



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអន្តរាជ្យាករណ៍

THE ARBITRATION COUNCIL

Case number and name: 146/08-Island Glory

Date of Award: 18 December 2008

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **Seng Vuochhun**

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

Chair Arbitrator (chosen by the two Arbitrators): **Pen Bunchhea**

DISPUTING PARTIES

Employer party:

Name: Island Glory Industrial Co., Ltd

Address: Toul Sangke Village, Sangkat Toul Sangke, Khan Russey Keo, Phnom Penh

Telephone: 012 434 168

Fax: N/A

Representative:

- | | |
|----------------------|-----------------------------|
| 1. Mr. Jay Choo | Director of the company |
| 2. Mr. Sok Chantha | Company's advisor |
| 3. Mr. Nov Bunkheang | Head of administration |
| 4. Mr. Chea Saroeurn | Head of GRD Security Guards |

Worker party:

Name: Khmer Youth Federation Trade Union (KYFTU) and local union of Khmer Youth Trade Union (KYTU) at Island Glory factory

Address: Toul Sangke Village, Sangkat Toul Sangke, Khan Russey Keo, Phnom Penh

Telephone: 017 430 312

Fax: N/A

Representative: **Absent**

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- The workers demand that the company change a three-month fixed duration contract to a six-month fixed duration contract. The company states that it follows the Labour Law and its existing principles.
- 2- The workers demand that the company reinstate Mr. Sat Bunthoeurn and maintain his wages and bonus until the date he will be reinstated. The company party will not reinstate Mr. Sat Bunthoeurn, nor will it maintain his wages and bonus.

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. 1286 KB/AK/VK, dated 26 November 2008 was submitted to the Secretariat of the Arbitration Council on 26 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: 4 December 2008 at 2:30 p.m. (The union and worker party was absent)

Procedural issues:

On 17 November 2008, the Department of Labour Disputes received a complaint through telephone by workers in the factory regarding the demand for the company to improve working conditions. Immediately after the receipt of this case, the Department of Labour Disputes assigned an officer to resolve this collective labour dispute and the last conciliation [] meeting was held on 18 November 2008 with a result of two non-conciliation issues of three issues. The two non-conciliation issues were referred to the Arbitration Council on 26 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 two non-conciliation issues on 4 December 2008 at 2:30 p.m. However, the worker party did not show up at the hearing and did not make a request in writing to postpone the hearing date with a proper

reason prior to the hearing. To the hour of the hearing, the officer of the Secretariat of the Arbitration Council telephoned the union party; the union party expressed that it was willing to postpone the hearing date but when the officer of the Secretariat of the Arbitration Council advised them to submit an application in accordance with the procedure, the union party renounced its opportunity and did not follow the [] set procedure. The employer party, on the other hand, appeared at the hearing as invited by the Arbitration Council and requested that the Arbitration Council follow the law. Therefore, the Arbitration Council will consider and decide the issues in dispute 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. Authorisation letter by the Director of Island Glory Company to Mr. Sok Chantha, the company's advisor, and Mr. Nov Bunkheang, head of administration, [] to authorise them to resolve the collective labour dispute at Island Glory Company [] with the right to make decisions in the process of this dispute resolution, dated 1 December 2008.
2. Certificate of commercial registration of Island Glory Company No. 819 PN.NTK, dated 7 April 2005.
3. Internal Work Rules of Island Glory Company, registration No. 081 KKBV/AK, dated 20 July 2005.
4. Statute of Island Glory Company, dated 24 February 2005
5. Notification regarding an election of the union committee of the local union of KYTU in Island Glory, dated 22 January 2007.
6. Letter regarding the [incident where] factory worker(s) in the mechanical section jumped over the fence to get out of the factory during working hours, dated 10 October 2008.
7. Notification regarding a request to conduct a non-violent strike/demonstration, dated 6 November 2008.
8. Minutes of the collective labour dispute conciliation at Island Glory Company, dated 18 November 2008.
9. Payroll list regarding payment of 5% of wages in July 2007.
10. List of reimbursement for medical check fees for December 2007 - May 2008.

B. Provided by the worker party: N/A

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

1. Report No. 1286 KB/AK/VK, dated 26 November 2008 on the collective labour dispute settlement at Island Glory Company;
2. Minutes of collective labour dispute conciliation at Island Glory Company, dated 18 November 2008.

D. Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 725 KB/AK/VK/LKA dated 28 November 2008 to the worker party to attend the hearing;
2. Invitation No. 724 KB/AK/VK/LKA dated 28 November 2008 to 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 without providing a reason for their non-appearance at the hearing although they were duly invited by the Secretariat of the Arbitration Council. 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. 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 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 properly notified

Based on part (D), documents provided by the Secretariat of the Arbitration Council, the Arbitration Council finds that the Secretariat of the Arbitration Council informed the worker party to pick up the invitation letter but the union did not come to collect the letter in person. On the hearing day, the Secretariat of the Arbitration Council telephoned to remind the worker and union party to attend the hearing on time. However, the party responded that they were unable to attend the hearing although they were informed about date, time and venue of the hearing in accordance with Rule 4.7 in the Annex to the Prakas regarding the Arbitration Council. Therefore, the Arbitration Council considers that the worker party was duly informed about date, time and venue of the hearing by the Secretariat of the Arbitration Council to attend the hearing of the Arbitration Council. **Thus, condition 1 is met.**

Condition 2: The party does not appear at the hearing

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

The arbitration process includes four stages as follows:

- a. Self introduction and clarification of any 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. And hearing of the merits of the case.

In this case, the union and worker party did not participate in all four stages. Thus, the Arbitration Council considers that the union and the worker party was not present at the hearing according to the 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 union and worker party did not provide any reason for its failure to attend the hearing because up to the hearing date on 4 December 2008 at 2:30 p.m., the Secretariat of the Arbitration Council communicated through telephone to remind the employer party and the union and worker party about the hearing. The union and worker party responded that they were busy and unable to attend the hearing. The Secretariat of the

Arbitration Council asked further whether it was possible to have another representative of workers or union leaders to attend the hearing. The union and worker stated that no one could attend the hearing. At that time the union also expressed its willingness to postpone the hearing but an officer of the Secretariat of the Arbitration Council advised them to submit an application to postpone the hearing in accordance with the procedure; the union renounced its opportunity as it did not come to submit the application as advised. The Arbitration Council observed that if the union and worker party was willing to postpone the hearing, it should have made a request in writing and provide a valid reason to the Secretariat of the Arbitration Council prior to the hearing date. In addition, the union and worker party was already informed about time of the hearing, thus it should not have required the Secretariat of the Arbitration Council to remind them about the hearing. The employer party attended the hearing as scheduled and requested that the Arbitration Council follow the law. Thus, the Arbitration Council considers that **the union and worker party did not provide a good reason 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 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 an authority to issue an award.

Furthermore, in this case the Arbitration Council allowed sufficient opportunity for the local union of KYTU at Island Glory factory who is the claimant in this case to defend the demands of workers who authorised the union [to represent them] according to the Labour Law. However, the union chose not to attend the hearing and gave up the chance to present evidence to support its demands. 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 their demands. 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 to resolve before the Arbitration Council.

Therefore, the Arbitration decides to close case 146/08-Island Glory.

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

DECISION AND ORDER

- Close Case 146/08-Island Glory.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Seng Vuochhun**

Signature:

Arbitrator chosen by the worker party:

Name: **Liv Sovanna**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: