

KINGDOM OF CAMBODIA
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THE ARBITRATION COUNCIL

Case number and name: 15/06-Xing Tai

Date of Award: 24 March 2006

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: Mr. Kao Thach

Arbitrator chosen by the worker party: Mr. Liv Sovanna

Chair arbitrator (chosen by the two Arbitrators): Mr. Kong Phallack

DISPUTING PARTIES

Employer party:

Name: Xing Tai Garment (Cambodia) Co. Ltd.

Address: Building 380, Street North Bridge, Khan Reusey Keo, Phnom Penh

Telephone: 012 856 970

Fax: N/A

Representative:

- Mr. Duot Sulkipli, Company's representative

Worker party:

Name: Coalition of Cambodian Apparel Workers Democracy Union (C.CAWDU) and local union of C.CAWDU at Xing Tai Garment (Cambodia) Co. Ltd.

Address: #6C, Street 476, Sangkat Tuol Tumpung 1, Khan Chamkar Mon, Phnom Penh

Telephone: 012 282 653 / 012 998 906

Representative:

1. Mr. Um Visal, Officer of C.CAWDU
2. Mr. Puth Sambath, President of local union of C.CAWDU at Xing Tai Garment (Cambodia) Co. Ltd.
3. Mr. Hor Chinlan, Vice President of local union of C.CAWDU at Xing Tai Garment (Cambodia) Co. Ltd.

4. Mr. Un Kim Yas, Secretary of local union of C.CAWDU at Xing Tai Garment (Cambodia) Co. Ltd.

ISSUES IN DISPUTE

(In the non-conciliation report)

Based on the non-conciliation report, the following non-conciliated issues are the demands of the workers:

1. The workers demanded that the company provide them with 50 percent of wages when the company does not have work for the workers and requested they punch in once per week. The company agreed to pay 50 percent wages to the workers when the company does not have work for the workers; however, the company required the workers to punch in twice a day.
2. The workers demanded that the company provide pregnant women with one day per month [of leave] and preserve the wages and bonus in order to allow the latter to undertake a health check. The company did not agree to the demand, stating that it would give permission for leave but would not preserve the wage and bonus for them.
3. The workers demanded that the company reimburse unused annual leave. However, the company stated that it would follow the past practice of the company and will grant annual leave during the annual vacations.

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 99/04 on the Arbitration Council; the Arbitration Council Procedural Rules which form an Annex to the same Prakas; and the Prakas 513/05 on the Appointment of Arbitrators (Third 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. But the conciliation hearing was unsuccessful and the non-conciliation report No. 286 AABV/AK/VK dated 28 February 2006 was submitted to the Secretariat of the Arbitration Council on 1 March 2006.

HEARING AND SUMMARY OF PROCEDURE BEFORE THE ARBITRATION COUNCIL

- Place of hearing:** The Arbitration Council, Phnom Penh Center Building "A", Sothearos Blvd, Sangkat Tonle Bassac, Phnom Penh.
- Date of hearing:** 7 March 2006 (from 2:00 to 4:30 p.m.)

Procedural Issues:

On 20 December 2005, the Labour Dispute Department received a complaint from C.CAWDU, demanding the company improve the working conditions on 12 issues. After receiving the complaint, the Labour Dispute Department appointed its labour dispute settlement officer to conciliate the dispute. After several conciliations, nine of 12 issues were conciliated on 14 February 2006.

On 1 March 2006, the Arbitration Council received the case and the non-conciliation report number 286 AABV/AK/VK dated 28 February 2006 produced by Mr. Koy Tep Daravuth, Chief of the Department of Labour Disputes. Having received the case, the Arbitration Council summoned the employer party and the worker party to a hearing in order to conciliate the three remaining issues on 7 March 2006 at 2:00 p.m. Both parties attended the hearing at the invitation of the Arbitration Council. On the hearing day, the Arbitration Council learned that both parties had agreed on two issues out of the three remaining issues: the second and third issues. The Arbitration Council made an attempt to further conciliate the remaining issue but was unsuccessful. Thus, in this award the Arbitration Council will consider only the non-conciliated issue based on the evidence and findings of fact as follows:

EVIDENCE

Witnesses and experts: N/A

DOCUMENTS, EXHIBITS AND OTHER EVIDENCE CONSIDERED BY THE ARBITRATION COUNCIL

Provided by the employer party:

1. Power of attorney from the Director of Xing Tai Garment (Cambodia) Co. Ltd. to Mr. Duot Sulkipli, dated 6 March 2006
2. Minute of a meeting between the company's representatives and the workers' representatives, dated 16 February 2006, on the issues of overtime work and annual leave

Provided by the worker party:

1. Summary statement on the labour dispute at Xing Tai Garment (Cambodia) Co. Ltd., dated 6 March 2006
2. Short-term labour contract of Ngim Vanny relating to night shift
3. Receipt dated 29 December 2005 issued by the Department of Labour Disputes on the registration filing of the labour union at Xing Tai Garment (Cambodia) Co. Ltd.

Provided by the Ministry of Labour and Vocation Training:

1. Letter No. 204 AABV dated 9 March 2006 of His Excellency Nhep Bunchin, Minister of Labour and Vocational Training regarding the request for the settlement of a collective labour dispute at Xing Tai Garment (Cambodia) Co. Ltd.
2. Report on the settlement of a collective labour dispute at Xing Tai Garment (Cambodia) Co. Ltd. No. 286 AABV/AK/VK produced by Mr. Koy Tep Daravuth, Chief of the Department of Labour Disputes, dated 28 February 2006
3. Minute of the collective labour dispute settlement dated 14 February 2006

Provided by the Secretariat of the Arbitration Council:

1. Letter of invitation to the worker party to attend the hearing No. 092 dated 3 March 2006
2. Letter of invitation to the employer party to attend the hearing No. 091 dated 3 March 2006

FACTS

- Having examined the documents submitted to the Arbitration Council;
- Having reviewed the report of the collective labour dispute conciliation;
- Having listened to the arguments raised by the worker and the employer parties;

THE ARBITRATION COUNCIL FINDS THAT:

Issue 1: The demand for 50 percent of regular wage during the period of insufficient work and punching in only once per week

- At Xing Tai Garment (Cambodia) Co. Ltd., there are two labour unions: the local union of Federal Union of Solidarity and local union of C.CAWDU. The complainant in this case is the local union of C.CAWDU at Xing Tai Garment (Cambodia) Co. Ltd., which was newly established but had not received an official registration certificate.
- According to the statement of the employer party at the hearing, sometimes there were period of insufficient work, but the company did not apply to the Labour Inspector for suspension. During those occasions, the company paid the workers 50 percent of regular wages and required them to punch in twice or sometimes once a day. The duration of insufficient work ranged from one to three days and never lasted up to a week. The workers did not deny this argument.

- In this case, the president of the local union asserted that the workers did not demand any compensation or amendment of previous practice but stated that the demand is for the future.

REASON FOR DECISION:

In this case, in periods of insufficient work from one to three days, the company paid the workers 50 percent of their wages and required them to punch in once or twice per day. This practice had lasted for some time and there was no conflict arising from it. However, in this case the workers demanded, as an improvement of the working conditions, to punch in only once per week as the practice from now on. Therefore, the Arbitration Council will consider as follows:

Article 72(1) of the Labour Law states that:

The suspension of a labor contract affects only the main obligations of the contract, that are, those under which the worker has to work for the employer, and the employer has to pay the worker, unless there are provisions to the contrary that require the employer to pay the worker.

Other obligations such as furnishing of accommodation by the employer, as well as the worker's loyalty and confidentiality towards the enterprise, continue to be in effect during the period of suspension."

Based on Article 72(1) of the Labour Law, the Arbitration Council considers that when the labour contract is suspended, the main obligations of the labour contract are affected meaning that the workers are not obliged to work for the employer and the employer is not obliged to pay the workers. Thus, the workers are not obligated to punch in and they will not receive their wage.

However, during periods of insufficient work, the company required the workers to punch in once or twice per day. Therefore, the main obligations were not suspended. If the employment contract was not suspended, the main obligations were not suspended either. In other words, the workers have an obligation to work full time for the employer, while the employer is under an obligation to pay full wages to the workers, although there was insufficient work for them to do. Therefore, the workers must come to the factory every day and the employer has an obligation to secure work for the workers to do. In the event that the

employer cannot find sufficient work for the workers and order them to return home, then he or she is obligated to pay them full wage.

However, in the present case, the employer required the workers to punch in twice per day and provided only 50 percent of their wage. Therefore, the Arbitration Council finds that the practice is not fair, for Article 13 of the Labour Law provides that:

The provisions of this law are of the nature of public order, excepting derogations provided expressly. Consequently, all rules resulted from a unilateral decision, a contract or a convention that do not comply with the provisions of this law or any legal text for its enforcement, are null and void.

Except for the provisions of this law that cannot be derogated in any way, the nature of public order of this law is not obstructive to the granting of benefits or the rights superior to the benefits and the rights defined in this law, granted to workers by a unilateral decision of an employer or a group of employers, by an employment contract, by a collective convention or agreement, or by an arbitral decision.

On the basis of Article 13, the Arbitration Council finds that the agreement, the practice, or the habit of [the employer] providing, and [the employer] receiving 50 percent of wages during periods of insufficient work is a practice which provides benefits to the workers below those mandated by the Labour Law of 1997 since according to the law the employer is under an obligation to provide 100 percent of wages to the workers because in this case the employment contract has not been suspended and the employer mandates the workers to punch in twice per day. Hence, the Arbitration Council orders the employer to stop this practice even though the workers have agreed to accept the 50 percent payment of their wages.

In this case, the workers did not make a demand for the reimbursement of the wage from the past, but claimed for the improvement of working conditions from punching in twice per day to punching in once per week from now on. Thus, the Arbitration Council will consider whether the determination of punching in is the right of the employer or the right of the workers.

Paragraph 2 of Article 2 of the Labour Law states that every enterprise may consist of several establishments, each employing a group of people working together in a defined place such as in factory, workshop, work sites, etc., under the supervision and direction of an

enterprise and an establishment. Based on the provision of this Article and previous arbitral awards, the Arbitration Council finds that the employer has the right and authority to supervise and direct his or her enterprise. (See 28/04-Raffles d'Angkor and 49/04-Ho Hing.)

Therefore, the employer has the right to require the workers to punch in according to his need because it is the right and management authority of the employer in directing his enterprise. Thus, the Arbitration Council decides to reject the demand raised by the workers.

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

DECISION

- Reject the demand raised by the workers to improve the working conditions from punching in twice per day to punching once per week.

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 with the Secretariat of the Arbitration Council within this time period.

Signatures of Members of the Arbitration Panel:

Arbitrator chosen by the employer party:

Name: Mr. Kao Thach

Signature:

Arbitrator chosen by the worker party:

Name: Mr. Liv Sovanna

Signature:

Chair of arbitration panel:

Name: Mr. Kong Phallack

Signature: