



KINGDOM OF CAMBODIA
NATION RELIGION KING

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THE ARBITRATION COUNCIL

Case number and name: 149/08-Cambo Hansae

Date of Award: 19 December 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: **Cambo Hansae Co., Ltd**

Address: Trovang Chrey Village, Sangkat Kakab, Khan Dangkor, Phnom Penh

Telephone: 092 526 972

Fax: N/A

Representative:

- | | |
|--------------------|--|
| 1. Mr. Lim Chhayly | Interpreter |
| 2. Mr. Long Chan | Head of Administration of Cambo Hansae Company |
| 3. Mr. Sim In Bo | Compliance Manager |

Worker party:

Name: **Free Trade Union of Workers of Kingdom of Cambodia (FTUWKC) and local union of FTUWKC at Cambo Hansae Company**

Address: #16A, Street 376, Sangkat Boeung Keng Kang, Khan Chamkamorn, Phnom Penh

Telephone: 012 263 543

Fax: N/A

Representative:

- | | |
|--------------------|-------------------|
| 1. Mr. Pao Sina | Officer of FTUWKC |
| 2. Mr. Tuy Vang | Officer of FTUWKC |
| 3. Mr. Tith Sophea | Officer of FTUWKC |

4. Mr. Yen Thairatt	President of local union of FTUWKC at Cambo Hansae Company
5. Mr. Nhim Chhoeut	Secretary of local union of FTUWKC at Cambo Hansae Company
6. Mr. Cheang Phalla	Worker
7. Mr. Meas Ponna	Worker

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- The workers demand that the company reinstate Mr. Yen Thairatt, President of local union, Mr. Long Thaisann, Vice-President of local union of FTUWKC and Ms. Phann Em, worker delegate. The company party states that it cannot reinstate the three union leaders as it is waiting for the court decision to whether the workers committed misconduct or not.
- 2- The workers demand that the company pay the US\$ 6 living allowance for workers from the date of commencement of work.
- 3- The workers demand that the company provide the same amount of US\$ 55 per month as the main wage for old workers and new workers.
- 4- The workers demand that the company should have a safety lane in the packing section.
- 5- The workers demand that the company implement the old agreement.
- 6- The workers demand the company should pay damages to those workers who are stopped by security guards for inspection but are not found guilty.
- 7- The workers demand that the company provide US\$ 5 per month as transportation fee.
- 8- The workers demand that the company provide US\$ 7 per month as attendance bonus.
- 9- The workers demand that head of groups should have overtime payment like normal workers.
- 10- The workers demand that the company has a physician on standby during the hours they perform overtime work.
- 11- The workers demand that the company provide 1,500 riel as meal allowance for overtime work from 4:00 p.m. to 6:00 p.m.
- 12- The workers demand that the company dismiss Mr. Lim Chayly, an interpreter.
- 13- The workers demand that the company arrange to have hygienic toilets.

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 was unsuccessful, and the non-conciliation report No. 1281 KB/AK/VK, dated 26 November 2008 was submitted to the Secretariat of the Arbitration Council on 27 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: 8 December 2008 (at 8:00 a.m.)

Procedural issues:

On 6 November 2008 the Department of Labour Disputes received a complaint via telephone from local union of FTUWKC at Cambo Hanse Company regarding workers who were on strike to demand that the company improve some working conditions. After receiving the claim, the Department of Labour Disputes assigned an expert officer to resolve this labour dispute and the last conciliation session was held on 20 November 2008 but did not receive any conciliation result on the 13 issues. The 13 non-conciliation issues were referred to the Secretariat of the Arbitration Council on 27 November 2008.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the company party and the worker party to the hearing and conciliation on the 13 non-conciliation issues on 8 December 2008 at 8:30 a.m. Both parties were present as invited by the Arbitration Council.

