



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាសវនកម្មជាតិ

THE ARBITRATION COUNCIL

Case number and name: 155/08-Yung Wah II

Date of Award: 9 January 2009

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: **Ven Pov**

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

DISPUTING PARTIES

Employer party:

Name: **Yung Wah Industrial (Cambodia) Co., Ltd.**

Address: Thmei Village, Ta Khmao Commune, Ta Khmao District, Kandal Province

Telephone: 012 510 966

Fax: N/A

Representative:

- | | |
|--------------------|-------------------------|
| 1. Mr Ng Min Cauan | General Affairs Manager |
| 2. Ly Muy Chheng | Administration Officer |

Worker party:

Name: **Coalition of Cambodian Apparel Workers' Democratic Union (C.CAWDU) and local union of C.CAWDU**

Address: Thmei Village, Ta Khmao Commune, Ta Khmao District, Kandal Province

Telephone: 012 921 802 or 012 282 653 Fax: N/A

Representative:

- | | |
|-----------------------|---|
| 1. Mrs. Meas Vanny | Dispute resolution officer of C.CAWDU |
| 2. Mrs. Sok Phalla | Vice-President of local union of C.CAWDU in the factory |
| 3. Mrs. Keo Samphorst | Secretary of local union of C.CAWDU in the factory |
| 4. Mrs. Noeurn Sally | Worker in QC section |

5. Mrs. Chhem Sovan	Worker in QC section
6. Mrs. Pon Thary	Worker in QC section
7. Mrs. Chea Sarong	Worker in QC section
8. Mrs. Puth Sopheak	Worker in QC section
9. Mrs. Sok Sokkheng	Worker in QC section

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

Twenty women workers in the quality control section do not agree to change their working station from quality control of final clothes to quality control of ironed clothes because in the former place they have chairs for sitting but they need to stand up if they work in the new working place. They request that for the sake of equality the company should have a lucky draw [to assign the workplace]. The company party does not agree to the demand but will arrange work according to assembly lines based on actual needs. The company will implement employment contract and the company's Internal Work Rules properly according to the Labour Law.

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. 696/08 KB/KN, dated 15 December 2008 was submitted to the Secretariat of the Arbitration Council on 17 December 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: 25 December 2008 (from 2:30 p.m. to 5:30 p.m.)

Procedural issues:

On 19 December 2008 the Department of Labour and Vocational Training of Kandal Province assigned an officer and conducted conciliation on a collective labour dispute on one issue but did not receive a conciliation result. The one non-conciliation issue was referred to the Secretariat of the Arbitration Council on 17 December 2008.

Having received the case, the Secretariat of the Arbitration Council summoned both the employer party and the worker party to the hearing and conciliation on the one non-conciliation issue on 25 December 2008 at 2:30 p.m.

Both parties were present as invited by the Arbitration Council. In the hearing the Arbitration Council sought additional information relevant to this dispute and attempted to further the conciliation on the one non-conciliation issue but did not receive a conciliation result. Therefore, the Arbitration Council will consider and resolve this case based on evidence and clarification of 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. Certificate of commercial registration of the Yung Wah Industrial (Cambodia) Co., Ltd, No. 981 PN.NTK, dated 27 March 1998;
2. Memorandum and statute of Yung Wah Industrial (Cambodia) Co., Ltd, dated 2 April 2002;
3. Internal Work Rules of Yung Wah Industrial (Cambodia) Co., Ltd, No. 008/06 KBV, dated 29 May 2006;
4. Employment contract of the 20 women workers.

B. Provided by the worker party:

1. Certificate of union registration of local union of C.CAWDU at Yung Wah II, dated 11 August 2006.
2. Authorisation letter by 20 women workers to the local union of C.CAWDU at Yung Wah II, dated 19 December 2008 (with thumbprint of each worker).

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

1. Report No. 696/08 KB/KN, dated 15 December 2008 on the collective labour dispute settlement at Yung Wah Industrial (Cambodia) Co., Ltd;
2. Minutes of the collective labour dispute conciliation, dated 9 December 2008.

D. Provided by the Secretariat of the Arbitration Council:

1. Invitation No. 754 KB/AK/VK/LKA dated 18 December 2008 to the company party to attend the hearing;

2. Invitation No. 753 KB/AK/VK/LKA dated 18 December 2008 to the worker party to attend the hearing;

FACTS

- Having examined documents submitted to the Arbitration Council;
- Having reviewed the report of collective labour dispute conciliation;
- Having listened to statements by the representatives of the workers and the employer;
- Having examined additional documents;

The Arbitration Council finds that:

- Yung Wah Industrial (Cambodia) Co., Ltd employs approximately 5000 workers including 126 women workers in the quality control section.
- Local union of C.CAWDU is the claimant in this case.
- The company changed the work station of 20 workers of the 126 workers from quality control of final clothes to quality control in the ironing section. However, the 20 women do not agree to the change by the company as workers who need to change their work station are picked by the group supervisor, a process [] the workers considered to be inequitable and requested that the company make it equitable in order to be just.
- The company and the workers acknowledge that the company maintains wages, position and benefits they used to receive when the company changed the work station of the workers.
- The 20 women workers have been working for the company from three to four years and they are employed under undetermined duration contracts.
- The workers mention in the hearing that in the past the company rotated the change for every worker. However, the change the company makes for the 20 workers is on a permanent basis which means they will not be able to return to work in their former place. For this reason, the workers request that the company should ensure equality for the workers regarding this change. The company does not object to the workers' claim.
- The company states that it follows the employment contract and the company's Internal Work Rules based on the production line and actual needs of the company when it made the change to the 20 workers' work station.
- The workers add that the new work station is not the same as their old place because in the old place (they have chairs to sit on) and the workers: check clothes, cut thread, inspect for stains and holes, check the stitching, inspect for tears in the

material and check the clothes as a whole. On the other hand, in the new work station (they do not have chairs to sit on) and the workers: stand to work between eight to ten hours per day as they have a tape measure to measure the [] size of each cloth and inspect for tears and stain in case quality control (QC) overlooked them at some point.

- The workers state that the reasons that the 20 workers do not agree to work in the new working station was because:
 - They have to stand to work in the new work station that cause much difficulty as they need to stand for eight to 10 hours (two hours overtime work) per day.
 - They consider the process of transferring them to the new work place to be not equal.
- The company states that the reasons that the company transfers the women workers to the new work station [] are:
 - Production line requires that the company transfer the women workers to the new work station.
 - The new work station already has 100 workers but it needs an additional 20 workers because currently in the ironing section there are only 10 quality controllers and it needs an additional 20 workers to make up 30 of them.

REASONS FOR DECISION

The worker party demands that the company conduct an equal process in transferring the work station of 20 women workers among 126 workers from quality control of final clothes to quality control of ironed clothes because this change is following a selection made by the group supervisor.

Thus, the Arbitration Council will consider whether the employer has the right to transfer the work station of the 20 workers from quality control of final clothes to quality control of ironed clothes and whether the employer's management to change the workers' work station is just and equal.

The Arbitration Council found that the Labour Law does not state clearly regarding the transferring of workers' work station for the Arbitration Council to use as a basis to interpret and consider in this case. However, Article 2 of the Labour Law states, "*All natural persons or legal entitles ... are considers to be employer who constitute an enterprise, within the meaning of this law, provided that they employ one or more workers, even discontinuously... under the supervision and direction of the employer.*"

In previous cases the Arbitration Council interpreted Article 2 that the employer has the right to supervise and direct the company as long as the supervision and direction is in

accordance with the law and reasonable. (See Arbitral Awards 84/08-Trinunggal Komara, issue 1 and 141/08-Bloom Time, issue 1).

In case 17/03 and 18/03-Ho Hing, the Arbitration Council states that *“In making this decision the Arbitration Council is mindful not to interfere with the right of supervision and management of activities for business and general authorities of the company as employer in managing and changing the works of employees of the company provided it does not result into reduction of wage, changing of working place to the far place from original one, changing of day shift to night shift or night shift to day one and does not affect the specific professional skills. If these things are affected, it is considered as a violation of employment contract that requires to be respected. If the change of shift is made without reduction of wage, if it does not affect the time and place of work and if the change of work involves use of similar (and not complex) skills by the employee, the employer can lawfully do so.”*

In this case, the Arbitration Council agrees with the interpretation of the Arbitration Council in previous cases that the employer has the right to transfer its workers because the transfer the company made for the workers does not result in a reduction of wage, changing of work place that is far from the original one, changing of day shift to night shift or night shift to day one and does not affect the specific professional skills. Therefore, the transfer of the workers' work station [] should be reasonable.

However, the method of management the company used to transfer the workers' work station is not equal and just. The Arbitration Council found that the company transferred 20 workers among 126 workers from quality control of clothes to quality control of ironed clothes following the picking of names by the group supervisor. This does not ensure equality and justice.

Based on the findings of fact, the Arbitration Council found that in the past the company rotated the turn for the workers to go to work in quality control of ironed clothes. However, now the company transfers the work station of 20 women workers of the 126 workers from quality control of clothes to quality control of ironed clothes, not on a rotating basis as it used to practice in the past but they would be transferred to work there on a permanent basis which means they will not return to their old work station. The Arbitration Council considers that the picking of names by the group supervisor for 20 workers of 126 workers does not ensure equality for the 20 workers do not agree to go there. Moreover, their old work station allows more comfort than the new place does. Based on the findings of fact, the company and the workers mention in the hearing that the old work station is not the same as the new place because in the old place (they have chairs to sit on) and the workers: check clothes, cut thread, inspect for stains and holes, check the stitching, inspect for tears in material and check the clothes as a whole. On the other hand, in the new work station (they do not have chairs to sit on but stand to work from 8 to 10 hours) and the workers: stand to

work as they have a tape measure to measure the size of each cloth and inspect for tears and stain in case QC overlooked at some point in addition to their work in their old place. The Arbitration Council considers that the fact that the company transferred the work station of the 20 workers as mentioned above does not ensure justice for them. Thus, the Arbitration Council considers that the company should transfer work station of the workers based on an equal rotating basis as the company used to in the past or the company should ensure equality in the process of transferring the workers' work stations.

The company mentioned in the hearing that the company's transfer of work stations of the 20 workers of the 126 workers from quality control of clothes to quality control of ironed clothes is in accordance with point 3 of the employment contract and point "j" of Clause 2 of the company's Internal Work Rules.

Point 3 of the employment contract states: *"You need to abide by the company's Internal Work Rules strictly. You need to be responsible and should not object to any work assigned by the company."*

Point "j" of Clause 2 of the company's Internal Work Rules states, *"You should respect working hours and follow supervision and assignment of the company strictly following the direction determined by the company."*

The Arbitration Council considers that in accordance with the employment contract and Internal Work Rules above, it is a requirement that workers need to follow Internal Work Rules and working hours strictly. However, it does not state clearly about transferring the work station of the workers.

Article 312 of the Labour Law states, *"...The Council of Arbitration legally decides on disputes concerning the interpretation and enforcement of laws or regulations or of a collective agreement. The Council's decisions are in equity for all other disputes..."*

Based on the contents of the above Article, the Arbitration Council can decide in equity for disputes. In this case, because the method of management the company used to transfer the work station of the 20 workers of the 126 workers does not ensure equality, the Arbitration Council decides that the company should transfer the work station of the 20 workers based on a rotating basis as the company used to practice in the past or [] in the alternative the company should arrange selection by a lucky draw to change the work station of the workers to ensure justice and equality.

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

DECISION AND ORDER

Order the company to transfer the work station of the 20 workers based on a rotating basis as the company used to practice in the past or [] in the alternative, the company

should arrange selection by a lucky draw to change the work station of the workers to ensure justice and equality.

Type of Award: Binding award

This Award is immediately binding upon the parties after the notification of the award because the two parties agreed to the binding arbitral award on 25 December 2008.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Seng Vuochhun**

Signature:

Arbitrator chosen by the worker party:

Name: **Ven Pov**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: