |
| 2. Mr. Mao Vannak | Administrator. |

Worker party:

Name: **Cambodian Federation for Workers' Rights (CFWR) – Cambodian Union for Workers' Rights (CUWR)**

Address: Toul Pongror Village, Sangkat Chom Chao, Khan Dangkor, Phnom Penh

Telephone: 012 533 832 Fax: N/A

Representatives:

- | | |
|---------------------|---|
| 1. Mr. Chhum Veasna | President of CFWR; |
| 2. Mr. Chan Saroeun | President of CUWR at Vision Garment Factory; |
| 3. Mr. Pheap Bunly | Vice-President of CUWR at Vision Garment Factory; |
| 4. Mr. Koung Theara | Secretary of CUWR at Vision Garment Factory. |

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

1. The worker party demanded that the company reinstate Mr. Pheap Bunly, Vice-President of CUWR at Vision Garment Factory and Mr. Koung Theara, Secretary of CUWR at Vision Garment Factory. The employer party said it could not renew the fixed duration contracts of the two workers (the contracts expired) because these two workers did not pay attention to the assignments given by the company.
2. The worker party demanded that the company eliminate the short-term (three-month) fixed duration contracts because the workers lost several benefits because of the contract. The employer party said it could not sign long-term contracts with workers because the company has just started its operations.
3. The worker party demanded that the company build a parking lot for their bicycles and motorbikes. The employer party said it could not build the parking lot because there was no space (the factory premise is too small).

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 13 December 2007 was unsuccessful, and the non-conciliation report No. 1331 was submitted to the Secretariat of the Arbitration Council on 14 December 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: 21 December 2007 (from 8:00 a.m. to 11:00 a.m.)

Procedural issues:

On 1 December 2007, The Department of Labour Disputes received a complaint via telephone from CFWR on the demand for the improvement of some working conditions. Having received the complaint, the Department of Labour Disputes designated its officials to conciliate the dispute and the last conciliation session was held on 5 December 2007; as a

result, 17 out of 20 issues were conciliated. The three non-conciliated issues were submitted to the Secretariat of the Arbitration Council on 14 December 2007.

Having received the case, the Secretariat of the Arbitration Council summoned the employer party and the worker party to a hearing to conciliate the three non-conciliated issues on 21 December 2007 at 8:00 a.m. Both parties were present as summoned by the Arbitration Council.

On the hearing day, the Arbitration Council attempted to conciliate the three non-conciliated issues as stated in the non-conciliation report of the Department of Labour Disputes; as a result two issues: Issue 2 and Issue 3 were conciliated. Therefore, in this case the Arbitration Council considers only Issue 1 based on the evidence and statements of both parties in the hearing as follows:

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party:

1. Trade Registration Certificate No. 3168 of Vision Garment (Cambodia) dated 15 August 2007;
2. Value Added Tax Registration Certificate No. 8524 of Vision Garment (Cambodia) dated 27 September 2007;
3. Statute of Vision Garment (Cambodia) dated 6 August 2007;
4. Letter No. 718 on the appointment of Communication Staff of the company dated 26 July 2007;
5. Patent of Vision Garment (Cambodia) dated 27 September 2007;
6. Sample of the Payroll of Vision Garment (Cambodia);
7. Sample of the ledger of Vision Garment (Cambodia);
8. Notification on the launch of Vision Garment (Cambodia) Enterprise dated 11 December 2007;
9. Job application, leave form, birth certificate, and fixed duration labour contract of Mr. Koung Theara;
10. Warning letter, job application, leave form, birth certificate, and three-month fixed duration labour contract of Mr. Pheap Bunly;
11. Non-renewal letter of Pheap Bunly, ID card S70, dated 15 November 2007;
12. Pay slip for July, August, September, and November 2007 of Pheap Bunly;

13. Name list of workers whose contracts had been renewed and who had been paid of the annual bonus and five percent severance pay.

Provided by the worker party:

1. Registration Certificate of CUWR of Vision Garment (Cambodia) dated 3 October 2007;
2. Letter certifying the registration of CUWR of Vision Garment (Cambodia) dated 3 October 2007.

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

1. Report No. 1331 on the collective labour dispute settlement at Vision Garment (Cambodia) dated 13 December 2007;
2. Minute of the collective labour dispute conciliation at Vision Garment (Cambodia) dated 5 December 2007.

Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 632 dated 17 December 2007 to the employer party to attend the hearing;
2. Invitation No. 633 dated 17 December 2007 to the worker party to attend the hearing.

FACTS

- Having examined the report on the collective labour dispute conciliation;
- Having listened to the testimonies from both the employer party and the worker party;
- Having reviewed other supplementary documents;

The Arbitration Council finds that:

- Vision Garment Company employs 275 workers.
- CFWR, the claimant, has around 100 members. The union was officially registered through certificate No. 1258 dated 3 October 2007. Based on the certifying letter No. 182 dated 3 October 2007, the union had three leaders: Mr. Chan Saroeun, President (he still works for the company because his labour contract is valid), Mr. Pheap Bunly, Vice-President and Mr. Mao Morn, Secretary.
- According to the union representatives, Mr. Mao Morn had resigned and Mr. Koung Theara replaced him in the position of Union Secretary. The union did not inform the Ministry of Labour about the change, but had verbally informed the company.

Issue 1: The worker party demanded that the company reinstate Mr. Pheap Bunly, Union Vice-President and Mr. Koung Theara, Union Secretary

1. Mr. Pheap Bunly, Union Vice-President

- Mr. Pheap Bunly was born on 9 July 2007. He was the Vice-President of the union and he signed a fixed duration contract for a period of three months from 1 September to 1 December 2007. He received US\$ 52 per month; more than other workers because he was an outstanding worker and the company considered him as a role model.
- The company informed him of the labour contract expiration on 30 November 2007. Mr. Pheap Bunly signed on the agreement acknowledging the expiration of his labour contract.
- The company paid him the five percent severance pay and unused paid leave. Mr. Pheap Bunly said he had received the payment.
- The employer party claimed in the hearing that the company also paid compensation in place of the seven-day prior notice because it was the company's practice. Mr. Pheap Bunly said he did not receive this payment.
- Mr. Pheap Bunly and the union demanded in the hearing that the company reinstate him because he was Vice-President of the union and the termination was due to union discrimination.
- The employer party said the non-renewal of labour contract was not related to union discrimination, but his contract was expired. The company knew about the union establishment before the last renewal of his contract since August 2007 and the labour contract was renewed in September 2007. In addition to the expiration of his labour contract, Mr. Pheap Bunly's performance had recently declined and he always asked for leave. The employer party said Mr. Pheap Bunly was a good worker before.
- Mr. Pheap Bunly said he took leave once a month to take his wife to see the doctor. His work performance declined not because he took leave, but it was because the company did not allow him to work overtime as other workers.
- The employer party did not respond, but said the company did not discriminate against union and had no intention to reinstate Mr. Pheap Bunly. Mr. Pheap Bunly did not prove that there was union discrimination, but claimed that the company had renewed labour contracts of 67 workers whose labour contracts expired on 1 December 2007 except four union members include Mr. Koung Theara and two other workers. Mr. Pheap Bunly acknowledged that among the 63 workers whose contracts had been renewed, some were union members but he did not remember how many.
- The employer party claimed that the company did not renew the contracts of the four workers because their work performance was not good. Both parties did not elaborate but agreed that Mr. Koung Theara was a model worker. Among the workers whose contracts had been renewed, some were union members. The union acknowledged

that their members were among those workers whose contracts had been renewed, but did not remember their names.

- The employer party said the company had already informed the Ministry of Labour of the expiration of Pheap Bunly's labour contract. The Ministry of Labour did not respond because it was an expiration of the contract, not a dismissal.

2. Mr. Koung Theara, Union Secretary

- Mr. Koung Theara was born on 7 March 1986. He was the Secretary of the union and he signed a fixed-duration labour contract for a period of three months from 1 September to 1 December 2007. He received US\$ 51 per month.
- The company notified him of the expiration of his labour contract on 30 November 2007. Mr. Koung Theara signed and acknowledged the expiration of his labour contract.
- The company paid him the five percent severance pay and unused paid leave. Mr. Koung Theara said he received the payment.
- The employer party claimed in the hearing that the company also paid compensation in place of the seven-day prior notice because it was the company's practice. Mr. Koung Theara said he did not receive this payment.
- Mr. Koung Theara demanded in the hearing that the company reinstate him because he was the union Secretary and the company did not renew his labour contract because of the union discrimination.
- The employer party said that the non-renewal of labour contract was not related to union discrimination, but his contract expired. The company knew about the union establishment before the last renewal of his contract since August 2007 and the labour contract was renewed in September 2007. In addition to the expiration of his labour contract, Mr. Koung Theara was not well-disciplined, neglected his work, and performed union activities during working hours. The company confiscated union's leaflets in the factory premise.
- Mr. Koung Theara said he left behind his work because he was helping to resolve workers' issues, but did not perform union activities during working hours. He said that the company had indeed confiscated the leaflets at the gate of the factory.
- The employer party did not respond, but claimed that the company did not discriminate against union and had no intention to reinstate Mr. Koung Theara. Mr. Koung Theara did not prove that there was union discrimination, but said that the company had renewed the labour contract of 67 workers whose labour contracts expired on 1 December 2007 except four union members included Mr. Pheap Bunly

and two other workers. Mr. Koung Theara acknowledged that among the 63 workers, whose contracts had been renewed, some were union members but he did not remember how many.

- The employer party claimed that the company did not renew the contracts of the four workers because their work performance was not good. Both parties did not elaborate but agreed that Mr. Koung Theara was a model worker. Among the workers whose contracts had been renewed, some were union members. The union acknowledged that their members were among those workers whose contracts had been renewed, but did not remember their names.
- The employer party said the company had not informed the Ministry of Labour of the expiration of Koung Theara's labour contract because he was not officially recognised by the Ministry. The Ministry of Labour did respond because it was an expiration of labour contract, not a dismissal.

REASONS FOR DECISION

Issue 1: The worker party demanded that the company reinstate Mr. Pheap Bunly, Union Vice-President and Mr. Koung Theara, Union Secretary

In this case, the worker party demanded that the company reinstate Mr. Pheap Bunly, Union Vice-President and Mr. Koung Theara, Union Secretary because they were union leaders and the term of the union did not expire. However, the employer did not agree to reinstate them because their labour contracts expired. The Arbitration Council considers this case as follows:

Article 73 (1) of the Labour Law stipulates that, *“A labor contract of specific duration normally terminates at the specified ending date. ...”*

In case 100/07 – Ho Yea Cambodia, the Arbitration Council interpreted this article that, *“The Arbitration Council considers that a labour contract of fixed duration automatically terminates at the specified ending date. That means the obligation of the employer and the worker is also ended. Therefore, none of the contracting parties may force other party to renew the contract without consent.”* (See Arbitral Award 100/07 – Ho Yea Cambodia, Issue 2)

In this case, the Arbitration Council also agreed with the previous ruling of the Arbitration Council in the previous cases that a fixed duration labour contract automatically terminates at the specified ending date and the obligation of the employer and the worker also ended. Therefore, none of the contracting parties may force other party to renew the contract without consent.

In this case, the labour contracts of Mr. Pheap Bunly and Mr. Koung Theara expired on 1 December 2007 and the company informed the non-renewal of the labour contracts on 31 November 2007. That means the obligation between the employer and Mr. Pheap Bunly and Mr. Koung Theara also ended. Moreover, Mr. Pheap Bunly and Mr. Koung Theara had also acknowledged that their labour contracts expired and they had signed the recognition letters. Therefore, none of the parties may force other party to renew the contracts without consent.

Furthermore, Article 73 (7) of the Labour Law states that, *“At the expiration of the contract, the employer shall provide the worker with the severance pay proportional to both the wages and the length of the contract. The exact amount of the severance pay is set by a collective agreement. If nothing set in such agreement, the severance pay is at least equal to five percent of the wages paid during the length of the contract.”*

In case 100/07 – Ho Yea Cambodia, the Arbitration Council interpreted this article that, *“the company is obliged to pay the severance pay equals to five percent of the wage of period that the worker had worked for the company.”* (See Arbitral Award 100/07 – Ho Yea Cambodia, Issue 2)

In this case, the employer party claimed that the company had already paid the severance pay and the workers said that they had received the payment. Therefore, the Arbitration Council considers that the company had complied with Article 73 (7) of the Labour Law which states the provision of the five percent severance pay.

However, in this case the worker party claimed that non-renewal of labour contracts of Pheap Bunly and Koung Theara was because of union discrimination because the union mandate had not ended. The employer party said the non-renewal of the labour contracts was because they expired. It was not the union discrimination but their performance had declined and the other 63 workers, whose contracts had been renewed, were also members of the union.

The Arbitration Council considers that the expiration of labour contract and term of the union are two different things. The relationship between employer and workers ends when the contract expires and to renew the contract or not is the right of the parties because contract is an agreement between the parties. The term of the union does not establish the relationship between workers and employer. The term of the union is related to the relationship between union leaders and workers who are members and vote for them. Therefore, the Arbitration Council considers that the two union leaders can still perform union activities until the end of the term of the union. Only if the [union's] statute states so provides, the term shall end when the labour contract expires. (See Clause 3(4) of Prakas 305 dated 22 November 2001)

However, in previous cases, the Arbitration Council has ordered the employer to reinstate workers because the employer discriminated against union violating Article 12 and

279 of the Labour Law, which prohibits employers from taking into consideration union affiliation or participation in union activities when making decisions concerning recruitment, management and assignment of work, promotion, remuneration and granting of benefits, disciplinary measures and dismissal. (See also Arbitral Awards 28/07 – Dae Hwang, Issue 3 and 123/07 – E Garment, Issue 1)

In this case, the Arbitration Council also agreed with the previous ruling of the Arbitration Council in the previous cases that the employer shall reinstate the workers, if the employer discriminated against the union violating Article 12 and 279 of the Labour Law, which prohibits the employer from taking into consideration union affiliation or participation in union activities when making decisions concerning recruitment, management and assignment of work, promotion, remuneration and granting of benefits, disciplinary measures and dismissal. However, in this case Pheap Bunly and Koung Theara were not dismissed but their labour contracts expired. The Arbitration Council considers that the decision not to renew the expired labour contracts did not show discrimination against the union because it was the rights of the contracting parties.

Moreover, in the previous cases, the Arbitration Council determined that the worker party was obliged to provide evidence to prove that the employer discriminated against union. (See Arbitral Awards 90/06 – Evergreen, Issue 1; 112/06 – River Rich, Issue 1; and 01/07 – Supreme, Issue 1)

In this case, the Arbitration Council also agreed with the previous rulings of the Arbitration Council in the previous cases that the worker party was obliged to provide evidence to prove that the employer discriminated against union. The Arbitration Council considers that the worker party did not provide valid reason to prove that the decision not to renew the labour contracts was an act of union discrimination.

Similarly, in case 100/07 – Ho Yea Cambodia, the Arbitration Council rejected the demand that the company reinstate the union leaders because the contracts expired and there was no evidence to prove the discrimination. (See Arbitral Award 100/07 – Ho Yea Cambodia, Issue 2)

In conclusion, the Arbitration Council rejects the demand of workers that the company reinstate Pheap Bunly and Koung Theara and orders the employer to allow these two workers to perform union activities until the end of the union term in accordance to the union statute.

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

DECISIONS AND ORDERS

1. Reject the demand of the workers that the company reinstate Pheap Bunly and Koung Theara.
2. Order the employer to allow these two union leaders to perform union activities until the end of the union term in accordance to the union statute.

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 period.

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:

**Dissenting Opinion of Arbitrator An Nan
in Arbitral Award 140/07 – Vision**

In this case, the employer party terminated the labour contracts of Pheap Bunly and Koung Theara when their contracts expired. The union claimed that the contract non-renewal was because of union discrimination.

In the previous cases, the Arbitration Council determined that the worker parties has the burden regarding evidence to prove that the employer discriminated against the union. (See Arbitral Award 90/06 – Evergreen, Issue 1; 112/06 – River Rich, Issue 1; and 01/07 – Supreme, Issue 1)

In this case, I also agree with the previous decisions of the Arbitration Council. The worker party claimed that the company was in ordinary operation, both workers did not commit any misconduct, and especially the company had renewed the contracts of other workers who were not union activists or leaders, but the company did not renew the contracts of these two union leaders.

According to the fact, the employer party said that Pheap Bunly, Union Vice-President, did not perform well and always took leave. Pheap Bunly said he took leave once a month to take his wife to see the doctor. His performance declined not because he took leave, but it was because the company did not allow him to work overtime like other workers and the company always changed his work. The employer did not provide evidence to support his claim.

In the case of Koung Theara, the worker party said that the employer did not renew his contract because he had performed union activities within the enterprise. The employer party said he was not well-disciplined, neglected work, and performed union activities during working hours. The company confiscated leaflets in the factory premise. The worker party said that the employer did not renew his contract because Koung Theara always helped workers talk to the employer when they had problems. Koung Theara never committed any misconduct and he gathered union members only during break times. The employer did not provide evidence to support his statement and the non-renewal of Koung Theara's contract.

In this case, I also agree with the other two arbitrators in interpreting Article 73 and Article 65 to mean that the contract terminates at the end of the contract and the contract is an agreement of the contracting parties. In this case, the employer party did not violate the two Articles but according to the facts Pheap Bunly, Union Vice-President and Koung Theara, Union Secretary did not commit any misconduct. The company was in ordinary operation, and the company renewed other workers' contracts. In this case, I think that there might be an act of union discrimination. In principle, the claimant has the burden regarding evidence to support its demand and in this case the worker party has to provide evidence to

support their claim. The worker party provided the above reasons but the employer party did not provide reason to support its claim that there was no union discrimination. Therefore, I think that the non-renewal the labour contracts of these two workers, who were union leaders, was an act of union discrimination. Article 12 of the Labour Law stipulates that, *“Except for the provisions fully expressing under this law, or in any other legislative text or regulation protecting women and children, as well as provisions relating to the entry and stay of foreigners, no employer shall consider on account of:... membership of workers' union or the exercise of union activities, to be the invocation in order to make a decision on: hiring,...”* In this case, the non-renewal of the contracts of Pheap Bunly and Koung Theara violated Article 12 of the Labour Law. Therefore, the implementation of Article 73 and Article 65 cannot be concluded as in compliance with the law because it violated Article 12. Similarly, in the previous cases, the Arbitration Council interpreted Article 91 to mean that the employer may dismiss a worker without a reason by only provides compensations, but if the Article 12 is violated that means the employer discriminates against union and the termination with compensation cannot be made.

In conclusion, in this case the company did not violate Article 73 and Article 65 but the company violated Article 12.

Therefore, the company shall reinstate Pheap Bunly, Union Vice-President and Koung Theara, Union Secretary and reimburse their payment from the day the company terminated their contracts.

Phnom Penh, 9 January 2008

Arbitrator An Nan