On the hearing day, the Arbitration Council attempted to further the conciliation on the 13 non-conciliation issues. As a result, 12 issues were conciliated - issues 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13. Therefore, in this case the Arbitration Council will consider only issue 1 based on the evidence and clarification by the parties in the hearing 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. Letter No. 0919/2008 to authorise Mr. Simon Sim, Mr. Lim Chhayly, Mr. Long Chan, dated 2 December 2008.
2. Internal Work Rules of Cambo Hansae Co., Ltd, dated 17 July 2008.
3. Certificate of registration, dated 12 November 2007.
4. Letter No. 303 to certify that Cambo Hansae Company is a genuine member of the Garment Manufacturers Association of Cambodia.
5. Certificate of commercial registration of Cambo Hansae Company by the Ministry of Commerce, No. 3966 PN.NTK, dated 3 October 2007.
6. Patent for 2008 of Cambo Hansae Company No. LTU 024931.2008, dated 20 June 2008.
7. Certificate of registration for Value Added Tax of Cambo Hansae Company No. 8675 PD, dated 25 October 2007.
8. Certificate of commercial registration No. 2527 PN.JBP, dated 6 June 2008.
9. Statute of Cambo Hansae Company, dated 11 August 2007.
10. Letter by representatives of local union of FTUWKC at Cambo Hansae Company to request eight issues, dated 30 October 2008.
11. Letter of demand on 14 issues, dated 6 November 2008.
12. Letter of request, 38 sheets of paper, by workers in Cambo Hansae Company regarding the statement that they did not have an intention to participate in the strike with Cambo Hansae Company.
13. Minutes of the labour dispute conciliation at Cambo Hansae Company, dated 18 November 2008.
14. Minutes of the labour dispute conciliation at Cambo Hansae Company, 6 November 2008.
15. Letter No. 663 KB/AK/VK to invite the Director of Cambo Hansae Company to attend the collective labour dispute conciliation, dated 7 November 2008.
16. Interim relief order by the Phnom Penh Court of First Instance, dated 7 November 2008.
17. Complaint letter by Mr. You Chan Gu, Director of Cambo Hansae factory regarding the lawsuit against Ms. Phann Em, Mr. Long Thaisann and Mr. Yen Thairat, dated 20 November 2008.
18. Petition to request issuance of interim relief order, dated 6 November 2008.
19. Letter by Cambo Hansae Company regarding suspension of employment of Mr. Yen Thairat, Mr. Long Thaisann and Ms. Phan Em, dated 5 November 2008.
20. Letter by the Director of Cambo Hansae Company regarding a request for permission to terminate the employment of union leaders, dated 5 November 2008.

21. Notification letter to all workers that on 5 November 2008, there was a strike in Cambo Hansae Company, dated 14 November 2008.
22. Complaint letter by Mr. You Chan Gu, Director of Cambo Hansae factory regarding the lawsuit against Phann Em, Long Thaisann and Yen Thairat, dated 6 November 2008.
23. Documents relevant to Mr. Yen Thairatt, 20 sheets of paper.
24. Documents relevant to Ms. Phann Em, 10 sheets of paper.
25. Documents relevant to Mr. Long Thaisann, 15 sheets of paper.
26. Payroll for November 2008.
27. Minutes of meeting on 28 October 2008 between Mr. Seng Thoeurn and Mr. Lim Chhayly who were representatives of the company and representatives of workers regarding days-off on holidays.
28. Survey on workers regarding days-off on holidays, 39 sheets of paper.
29. Report by six workers regarding the strike to cause turmoil in the factory by local union of FTUWKC, dated 17 November 2008.
30. Payroll for November 2008 for the Stop Worker section of Cambo Hansae Company.

B. Provided by the worker party:

1. Certificate of union registration of local union of FTUWKC at Cambo Hansae factory, dated 4 November 2008.
2. Table of total wages calculation for Mr. Yen Thairat, Mr. Long Thaisann and Ms. Phann Em.
3. Interim relief order by the Phnom Penh Court of First Instance, dated 7 November 2008.
4. Thumbprints of workers in the Cambo Hansae factory to support the strike to demand the reinstatement of the three union representatives and demand improvement on some working conditions.
5. Minutes of the meeting on 6 September 2008 between Mr. Lim Chhayly and Mr. Seng Thoeurn and representatives of local union of FTUWKC and representatives of workers in Cambo Hansae Company regarding resolution of the request by the worker party.
6. Letter by representatives of local union of FTUWKC in Cambo Hansae Company, regarding the request on eight issues, dated 30 October 2008.
7. Letter of demand on 14 issues, dated 6 November 2008.

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

1. Report of the collective labour dispute resolution at Cambo Hansae Company No. 1281 KB/AK/VK, dated 26 November 2008.
2. Minutes of the collective labour dispute conciliation at Cambo Hansae Company, dated 20 November 2008.

D. Provided by the Secretariat of the Arbitration Council:

1. Letter of invitation to the worker party to attend the hearing, No. 729 KB/AK/VK/LKA, dated 28 November 2008.
2. Letter of invitation to the employer party to attend the hearing, No. 728 KB/AK/VK/LKA, dated 28 November 2008.

Findings of fact:

- Cambo Hansae Company is located in Trorpang Chrey Village, Sangkat Kakab, Khan Dangkor, Phnom Penh and employs approximately 770 workers.
- Local union of FTUWKC is the claimant in this case. The worker party claims that the local union of FTUWKC has approximately 700 members.

Issue 1: The workers demand that the company reinstate Mr. Yen Thairatt, President of local union, Mr. Long Thaisann, Vice-President of local union and Ms. Phann Em, worker delegate.

- On 30 October 2008, workers submitted a request to meet with the employer to negotiate on eight issues of demand.
- On 4 November 2008, the workers and the employer had a negotiation meeting but did not reach an agreement in writing on the eight issues.
- On 5 November 2008, the workers went on strike by sitting at their own workplace at 12:30 p.m. to demand the company resolve the issues in dispute.
- On 5 November 2008 at about 6 p.m. the company issued a letter to suspend the employment of Mr. Yen Thairatt, President of local union, Mr. Long Thaisann, Vice-President of local union and Ms. Phann Em, worker delegate. The suspension was effective from 6 November 2008. In the letter the company accused the three people of provoking people to go on strike and conducting a strike not in accordance with the legal procedure. The workers claim that they did not incite the workers. The strike happened in the factory at the workers' workplace. The employer does not provide any evidence to prove that the three workers provoked the workers.
- According to the report of collective labour dispute resolution at Cambo Hansae Company No. 1281 KB/AK/VK, dated 26 November 2008 and the minutes of collective labour dispute resolution at Cambo Hansae company, dated 20 November

2008, on the same day of 5 November 2008 the workers increased their demand to 14 issues but then withdrew one issue and the demand remained to be 13 issues.

- On that same day of 5 November 2008, the employer made a request to the head of the Department of Labour Disputes to terminate the employment of Mr. Yen Thairatt, President of local union, Mr. Long Thaisann, Vice-President of local union and Ms. Phann Em, worker delegate and the Department of Labour Disputes received the letter on 6 November 2008. Up to the hearing date the company has not received any information regarding the decision of the head of the Department of Labour Disputes and up to the hearing date and the date of this Arbitral Award the company has not made an appeal to the Minister of Labour and Vocational Training.
- On 6 November 2008, the strike continued and the Department of Labour Disputes conducted a conciliation but did not receive any conciliation result because the worker party did not attend the conciliation.
- On 6 November 2008, the company submitted a petition to request the head of Phnom Penh Court of First Instance to issue an interim relief order.
- On 7 November 2008, the Phnom Penh Court of First Instance issued an interim relief order to order all workers except for Mr. Yen Thairatt, Mr. Long Thaisann and Ms. Phann Em to stop the strike and return to work to await the final decision by the court.
- On 7 November 2008, the Department of Labour Disputes issued a letter to invite the Director of the company for a conciliation session at the Department of Labour Disputes on 18 November 2008. The Arbitration Council did not receive the report regarding conciliation on 18 November 2008.
- On 20 November 2008, the Department of Labour Disputes conducted a conciliation again but did not receive a conciliation result, based on the report the Secretariat of the Arbitration Council received on 27 November 2008.
- On 20 November 2008, the employer submitted a complaint letter to the Prosecutor of the Phnom Penh Court of First Instance to bring a lawsuit against Mr. Yen Thairatt, Mr. Long Thaisann and Ms. Phann Em in accordance with Articles 331 and 396 of the Labour Law, and Articles 41 and 52 of the Transitional Criminal Law.
- On 8 December 2008, the company claims in the hearing that the workers did not return to work in accordance with the interim relief order by the Phnom Penh Court of First Instance, issued on 7 November 2008. Thus, the company alleges, in accordance with Article 337 of the Labour Law, all workers committed serious misconduct and the company terminated more than 500 workers who had already received their termination payment.

REASONS FOR DECISION

Issue 1: The workers demand that the company reinstate Mr. Yen Thairatt, President of local union, Mr. Long Thaisann, Vice-President of local union and Ms. Phann Em, worker delegate.

In this case, the Arbitration Council considers whether Mr. Yen Thairatt, Mr. Long Thaisann and Ms. Phann Em are entitled to demand reinstatement while their case is under the jurisdiction of the Labour Inspector.

Article 293 of the Labour Law states, *"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 three months following the end of their terms and to unelected candidates during three months following the proclamation of the results of the ballots. Any reassignment or transfer that would end the shop steward's term is subject to the same procedure.*

The Labour Inspector, who has been referred a request to authorise the dismissal of a worker covered by the present article, shall give his decision to the employer and to the worker in question as well as to the union organisation to which the worker belongs, within one month at the latest upon receipt of the case.

On receipt of the decision, the employer, the worker in question, or the union organisation to which the worker belongs has a period of two months to appeal to the Minister in charge of Labour. The Minister in charge of Labour can cancel or reverse the decision of the Labour Inspector.

If there is no notification of the Labour Inspector's decision within the allotted time, or if there is no notification of the decision of the Minister in charge of Labour within two months upon receipt of the appeal, the case and the appeal are considered to be rejected."

Based on the contents of Article 293(2) of the Labour Law above, the Arbitration Council considers that the employer must obtain permission from the Labour Inspector and the Minister in charge of Labour for all termination of employment of protected workers. This means that the Labour Inspector has a duty to consider, investigate and decide whether to permit or reject the employer's request to terminate the employment of union leaders within a period of one month at the latest upon the receipt of the case.

This Article is also applicable to union leaders, as stipulated in Clause 4 of Prakas 305 SKBY, dated 22 november 2001 by the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation that states, *"... this protection will be granted to 3 union leaders pursuant to the conditions set out in Articles 282 and 293 of the Labour Law."*

In this case, the employer submitted a request to terminate the employment of Mr. Yen Thairatt, President of local union, Mr. Long Thaisann, Vice-President of local union and Ms. Phann Em, worker delegate, to the Department of Labour Disputes on 5 November 2008

and the Department received the request on 6 November 2008. Up to the hearing date, the company has not received any information about the decision of the Chief of the Department of Labour Disputes.

Based on the contents of Article 293(4) of the Labour Law, the Arbitration Council considers that the employer's request dated 5 November 2008, received by the Department of Labour Disputes on 6 November 2008, is considered to be rejected because the head of the Department did not issue a decision within a period of one month from the date of receipt of the case (from 6 November 2008 to 6 December 2008). []. Moreover, the employer party has not made an appeal to the Minister of Labour and Vocational Training, although the period of one month has passed.

Based on the findings of fact above, the company issued a letter to suspend employment of Mr. Yen Thairatt, President of local union, Mr. Long Thaisann, Vice-President of local union and Ms. Phann Em, worker delegate, on 5 November 2008.

Article 295 of the Labour Law states, *"In the case of serious misconduct, the manager of enterprise can render the decision to instantly suspend the party in question pending the Labour Inspector's decision. If the Labour Inspector turns down the dismissal, the suspension is annulled and its effects are cancelled lawfully."*

In Arbitral Award 107/08, the Arbitration Council interpreted that in accordance with Article 295 above the company is entitled to suspend the employment contract of union leaders during the period of pending decision by the Labour Inspector. The same Article states that if the Labour Inspector does not agree to the termination of employment, the suspension of employment is considered void. (See Arbitral Award 107/08-Seratex, issue 2).

The Arbitration Council in this case agrees with the interpretation of the Arbitration Council in previous cases. The Arbitration Council considers that the suspension of employment of Mr. Yen Thairatt, Mr. Long Thaisann, and Ms. Phann Em should be considered void because the Labour Inspector did not respond to the request for termination of employment by the required time.

In conclusion, the Arbitration Council decides to order the employer to reinstate the the three workers to work normally pending the decision by the Minister of Labour and Vocational Training should the employer make an appeal within a period of two months after the date of the decision if the Labour Inspector rejects the request.

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

DECISION AND ORDER

Issue 1: Order the employer to reinstate Mr. Yen Thairatt, President of local union, Mr. Long Thaisann, Vice-President of local union of FTUWKC and Ms. Phann Em, worker delegate to work normally pending the decision by the Minister of Labour and Vocational Training should the employer makes an appeal within a period of two months.

Type of Award: Non binding award

This Award will become binding after eight days of the date of notification unless one of the parties lodges a written opposition to the Minister of Labour through the Secretariat of the Arbitration Council within this time 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: