



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 148/07 – Pay Her

Date of Award: 11 February 2008

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **Hem H Naryth**

Arbitrator chosen by the worker party: **Sin Kim Sean**

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

DISPUTING PARTIES

Employer party:

Name: **Pay Her Company**

Address: Krol Ko Village, Sangkat Kilometer 6, Khan Russei Keo, Phnom Penh

Telephone: N/A

Fax: N/A

Representatives: Absent

Worker party:

Name: **Coalition of Cambodian Apparel W. D. U (C.CAWDU)**

Address: Krol Ko Village, Sangkat Kilometer 6, Khan Russei Keo, Phnom Penh

Telephone: 012 396 069

Fax: N/A

Representatives:

- | | |
|----------------------|-------------------------------------|
| 1. Mr. Um Visal | Deputy Secretary General of C.CAWDU |
| 2. Mr. Math Sub Pi-E | President of C.CAWDU at Pay Her |

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

1. [The worker party] demanded that the company reinstate eight workers: 1) Mr. Math Sub Pi-E, 2) Ms. Soeun Vannary, 3) Ms. Chan San, 4) Ms. Ven Leakhena, 5) Ms.

Chhin Sreyneang, 6) Ms. Het Mary, 7) Ms. Chhan Hay and 8) Ms. Sun Sophorn, maintain their wages and positions and stop intimidating them or causing other forms of hardship.

2. [The worker party] demanded that the company provide workers with US\$ 50 minimum wage per month in compliance with the Labour Law.
3. [The worker party] demanded that the company calculate the rate for Sunday work, overtime work and holiday work for workers in accordance with the Labour Law.
4. [The worker party] demanded that the company stop intimidating workers when workers refuse to work overtime.
5. [The worker party] demanded that the company simplify the leave application process for workers in accordance [with the level of] urgency.
6. [The worker party] demanded that the company provide workers with an 800 riel meal allowance when workers are required to work overtime.
7. [The worker party] demanded that the company set up a day-care centre and a clinic with sufficient medicine.
8. [The worker party] demanded that the company issue a pay slip [to workers] in accordance with the law.
9. [The worker party] demanded that the company be held responsible for workers' work-related accidents.
10. [The worker party] demanded that the company allow pregnant workers to leave work 5 or 10 minutes early.
11. [The worker party] demanded that the company apply overtime work on a voluntary basis.
12. [The worker party] demanded that the company provide pregnant workers with 50 percent of salary and other perquisites before they take the 90 days maternity leave.

The company party did not turn up for the conciliation [at the Ministry] and failed to provide any reason for their absence.

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 24 December 2007 was unsuccessful, and the non-conciliation report No.1380 was submitted to the Secretariat of the Arbitration Council on 27 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:

First hearing: 14 January 2008 (2:00pm)
(The worker party requested to move the hearing date)
Second hearing: 31 January 2008 (from 2:00pm to 4:00pm)

Procedural issues:

On 2 August 2007, the Department of Labour Disputes received a complaint from C.CAWDU demanding the improvement of working conditions. Having received the complaint, the Department of Labour Disputes designated its officials to conciliate the dispute. The last conciliation session held on 1 November 2007 however none of the 12 disputing issues was conciliated because the employer party did not cooperate or participate [in the conciliation process] to resolve the dispute. The 12 non-conciliated issues were submitted to the Arbitration Council on 27 December 2007.

Having received the case, the Secretariat of the Arbitration Council summoned both the employer party and the employee party to a first hearing to conciliate the 12 non-conciliated issues on 14 January 2008 at 2:00pm. The worker party accepted the invitation to the hearing, but asked to move the hearing date because the union leaders were attending a workshop in Kompong Cham organized by Community Law Education Center (CLEC); the employer party did not accept the invitation to the hearing. The Arbitration Council agreed to the request of the worker party and scheduled a second hearing date for 31 January 2008 at 2:00pm. The worker party accepted the invitation to the hearing and turned up on the hearing date; however the employer party did not accept the invitation to the hearing for the second time and did not turn up for the hearing.

On the hearing day, the Arbitration Council conducted the hearing without the presence of the employer party. In the hearing, the worker party agreed to withdraw 11 issues and asked the Arbitration Council to consider only Issue 1. Therefore, in this case the Arbitration Council considers only Issue 1 based on the evidence and statements of the worker party 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: N/A

Provided by the worker party:

1. Letter No. 003/08 dated 9 January 2008 requesting to reschedule the hearing date;
2. Summary thesis on the activities of C.CAWDU at Pay Her dated 4 February 2008.
3. Letter No. 065/07 dated 25 June 2007 on the Notification of the result of the election of C.CAWDU leaders at Pay Her Factory;
4. Letter No. 056/07 dated 19 June 2007 on the Notification of the election to establish C.CAWDU at Pay Her Factory;
5. Registration license No. 1211 dated 22 August 2007;
6. Minutes of the election to establish C.CAWDU at Pay Her Factory dated 23 June 2007;
7. Letter No. 029/07 dated 27 June 2007 on the request for assistance to resolve issues of working conditions and discrimination against the union at Pay Her Factory;
8. Thumb prints of workers at Pay Her Factory requesting for assistance to resolve issues of working conditions and discrimination against the union at Pay Her Factory dated 26 June 2007.

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

1. Report No. 24/08 dated 8 January 2008 on the collective labour dispute settlement at Pay Her Factory;
2. Minutes of the collective labour dispute conciliation at Pay Her Factory dated 1 November 2007.

Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 008 dated 8 January 2008 to the Company Director to attend the first hearing;
2. Invitation No. 009 dated 8 January 2008 to the worker party to attend the first hearing;
3. Invitation No. 065 dated 23 January 2008 to the Company Director to attend the second hearing;
4. Invitation No. 066 dated 23 January 2008 to the worker party to attend the second 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:

- Pay Her Company employs around 500 workers.
- According to the testimony of Mr. Math Sub Pi-E, President of C.CAWDU at Pay Her Company, the claimant, the union received its registration certificate on 22 August 2007.
- According to the testimony of Mr. Math Sub Pi-E, President of C.CAWDU at Pay Her Company, 100 out of 500 workers are members of C.CAWDU.
- Mr. Math Sub Pi-E, President of C.CAWDU, claimed that on 19 June 2007, C.CAWDU sent Notification letter No. 056/07 dated 19 June 2007 about the establishment of C.CAWDU at the factory to the Company Director and the security guard signed the acceptance the letter. On 23 June 2007, C.CAWDU organized the election in compliance with the procedure. On 25 June 2007, C.CAWDU notified the company of the election result.

Issue 1. Workers demanded that the company reinstate eight workers: 1) Mr. Math Sub Pi-E, 2) Ms. Soeun Vannary, 3) Ms. Chan San, 4) Ms. Ven Leakhena, 5) Ms. Chhin Sreyneang, 6) Ms. Het Mary, 7) Ms. Chhan Hay and 8) Ms. Sun Sophorn

- According to the claim of the union President, the company dismissed the eight workers in two phases—on 22 June 2007 and on 26 June 2007. The reason for the dismissal was because the eight workers joined together to establish a union. The union president claimed that one of the eight workers had received a warning from the company, adding that the factory was still in operation and new workers were continuously employed.
- The union President claimed that the eight dismissed workers were all candidates for the election and they were dismissed on the following dates:

No.	Name	ID	Section	Employment Date	Dismissal Date	Position
1	Math Sub Pi-E	0149	Knitting-Sewing	27/04/2007	22/06/2007	President
2	Soeun Vannary	0191	Knitting	17/05/2007	26/06/2007	Vice-President
3	Chan San	0316	Design	20/04/2007	26/06/2007	Secretary
4	Ven Leakhena	0166	Sewing	03/05/2007	26/06/2007	Treasurer
5	Chhin Sreyneang	0165	Sewing	03/05/2007	26/06/2007	2 nd Adviser
6	Het Mary	0055	Sewing	23/04/2007	26/06/2007	1 st Adviser
7	Thai Bunthoeun	0100	Sewing	-	Not yet	3 rd Adviser

					fired	
8	Chhan Hay	1055	Sewing	-	26/06/2007	5 th Adviser
9	Sun Sophorn	0161	Sewing	03/05/2007	26/06/2007	4 th Adviser

- The union President claimed that all the workers except Chhan San received their severance pay, adding that most of the dismissed workers have found new jobs except for himself and Chan San but they wanted to return to the old factory because it is close to their accommodation. The union President claimed that worker Thai Bunthoeun was dismissed by the company, but was later reinstated by the company because he resigned from CAWDU at Pay Her Factory.
- In the hearing, the union President requested that the company reinstate all eight workers because the dismissals were due to union discrimination since they were all nominated candidates for the election and the elected union leaders.
- Representatives of the company were absent in the hearing without a valid reason and no evidence was submitted to the Arbitration Council for consideration.

REASONS FOR DECISION

Prior to the deliberation on this dispute, the Arbitration Council needs to consider whether or not the arbitrators can proceed with the hearing in the absence of the employer.

Article 21 of Prakas 099 dated 21 April 2004 provides that, *"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."*

Based on the content of Article 21 of Prakas 099 dated 21 April 2004 and the previous awards, when a party is duly invited but fails to appear before the Arbitration Panel without a valid reason, the Arbitration Panel can proceed in the absence of that party. In Awards 53/04 – Kung Hong and 63/04 – Shine Well, the Arbitration Council decided to proceed in the absence of the employer party. (See Awards 53/04 – Kung Hong, 63/04 – Shine Well)

In this case, only the President of CAWDU at Pay Her Company and the officials of C.CAWDU attended the hearing summoned by the Arbitration Council; while the employer party did not attend the hearing summoned by the Arbitration Council and did not provide a valid reason for the absence.

Therefore, to be consistent with the previous cases, the Arbitration Council decides to proceed with the hearing in the absence of the employer party and determine the case submitted to the Arbitration Council based on the evidence and testimonies of the union President.

Issue 1. Workers demanded that the company reinstate eight workers 1) Mr. Math Sub Pi-E, 2) Ms. Soeun Vannary, 3) Ms. Chan San, 4) Ms. Ven Leakhena, 5) Ms. Chhin Sreyneang, 6) Ms. Het Mary, 7) Ms. Chhan Hay and 8) Ms. Sun Sophorn

In this case, the workers demanded that the company reinstate the eight nominated candidates for the union leader election. Thus, the Arbitration Council considers the case as follows:

1. Were the eight workers dismissed on the basis of union discrimination?
2. Did the employer comply with the law when dismissing the eight workers?

1. Were the dismissals of the eight workers made due to the union discrimination?

Paragraph 1 of Article 266 of the Labour Law states that, "*Workers and employers have, without distinction whatsoever and prior authorisation, the right to form professional organisations of their own choice for the exclusive purpose of studying, promoting the interests, and protecting the rights, as well as the moral and material interests, both collectively and individually, of the persons covered by the organisation's statutes.*"

Article 12 of the Labour Law states that, "*...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....or discipline or termination of employment contract...*"

Article 279 of the Labour Law states that, "*Employers are forbidden to take into consideration union affiliation or participation in union activities when making decisions concerning recruitment... and dismissal.*"

Based on the content of Articles 12 and 279 of the Labour Law in the previous cases, the Arbitration Council ordered the employer to reinstate the workers because the dismissal of all the workers was as a result of union discrimination in violation Article 12 and Article 279 of the Labour Law. These articles prohibit employers from [making decisions about] hiring, disciplining or terminating workers' labour contracts on the basis a worker's membership of a union or the exercise of union activities (see Arbitral Awards 28/07 - De Fang, Issue 3 and 123/07 – E Garment, Issue 1).

Regarding the allegation that the employer discriminated against the union, in the previous cases the Arbitration Council requested the worker party to provide evidence to support the allegation that the employer discriminated against the union (see Arbitral Awards 90/06 – Evergreen, Issue 1, 112/06 – River Rich, Issue 1, and 01/07 – Supreme, Issue 1).

In general, in relation to evidence of union discrimination, the Arbitration Council considers the testimonies made at the hearing and examination of other evidence relevant to the case to decide whether or not union discrimination led to the dismissal of workers (see

Arbitral Awards 03/03 – Tonga, Issue 1; 10/03 – Jacqsintex, Issue 4, 19/04 – Kbal Koh, Issue 1; 17/07 – Charm Textile, Issue 1).

In this case, the union President claimed in the hearing that C.CAWDU had submitted Notification 056/07 dated 19 June 2007 about the establishment of the new union at Pay Her Factory to the employer and the company's security guard signed to [acknowledge] acceptance of the letter. After notifying the company, on 22 June 2007 Mr. Math Sub Pi-E was dismissed by the company without a valid reason and on 26 June 2007 seven other workers were dismissed by the company without a valid reason. Moreover, the union President claimed that worker Thai Bunthoeun was also dismissed by the company but later reinstated by the company because he had resigned from the union.

Furthermore, the election outcome at Pay Her showed that Mr. Math Sub Pi-E was elected President, Ms. Soeun Vannary and Ms. Chan San elected as Secretaries. Letter No. 140 dated 22 August 2007 of the Ministry of Labour and Vocational Training and Registration Certificate dated 22 August 2007 acknowledged the three union leaders at Pay Her. Other dismissed workers were nominated candidates for the election and were elected as the union's advisers.

Based on the evidence presented by the union in the hearing, the evidence submitted by the union to the Arbitration Council as outlined above and the failure of the employer to appear in the hearing to provide evidence to counter the allegation of the worker party, the Arbitration Council finds that the dismissal of the eight workers was due to union discrimination because the dismissals took place after C.CAWDU notified the company of the election and the election outcome held at Pay Her Factory.

2. Did the employer comply with the law when dismissing the eight workers?

Article 293 (1) of the Labour Law states that, "*The dismissal of a shop steward or a candidate for shop steward can take place only after authorisation from the Labour Inspector. The same protective measures apply to former shop stewards...*"

Clause 3 (3) of Prakas 305 dated 22 November 2001 states that, "*All employees who are candidates for election as union leader shall also receive protection from work dismissal like worker delegates. This protection lasts for 45 days prior to the election and ends 45 days after the election if these candidates are not selected. The union shall notify the employers about this candidacy through all reliable means. Employers shall apply this provision once only at every election of union leaders.*"

Moreover, Clause 4 (1) of Prakas 305 dated 22 November 2001 states that, "*From the time of union registration application, all workers who, are the founders or workers who volunteer to join the union as members within the registration period, shall receive protection*

like that of shop stewards. The protection lasts until 30 days after the date of union registration.”

According to the content of Clause 3 (3) and Clause 4 (1) of Prakas 305 dated 22 November 2001, the Arbitration Council considers that all union leaders who are the founders or workers, who voluntarily join a union as members during the registration, shall be protected from dismissal.

In previous cases, the Arbitration Council interpreted Clause 3 and Clause 4 of Prakas 305 dated 22 November 2001 [to mean] that workers can receive special protection as long as: 1) *[the worker is] the type of workers entitled to receive special protection*, 2) *the dismissal is made within the special protection period* and 3) *the union has notified the employer of the candidates [entitled to special protection] through all reliable means* (see Arbitral Awards 07/06 – Dai Young, Issue I and 09/06 – Grand Diamond City, Issue 1).

The first condition was met because the Arbitration Council found that Mr. Math Sub Pi-E, Ms. Soeun Vannary and Ms. Chan San were union leaders as stated in Clause 3 (3) of Prakas 305 dated 22 November 2001; while Ms. Chhin Sreyneang, Ms. Chhan Hay, Het Mary, Ven Leakhena and Sun Sophorn were founders as they joined the union when the union applied for registration or they were workers who voluntarily joined the union during the union registration period as stated in Clause 4 (1) of Prakas 305 dated 22 November 2001.

The second condition was also met because the employer dismissed the eight workers during the special protection period. That means the union submitted Notification 056/07 dated 19 June 2007 regarding the election to establish a new union to the employer and the company's security guard signed to accept the letter. On 23 June 2007, C.CAWDU held the election in compliance with the [proper] process. On 25 June 2007, C.CAWDU notified the company again of the election outcome. The eight workers were dismissed on 22 June 2007 and 26 June 2007, the period in which workers received special protection from dismissal as defined in Clause 3 and Clause 4 of Prakas 305 dated 22 November 2001 (see Arbitral Award 07/06 – Dai Young, Issue 1).

The third condition was also met because the union notified the company of the candidates who [were entitled to] receive special protection through all reliable means. That means in accordance with C.CAWDU's statement and the testimony of the union President in the hearing, the Arbitration Council finds that the union did notify the company of the election outcome on 25 June 2007 naming Mr. Math Sub Pi-E as Union President, Ms. Soeun Vannary as Vice-President, Ms. Chan San as secretary and the other six workers as nominated candidates. [Following this] five out of the six workers (Ms. Chhin Sreyneang, Ms. Chhan Hay, Ms. Het Mary, Ms. Ven Leakhena and Ms. Sun Sophorn) were dismissed. Moreover, the Arbitration Council finds no evidence showing that the employer had not

received the notification because the employer party neither appeared in the hearing nor provided evidence to counter the allegation.

Based on the above interpretation, the Arbitration Council considers that the eight workers satisfied the criteria to receive special protection from dismissal as defined in Clause 3 (3) and Clause 4 (1) of Prakas 305 dated 22 November 2001. Therefore, the Arbitration Council considers that in order to dismiss the eight workers, the employer had to get approval from the Labour Inspector because these workers received special protection during the union registration period. Furthermore, the Arbitration Council finds no evidence to show that the employer received approval from the Labour Inspector.

Therefore, the Arbitration Council considers that the employer dismissed the eight workers on the grounds of union discrimination in contravention of Article 293 of the Labour Law. In conclusion, the employer did not comply with the Labour Law when dismissing the workers.

On the other hand, Article 34 of Prakas 099 dated 21 April 2004 states that, “...*the panel shall have the power and authority to fully remedy any violation of provisions provided in the Labor Law...including: A) orders to reinstate dismissed employees to their former or any other appropriate position...*”

In conclusion, the Arbitration Council orders the employer to reinstate the eight union leaders and union advisers (see Arbitral Awards 02-04 – Cambodiana Hotel, Issue 1, 17/04 – Cheer View, Issue 1, 19/04 – Kbal Koh II, Issue 1 and 17/07 – Charm Textile, Issue 1).

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

DECISION AND ORDER

Order the employer to reinstate the eight union leaders and union advisers.

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: **Hem H Naryth**

Signature:

Arbitrator chosen by the worker party:

Name: **Sin Kim Sean**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: