



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាគណ្តារ

THE ARBITRATION COUNCIL

Case number and name: 145/08-Pantessa

Date of Award: 31 December 2008

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

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

Arbitrator chosen by the worker party: **Ann Vireak**

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

DISPUTING PARTIES

Employer party:

Name: **Pantessa Garment (Cambodia) Co., Ltd.**

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

Telephone: 012 827 755

Fax: N/A

Representative:

- | | |
|-------------------|----------------------------------|
| 1. Mr. Sry Kimyou | Company's lawyer |
| 2. Ms. Hen Nika | Accountant |
| 3. Mr. Kim Sokha | Company's administration officer |

Worker party:

Name: **Trade Union Federation of Development of Luck of Workers (TUFDLW) and its local union in Pantessa Garment Company**

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

Telephone: 015 370 363

Fax: N/A

Representative:

- | | |
|----------------------|-------------------------------------|
| 1. Mr. Vat Samnang | President of TUFDLW |
| 2. Mr. Tom Kimsoeurn | General Secretary of the federation |
| 3. Mr. Chhum Veasna | President of CFWR |

- | | |
|---------------------|-------------------------------|
| 4. Mr. Chea Sary | President of local union |
| 5. Ms. Mut Sophy | Secretary of local union |
| 6. Mrs. Kong Sothea | Vice-President of local union |

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- Leaders of TUFDLW and worker delegates in the factory demand that the company maintain US\$50 per month as a main wage and US\$90 per month as a position allowance for Mr. Chea Sary. The company states that it can maintain the US\$50 main wage and provide US\$15 as a position allowance (mechanic). However, the US\$90 per month the company used to pay Mr. Chea Sary was an incentive bonus provided based on the actual results of work.
- 2- The workers demand that the company arrange two punching machines as the current arrangement causes a bottleneck.
- 3- The workers demand that the company open the toilets at the first gate and the second gate.
- 4- The workers demand that the company allow two hours per week for union representatives to have a meeting.
- 5- The workers demand that the company provide an information board.
- 6- The union demands that the company allow it to post its union structure in order for workers to know the union.
- 7- The workers demand that the company instruct Cambodian group leaders to use proper language toward workers.
- 8- The workers demand that the company allow union representatives to attend monthly meetings at the office of TUFDLW on 15th of each month from 12:00 p.m. to 4:00 p.m.

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. 1264 KB/AK/VK, dated 24 November 2008 was submitted to the Secretariat of the Arbitration Council on 24 November 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:

- First hearing: 5 December 2008 (at 8:00 a.m.)
- Second hearing: 18 December 2008 (at 2:00 p.m.)
- Third hearing: 22 December 2008 (at 8:00 a.m.)

Procedural issues:

On 24 October 2008, the Department of Labour Disputes received a complaint by TUFDLW in the factory, dated 24 October 2008, regarding the demand for the company to improve working conditions. After the receipt of this case, the Department of Labour Dispute assigned an officer to resolve this labour dispute and the last conciliation was held on 6 November 2008 but did not reach a successful conciliation result on 8 issues. The 8 non-conciliation issues were referred to the Arbitration Council on 24 November 2008.

After receiving the case, the Secretariat of the Arbitration Council summoned the employer and the worker parties to the hearing and conciliation on the 8 non-conciliation issues three times: the first hearing was held on 5 December 2008 (at 8:00 a.m.), the second hearing on 18 December 2008 (at 2:00 p.m.) and the third hearing on 22 December 2008 (at 8:00 a.m.).

On the first hearing day on 5 December 2008 both parties were present at the hearing as invited by the Arbitration Council but the hearing could not be carried on as the worker party who was the claimant lacked the qualification of a legal claimant as it did not have an authorisation letter from the worker to prove its status as a legal claimant. The worker party requested to reschedule the hearing to allow for additional evidence. The employer party agreed to the request. The Arbitration Council decided to reschedule the hearing to 18 December 2008 so to allow an opportunity to the worker party to provide documents related to the election of new union leaders, the union statute and letter from the workers to provide authorisation to the union, and letter to recognise the new leadership of the union because the claimant who brought the case to the Arbitration Council claimed that they were newly elected union leaders.

On the second hearing date on 18 December 2008, both parties were present as invited by the Arbitration Council but the hearing still could not move forward because the claimant union was not qualified as it did not provide documents related to the election of new union leader, nor an authorisation letter to the union and union statute; it provided only the letter to recognize the new union leaders. The Arbitration Council again decided to reschedule the hearing to 22 December 2008 and ordered the worker party to provide documents related to the election of new union leader, authorization letter to the union and

union statute by 19 December 2008. However, the union did not submit these documents to the Arbitration Council.

On the third hearing date on 22 December 2008, the employer party was present as summoned by the Arbitration Council. However, the employer was 30 minutes late to the hearing while the worker party, the claimant, was absent. The worker party did not provide the reason why they were absent in the third hearing. Therefore, in this case the Arbitration Council will consider this case based on evidence and reasoning 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. Payroll for October 2008.
2. Incentive bonus for October 2008.
3. Internal communication letter.

B. Provided by the worker party:

1. Certificate of union registration of local union of TUFDLW in Pantessa Garment factory, dated 21 July 2008.
2. Letter by the Chief of the Department of Labour Dispute to the president of local union of TUFDLW in Pantessa Garment factory regarding recognition of new union leadership, No. 1279 KB/AK/VK, dated 25 November 2008.

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

1. Report No. 1264 KB/AK/VK, dated 24 November 2008 on the collective labour dispute settlement at Pantessa Garment Company;
2. Minutes of collective labour dispute conciliation at Pantessa Garment Company, dated 6 November 2008.

D. Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 717 KB/AK/VK/LKA dated 26 November 2008 to invite the worker party to attend the hearing;
2. Invitation No. 716 KB/AK/VK/LKA dated 26 November 2008 to invite the employer party to attend the hearing;

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:

- Pantessa Company is located in Morl Village, Sangkat Dangkor, Khan Dangkor, Phnom Penh. It employs approximately 4,500 workers.
- The local union of TUFDLW in Pantessa factory is the claimant in this case.
- The local union of TUFDLW in Pantessa factory is registered with registration No. 1479 KB/VK, dated 21 July 2008 through the letter No. 168 KB, dated 21 July 2008 with three union leaders: Ms. Phon Norn, the President; Mrs. Chin Nakry, Vice-President; and Mr. Keo Vin, Secretary.
- Mrs. Phon Norn, the President of the local union, resigned from work on 10 July 2008 before the union was granted the registration certificate dated 21 July 2008.
- Mrs. Chin Nakry, Vice-President of the local union, also resigned from her position (could not recall the date) after the union received the registration certificate but continued to work in the company.
- Mr. Keo Vin, Secretary of the union, resigned from work on 19 September 2008.
- On 20 October 2008, TUFDLW submitted a request to negotiate with the company on 8 issues but the union federation does not have a letter to certify that it had authorization letter from the workers; the letter to request negotiation was signed by the President of the union federation.
- On 20 October 2008, Mr. Chea Sary filed an individual claim to the Department of Labour Disputes to demand for position allowance.
- According to the claim by the representative of the union federation and worker representatives present in the hearing, the union federation organized an election of new union leaders on 21 October 2008. However, the union did not notify the employer about the components of the new leadership.
- On 24 October 2008, TUFDLW file a complaint against the company to the Department of Labour Disputes. The Department of Labour Disputes received the complaint on 24 October 2008.
- The Department of Labour Disputes assigned a conciliation officer to conduct the conciliation on this labour dispute on 28 October 2008 and the conciliation session was held on 6 November 2008. The worker party walked out of the conciliation and did not agree to sign the minutes of the conciliation.
- The non-conciliation report No. 1264 KB/AK/VK, dated 24 November 2008, was sent to the Arbitration Council on 24 November 2008.

- The Department of Labour Disputes issued a letter to recognize the new union leadership on 25 November 2008 in which it certifies that Mr. Chea Sary is the President; Ms. Kong Sothea, Vice-President and Ms. Mut Sophy, Secretary.
- There are no findings of fact related to the issues in dispute because the Arbitration Council had not had a hearing on the merits of this case.

REASONS FOR DECISION

Based on the procedural issues and findings of fact above, the Arbitration Council considers that the claimant worker party in this case does not have clear authority to be a representative; the Arbitration Council allowed time for the workers and the union federation and three scheduled hearings to provide evidence to prove that they had legal status as representatives but the worker party did not provide sufficient evidence. In addition, they were absent in the third hearing. Therefore, the Arbitration Council considers the absence of the worker party in the third hearing as the abandonment of the claim for the following reasons:

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. In either case, it must be satisfied that the parties have been properly notified of the date, time and venue of the arbitration proceedings before making such decision.”*

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, 95/08-Yung Wah I, 132/08-GHG and 138/08-Marlyn, the Arbitration Council interprets Clause 21 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 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 worker party was present in the first and the second hearing but they did not have sufficient evidence to prove their legal representation status as a claimant. In the second hearing the worker party agreed that it would submit evidence to prove its legal representation status as a claimant to the Arbitration Council in order to be entitled to attend the third hearing. The worker party did not provide the documents to the Arbitration Council and was absent on the day of the third hearing.

In conclusion, the Arbitration Council considers that in this case the worker party was duly notified in accordance with condition 1. The fact that the worker party did not show up in the third hearing fulfill the second condition and the fact that it did not provide a valid reason for its failure to appear at the hearing fulfilled the third condition. Therefore, the Arbitration Council considers that conditions 1, 2 and 3 are fulfilled. In relation to the failure to appear in the hearing, the Arbitration Council considers that the worker party has renounced its right as a claimant. Such decision does not show a good faith intent by the union and worker party to bring their dispute for resolution before the Arbitration Council in the third hearing.

Therefore, the Arbitration decides to close case **145/08-Pantessa**.

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

DECISION AND ORDER

- Close Case **145/08-Pantessa**.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Lee Tayseng**

Signature:

Arbitrator chosen by the worker party:

Name: **Ann Vireak**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: